

ATTACHMENTS UNDER SEPARATE
COVER

ORDINARY COUNCIL MEETING
22 JUNE 2021



PORT STEPHENS
C O U N C I L

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APPLICATION REFERENCES

Application Number	16-2020-811-1
Development Description	Construction and use of four storey residential flat building (three apartments), demolition of existing single storey dwelling, associated landscaping, civil works and car parking
Applicant	PERCEPTION PLANNING PTY LTD
Land owner	Mr C CELEA
Date of Lodgement	07/12/2020
Value of Works	\$1,437,929.00
Submissions	21

PROPERTY DETAILS

Property Address	10 Tomaree Road SHOAL BAY
Lot and DP	LOT: 31 DP: 17513
88B Restrictions on Title	Nil.
Current Use	Single Storey Dwelling
Zoning	R3 MEDIUM DENSITY RESIDENTIAL
Site Constraints	Bushfire Prone Land – Category 3 Acid Sulfate Soils Class 5 Coastal Management Zone – Coastal Environment and Coastal Use area. Stormwater Drainage Requirement Area Hunter Water Special Area – Anna Bay Height of Building 9m
State Environmental Planning Policies	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.

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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,

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PROPOSAL

The application seeks consent for the construction and use of a four storey residential flat building (RFB) comprising three apartments, demolition of existing single storey dwelling, associated landscaping, civil works and car parking.

Each of the three apartments includes 4 bedrooms, 1 bathroom and 2 ensuites, open plan living, dining and kitchen and deck oriented to Tomaree Road. The primary access to each apartment is via a central lift. A 6 space car park and bin storage area with access via Tomaree Road is provided at ground level.

The proposal does not involve subdivision of the subject lot.



Figure 1: Perspective drawing

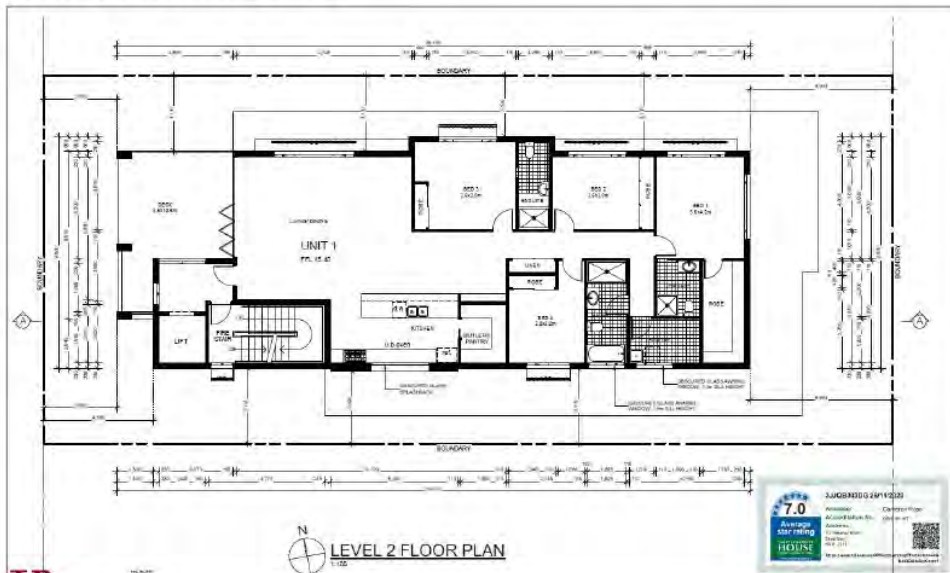


Figure 2: Level 2-4 layout

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The subject site, legally identified as Lot 31 DP 17513 is rectangular in shape and measures and area of 533m². The lot is relatively narrow, measuring 15m in width. The depth of the lot is 35m. The topography of the site slopes from 13.5m Australian Height Datum (AHD) at the front of the site to 15.8m AHD at the rear, with several non-native trees located on the site.

The site is located within an R3 Medium Density zone that has undergone a process of densification, evident by the prevalence of older multi dwelling and RFB housing stock replacing detached single and two storey dwellings.

Adjoining the subject site to the north of the site is a split level 4 storey residential flat building, known as the 'The Crest'. To the west, on the opposite side of Tomaree Road is a seven storey tourist and visitor accommodation building. Adjoining lots to the south consist of low density detached housing. To the east of the site upslope from the site is a split level 3 storey multi-dwelling housing development known as 'Bahia'.

Areas to both the north and west are subject to a 15m maximum building height, which is greater than the 9m maximum building height allocated to the subject site.

The Shoal Bay Local Centre (Zoned B2), is located immediately to the west of the site. The local centre provides for retail, business, entertainment and community uses within an accessible distance from the subject site.

SITE INSPECTION

A site inspection was carried out on 17/05/2021. The subject site can be seen in Images 1 and 6 below:



Image 1: Front view of the site from Tomaree Road



Image 2: View of the streetscape from the north



Image 3: View of the streetscape from the south



Image 4: Four storey 'Crest' apartments to the north of the site



Image 5: View from Bahia apartments to the east of the site



Image 6: Built character on Shoal Bay Road (subject to 9m height limit)



Image 7: Built character on Lillian Street (subject to 9m height limit)

ITEM 1 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**PLANNING ASSESSMENT**

The application was assessed, and comments provided, by the following external agencies and internal specialist staff:

Internal

Development Engineer – No objection was made and the application was supported with standard conditions.

Building Surveyor – No objection was made and the application was supported with standard conditions.

Development Contributions - Supported with conditions requiring infrastructure contributions for two dwellings.

Spatial Services – House numbering provided and included as advisory note.

External

Hunter Water Corporation – The application was referred to Hunter Water Corporation (HWC) as the development is located in the Nelson Bay Sandbeds Special area, gazetted in the Hunter Water Regulation 2015. In response, HWC made no objection to the development, noting that the proposal presented a low risk to water quality.

AUSGRID – The application was supported with recommendations made relating to supply of electricity and proximity to overhead power lines. The AUSGRID comments are recommended to be included as advisory notes on the consent.

NSW Rural Fire Service – The application was referred to RFS as the development includes a performance solution to calculate the APZ and associated BAL because the vegetation forming the bushfire hazard is located on land with a downslope greater than 20 degrees. In response, RFS made no objection to the DA, subject to conditions relating to bushfire protection measures.

Environmental Planning and Assessment Act 1979***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 as it does not require any of the approvals listed under Section 4.46.

Section 4.14 – Consultation and development consent (certain bushfire prone land)

The proposed development is mapped as bushfire prone land, category Category 3 (buffer) and as such requires assessment against the NSW RFS Planning for Bushfire Protection 2019.

The application includes the submission of a Bushfire Assessment Report (BAR), prepared by Perception Planning, reference no. 24/11/20_BAR_10 Tomaree Rd_V3 dated 24 November 2020. The assessment found the Bushfire Attach Level for the proposed development to be BAL 19. A reduction is proposed for the southern and western building elevations due to shielding under AS3959 (Clause 3.5 – Reduction in Construction Requirements Due to Shielding). This shielded elevation can be constructed to BAL-12.5.

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The application was referred to RFS as the development includes a performance solution to calculate the APZ and associated BAL because the vegetation forming the bushfire hazard is located on land with a downslope greater than 20 degrees.

In response, RFS made no objection to the DA, subject to conditions relating to bushfire protection measures.

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).

Section 4.15(a)(i) - any environmental planning instrument

An assessment has been undertaken against each of the applicable environmental planning instruments (EPI's), as follows:

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 two existing trees including a mature native tree and exotic palm located in the front setback of the existing dwelling. The removal is supported as replacement landscaping and tree planting is proposed by the applicant consistent with Council's landscape technical specifications.

State Environmental Planning Policy No. 55 – Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the insert proposed use is not listed as a possible contaminating use, per Table 1 of the Guidelines. Noting this, the proposed development satisfies the requirements of SEPP No. 55.

State Environmental Planning Policy (Koala Habitat Protection) 2021

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This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This Policy commenced on 17 March 2021.

The proposal does not include any tree or koala habitat removal. The site is less than 1ha and therefore does not trigger requirements under the SEPP.

State Environmental Planning Policy Coastal Management 2018

The subject land is located within the Coastal Environment Area and Coastal Use Area, as such the following general matters are required to be considered when determining an application.

As per Clause 13 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The proposed development incorporates appropriate stormwater and water sensitive design measures and is sufficiently setback from the Shoal Bay waterbody that it will not result in any adverse impacts to the coastal environment.

As per Clause 14 of the SEPP, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

The proposed development is an appropriate type and design for the coastal location. The proposed use of the site for increased residential density in conjunction with a sustainable built form will ensure that the visual amenity of the coast is protected. The building envelope and size of the development is also compatible with the natural setting and will not adversely impact important view corridors to the coast.

Clause 15 of the SEPP requires consideration to whether the development would increase the risk of coastal hazards. The proposed development is suitably designed and located to not increase risk to coastal hazards.

Therefore the application would generally comply with the aims of the SEPP and the other matters for consideration stipulated under Clause 13, 14, and 15, and can therefore be supported.

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

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'.

Whilst the development proposed is defined as a 'residential flat building (RFB)', it is not an RFB to which SEPP 65 applies due to the development only incorporating three dwellings.

Notwithstanding, Section C5 – Multi Dwelling Housing or Seniors Housing refers to SEPP 65 for assessment of residential flat buildings, on this basis the ADG has been used to inform a merits assessment of the application with regard to design quality.

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The proposed development was referred to Council's Urban Design Panel (UDP) on 11 February 2021. The UDP determined it was unable to support the application in the form presented and identified a number of areas of the development which required amendment as follows:

- **Built form and scale –**
 - The proposal includes visually-exposed, long, largely unarticulated side walls.
 - The proposal exceeds the 9m LEP height control by a considerable margin (43%) with the degree of exceedance being most pronounced towards the street-front.
 - The built form does not articulate the street façade (or any façade) to consider the 9m LEP height by change of materials, form or through setbacks.
 - The side boundary setbacks are limited to only 3.1m or less, which does not comply with the minimum 6m requirement of the ADG.
 - The proposed window arrangement and decks overlook the apartment building to the north and private open space of the property to the south.
 - Solar access would be limited to the adjacent site to the south.
- **Density –**
 - The proposed density does not achieve reasonable setbacks, provision of open space and deep soil for landscape, and an appropriate height.
- **Sustainability** - No sustainability provisions have been documented except those required for BASIX compliance.
- **Landscape -**
 - There is very limited area available for usefully-scaled landscape treatment.
 - The landscape treatment is inadequate for a building of this scale, and does not contribute to the future character of the area.
- **Amenity** – Surrounding properties are heavily overlooked and overshadowed by the proposal.
- **Safety** - Lift lobby spaces for each apartment remain quite “tight” and would make moving furniture in and out of the apartments difficult.
- **Housing Diversity and Social Interaction-** The rear open space could be used for communal open space, but would benefit from some fixed seating and a shade structure over part of the paved area formed by the protruding car park.
- **Aesthetics –**
 - The applicant's documentation should provide clearer, detailed design strategies which demonstrate the initiatives employed in the design including form, scale, order, texture, colour, materials, open space and sustainability initiatives.
 - Roofscape and architectural forms which add value to the context should be provided in lieu of flat parapets that exceed the height limits.

In response to the advice provided by the UDP, the applicant made building design amendments and additional information, including:

- Reduction in the overall height of the development from 12.9m (43% variation) to 10.75m (19.4% variation).
- Minor increase to southern side setback distance.
- Amended front façade treatment including changes to balconies, material and colour change to improve articulation.
- Visual recessing of the top floor through material change.

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- Changes to material and colour of side elevations to alleviate visual bulk.
- Changes to the roof form to include a skillion design comprising two major sections, which provides improved visual interest when viewed from Tomaree Road.
- Privacy screen louvers or obscure glazing added to all windows presenting potential privacy impacts.

The amendments generally address the recommendations made by the UDP, with the exception of landscaping and setbacks. Landscaping and setbacks are discussed further within the following assessment against the apartment design guide and found to be acceptable.

Apartment Design Guide (ADG)

As noted above, SEPP 65 does not apply to the proposal, notwithstanding, a merits assessment of the amended design has been made against the nine design quality principles and the ADG as outlined below.

Apartment Design Guide	
Quality design principles	
Principle	Assessment
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 zoned R3 medium density residential. The locality has historically undergone process of densification, evident by the prevalence of older build multi dwelling and RFB housing replacing detached single and two storey dwellings. There are few new-build multi-dwelling housing or RFB developments within the locality.</p> <p>Adjoining the subject site to the north of the site is a split level 4 storey residential flat building. To the west, on the opposite side of Tomaree Road is a seven storey tourist and visitor accommodation building. Areas to both the north and west are subject to a 15m maximum building height which is greater than the 9m maximum building height allocated to the subject site. Adjoining lots to the south and east consist of low density detached housing.</p> <p>The proposal is considered to be compatible with the other larger scale apartment buildings in the locality.</p> <p>Due to the narrow site and the future potential for adjoining development the windows on the side elevations include privacy screens and obscure glazing where necessary.</p> <p>The proposed front setback matches the average building line for the street.</p>
Principle 2: Built form and scale	<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>The proposed development has a maximum height of 10.75 metres above existing ground level, which is above the maximum permissible building height of 9m metres specified on the LEP Height of Buildings Map. The extent of the variation is 1.75m or</p>

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	<p>19.4% of the standard. Despite the variation, the proposed building height has been found to be acceptable for the following key reasons:</p> <ul style="list-style-type: none"> • There are several comparatively tall buildings in the immediate visual catchment of the site. • The design includes articulation and changes in colours and material finishes in order to adequately address the developments perceived bulk and scale. • The hierarchy of centres is not disrupted given there are several taller buildings existing in the Shoal Bay area which establish the hierarchy of the centre well above what is proposed by the development. • When viewed from the street, the highest point corresponds with the ridge of the skillion roof at 10.75m, which decreases to a height of 10.2m (13.3% variation) across the frontage. • The site slopes upward toward the rear of the site. Due to the proposed cut into this slope, at the rear of the development, the highest point is 9.3m, representing only a minor variation. • The proposed development maintains acceptable privacy and solar access to neighbouring properties, consistent with the requirements of the ADG, despite the height variation. <p>Overall the proposal is considered to achieve a scale, bulk and height appropriate for the area. The proposal is of a similar height to the adjoining development to the north and considerably less than the 7 storey building on the opposite side of Tomaree Road. The perceived bulk and scale of the building is adequately addressed through the use of articulation to the façade and side walls. The bulk of the large side walls of the building are effectively broken up through changes in material, colour and through the inclusion of recessed and protruding wall features. The upper most storey appears to be visually recessed through the changes in material finish.</p> <p>As demonstrated in the view analysis prepared by the applicant, from many viewpoints, particularly from Tomaree Road, the building will appear to be visually acceptable in the context of the surrounding built form.</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>In the absence of a FSR control for the site, an appropriate density of development is determined by the achievement of reasonable setbacks, provision of open space and deep soil for landscape, and an appropriate height.</p> <p>Despite the variations to the numerical ADG setback requirements and height limit, the variations are not considered to be of an extent that would unacceptably compromise communal open space, amenity or landscaping. Similarly, the proposed development maintains acceptable privacy and solar access to</p>

	<p>neighbouring properties, consistent with the requirements of the ADG, despite the height variation.</p> <p>The proposed apartments are generously sized, with open plan dining, living and kitchen. Each apartment has access to appropriate levels of sunlight and natural ventilation. Appropriate levels of storage are allocated internally to each apartment, both at ground level and within the apartments.</p> <p>Generous sized balconies provide private open space and screened clothes drying areas. Ground level communal open space is provided to the rear of the site.</p> <p>The proposed density of the development is reflective of other existing development in both the immediate locality and broader Shoal Bay area.</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. All apartments achieve adequate levels of solar access and can be cross ventilated to maximise amenity and minimise reliance on powered heating and cooling.</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 proposal includes 18% total landscaped areas which does not meet the 25% numerical requirement.</p> <p>Given the narrow typology of the site, limited landscape treatment has been proposed along the adjoining property boundaries, where solar access is limited.</p> <p>A single deep soil planting area has been provided in the front setback, comprising mature tree plantings to attenuate the front visitor space and built form.</p> <p>Deep soil planting with mature tree plantings is also provided to the rear of the site, adjacent the communal open space to enhance amenity for residents and provide some visual screening of the property from neighbouring residences to the rear.</p> <p>Subject to the recommended conditions requiring native tree plantings and maintenance of landscaping in perpetuity, the proposal provides acceptable landscaping.</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</p>

	<p>areas, and ease of access for all age groups and degrees of mobility.</p> <p>The proposed apartments are generously sized, with open plan dining, living and kitchen. Each apartment has access to appropriate levels of sunlight and natural ventilation. Appropriate levels of storage are allocated internally to each apartment, both at ground level and within the apartments.</p> <p>Generous sized balconies provide private open space and screened clothes drying areas. Ground level communal open space is provided to the rear of the site.</p> <p>Overall, the amenity of the proposed development is acceptable, providing for an appropriate level of solar access, natural ventilation, privacy and outlook. In addition, the UDP confirmed the layout of the proposed residential apartments 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> <p>The proposed balcony arrangement faces Tomaree Road, providing for good passive surveillance opportunities. The proposal includes a lobby area fronting the street, promoting further passive surveillance.</p>
Principle 8: Housing diversity and social interaction	<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 proposal is for three identical three bedroom dwellings, with very generous living spaces, large pantries and laundries. The UDP considered the housing mix is acceptable for an apartment building with three dwellings.</p> <p>The rear open space is suitable for use as communal open space, enabling casual social interaction between residents.</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>The amended proposal includes an articulated façade facing Tomaree Road, which is well proportioned and includes an appropriate mix of material finishes and colour choice.</p> <p>Balconies comprise a mix of varied materials, including glass and solid balustrades and colours which provide articulation to the front façade. The upper most storey is visually recessed through the changes in material finish.</p> <p>The bulk of the large side walls of the building are effectively broken up through changes in material, colour and through the inclusion of recessed and protruding wall features.</p>

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The roof form has been amended to a skillion design comprising two sections with varying pitches, which provide improved visual interest.		
Assessment Criteria		
Control / Requirement	Proposed	Compliance / Comment
3A-1 – Site analysis Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	Site analysis plan submitted.	Yes – provided.
3B-1 Orientation Building types and layouts respond to the streetscape and site while optimising solar access within the development.	The development is oriented to the single frontage to Tomaree Road. Each apartment benefits from a north aspect with three of the bedrooms and the open plan living and dining including north facing windows, providing for good solar access. Due to the orientation and narrow lot width overshadowing of the property to the south is unavoidable, even under a lower density design.	Yes – complies.
3B-2 Orientation Overshadowing of neighbouring properties is minimised during mid-winter.	A shadow diagram analysis has been submitted with the application. Due to the orientation of the lot, overshadowing is primarily caused to the neighbouring single storey dwelling (No. 12) to the south. Some overshadowing would also occur in the afternoon to the Bahia apartments at 47 Ronald Avenue to the east. At least 50% of the POS of the neighbouring dwelling to the south at No. 12 achieves solar access for 3 hours in mid-winter, in excess of the minimum 2 hours required. However, the north facing windows of the dwelling would not receive any direct sunlight	Yes – satisfactory.

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	<p>during mid-winter. Despite this, the overshadowing is considered acceptable given the orientation of the lot is such that overshadowing of this extent is unavoidable from any development that maximises the 9m height limit.</p> <p>Some overshadowing of the Bahia apartments at 47 Ronald Avenue to the east of the site would occur between the hours of 2:00 – 3:00pm mid-winter. However, all POS, open space and living areas would maintain a minimum of 2 hours solar access, in accordance with the requirements of this section.</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>The development provides a ground level lobby which provides passive surveillance to the street. The upper storey balconies also provide for further passive surveillance.</p>	<p>Yes – complies.</p>
<p><i>3C-2 Public Domain Interface</i></p> <p>Amenity of the public domain is retained and enhanced.</p>	<p>The amenity of the public domain will be enhanced through the provision of landscape treatment.</p>	<p>Yes – complies.</p>
<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"> • Communal open space has a minimum area equal to 25% of the site area. • 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). 	<p>A paved and landscaped communal open space area is allocated to the rear of the site with adjacent deep soil landscaping. The communal space area measures a total area of 46m², representing 11.6% of site area.</p> <p>Despite the communal open space non-compliance, given the generous sized balconies afforded to each apartment with a floor area of 26m² and north facing aspect for solar access, the design is considered sufficient to meet open space requirements.</p>	<p>Yes – satisfactory.</p>
<p><i>3D-2 Communal and Public Open Space</i></p>	<p>The proposed communal open space provides paved and</p>	<p>Yes – satisfactory.</p>

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Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	grassed areas, suitable for a range of activities. Deep soil landscaping is proposed within this area to provide for a natural outlook.	
<i>3D-3 Communal and Public Open Space</i> Communal open space is designed to maximise safety.	Communal open space is located toward the rear of the building. A condition is recommended requiring that access to this space be via locked gate.	Yes – satisfactory.
<i>3D-4 Communal and Public Open Space</i> Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.	Public open space is not proposed as part of the application.	N/A
<i>3E-1 Deep Soil Zones</i> 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. Numerical design criteria: <ul style="list-style-type: none"> • Site area less than 650m² – no minimum dimension requirement and 7% of site area deep soil planting. However, the design criteria may not be possible on some sites including: <ul style="list-style-type: none"> • Central business district. • Constrained sites. • High density areas. • Commercial centres. • Where there is 100% site coverage or non-residential uses at ground floor. 	The proposal provides 12% deep soil area in accordance with the requirements of this section. The deep soil area includes three tree plantings which provide screening to properties at the rear of the site. A single tree is located to the front of the site as an amenity planting.	Yes – complies.
<i>3F-1 Visual Privacy</i> Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy. Numerical design criteria: <ul style="list-style-type: none"> • Building height up to 12m (4 storeys): <ul style="list-style-type: none"> • Habitable rooms and balconies - 6m. • Non habitable rooms – 3m. • Building height up to 25 metres (5-8 storeys): 	The proposed ground floor (basement car park) of the development is located a minimum of 1.5m from the northern side boundary and 1.2 from the southern side boundary. However, the ADG does not require any separation for blank walls. There is a predominant setback of 3.1m for levels 2-4 from the north and south boundaries, with a reduced setback of 2.53m from the northern side boundary and 3m from the southern side	

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<ul style="list-style-type: none"> • Habitable rooms and balconies - 9m. • Non habitable rooms – 4.5m. • Building height over 25m (9+ storeys): <ul style="list-style-type: none"> • Habitable rooms and balconies - 12m. • Non habitable rooms – 6m. • No separation is required between blank walls. • 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. 	<p>boundary on the articulated wall features.</p> <p>Adequate separation is provided from the rear setback at 5.9m.</p> <p>The UDP recommended increased setbacks (i.e. +3m) be applied to the north and south boundaries to provide an appropriate transition and separation. However, it is noted the typology is classified as narrow infill apartments. As outlined in the ADG, achieving minimum building separation can be difficult to achieve given infill apartments are a response to the dimensions of traditional residential lot sizes in suburban areas such as Shoal Bay, which are narrow and deep, and are often surrounded by a combination of detached houses and flat buildings from previous eras.</p> <p>Therefore, the reduced side setbacks have been informed by the narrow dimensions of the site. To mitigate the reduced building separation, the development includes the following measures:</p> <ul style="list-style-type: none"> • The use of highlight, and opaque windows incorporated along the side elevations. • Screening devices provided for all habitable rooms; • Conditions for privacy screening on balconies. • The use of landscaping, wall articulation, materials and finishes to ameliorate visual impact; and • Main living spaces being provided with larger openings orientated to the front of the site to achieve reasonable levels of 	
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	<p>external and internal visual privacy.</p> <p>Despite the numerical non-compliance, the design strategies adopted have achieved an acceptable outcome given the infill typology of the site and development.</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 development includes a clearly defined entry lobby. The lobby is connected to the</p> <p>Pedestrian access is proposed from the Tomaree Road reserve to the entry lobby and garbage room.</p> <p>Landscaping, including tree planting is proposed within the front setback to soften the interface of the development with 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>As stated above, entries and pathways are accessible and easy to identify.</p>	Yes – complies.
<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 development site is relatively small (533m²), with access to only one frontage at Tomaree Road. The proposed footpath and driveway connection to Tomaree Road is considered adequate.</p>	Yes – complies.
<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>Partial shared pedestrian/vehicle use of the driveway is proposed within the road verge component of the driveway. Dedicated pedestrian access is provided.</p>	Minor non-compliance supported.

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<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"> • on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or • on land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <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>Car parking is satisfactory as detailed elsewhere in this report, against Chapter B9 of the DCP.</p>	<p>Yes – complies.</p>
<p><i>3J-2 Bicycle and Car Parking</i></p> <p>Parking and facilities are provided for other modes of transport.</p>	<p>Bicycle parking is available within the storage area allocated to each apartment in the ground floor car park.</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 underground car parking area is access via a locked door.</p>	<p>Yes – complies.</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 application includes cut into the sloped site to create the basement level car park, which aids in concealing much of the visual bulk associated with the car parking level.</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>The application includes cut into the sloped site to create the basement level car park which aids in concealing much of the visual bulk associated with the car parking level.</p>	<p>Yes – complies.</p>

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<p><i>4A-1 Solar and Daylight Access</i></p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • 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 • A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter. 	<p>The northerly aspect of apartments ensures that apartments receive three or more hours of direct sunlight to living rooms and private open spaces.</p>	<p>Yes – complies.</p>
<p><i>4A-2 Solar and Daylight Access</i></p> <p>Daylight access is maximised where sunlight is limited.</p>	<p>The development suitably captures solar access opportunities through siting of balconies and windows.</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, screens 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>Each habitable room can be naturally ventilated.</p>	<p>Yes – complies.</p>
<p><i>4B-2 Natural Ventilation</i></p> <p>The layout and design of single aspect apartments maximises natural ventilation.</p>	<p>The development does not include any single aspect apartments.</p>	<p>N/A.</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>Each apartment is able to cross ventilate with windows provided on multiple orientations.</p>	<p>Yes – complies.</p>

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<p>Numerical design criteria:</p> <ul style="list-style-type: none"> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line. 		
<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"> Habitable rooms – 2.7m. Non-habitable rooms – 2.4m, 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. Attic spaces – 1.8m at the edge of the room with a 30 degree minimum ceiling slope. If located in mixed use areas – 3.3m for ground floor and first floor to promote future flexibility of use. 	<p>Ceiling heights are proposed at 2.7m for all habitable rooms, thereby maximising natural ventilation.</p>	<p>Yes – complies.</p>
<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>The proposed ceiling heights are a uniform 2.7m high, which combined with the open plan dining/living provides an adequate sense of space.</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>The proposed development, would not be suitable for future ground floor commercial uses, noting the zoning of the land is for residential purposes.</p>	<p>N/A.</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"> Studio – 35 m² One bedroom – 50 m² Two bedroom – 70m² Three bedroom – 	<p>Each apartment includes an internal floor area of 182m², which is in excess of the requirements of this clause.</p> <p>Each habitable room can be naturally ventilated and receive natural light.</p>	<p>Yes – complies.</p>

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<p>90m²</p> <ul style="list-style-type: none"> • An additional 5m² is required for apartments with more than one bathroom. • An additional 12m² is required for a fourth, and further additional bedrooms. • 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. 		
<p><i>4D-2 Apartment Size and Layout</i></p> <p>Environmental performance of the apartment is maximised.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Habitable room depths are limited to a maximum of 2.5 x the ceiling height. • In open plan layout (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. 	<p>Each habitable room includes the appropriate depth dimensions. Adequate lighting is afforded to each habitable room.</p>	<p>Yes – complies.</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"> • Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). • Bedrooms have a minimum dimension of 3m (excluding wardrobe space). • Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> - One bedroom apartments - 3.6m. - Two or three bedroom apartments – 4m. • The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts. 	<p>Each room contains the following dimensions:</p> <ul style="list-style-type: none"> • Master bedrooms – 15m² • Other bedrooms - minimum 9m² • Each bedroom exceeds the minimum dimension of 3m. • Combined living/dining exceeds the minimum width requirement of 4m. • All apartments are a cross-over typology and at-least 4m in width. 	<p>Yes – complies.</p>

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<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"> • Studio apartments – 4m². • One bedroom apartments – 8m² with a depth of 2m. • Two bedroom apartments – 10m² with a depth of 2m. • Three + bedroom apartments – 12m² with a depth of 2.4m. • 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 15m² and a minimum depth of 3m 	<p>Each apartment includes a 26m² deck with northern and western aspects. The minimum depth of the balcony is 4.8m</p>	<p>Yes – complies.</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>Each apartment includes a deck that is accessible via stacked sliding doors from the open plan living/dining area.</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>Balconies comprise a mix of varied materials, including glass and solid balustrades and colours which provide articulation of the front façade. The upper most storey is visually recessed through the changes in material finish.</p>	<p>Yes – complies.</p>
<p><i>4E-4 Private Open Space and Balconies</i></p> <p>Private open space and balcony design maximises safety.</p>	<p>BCA compliant balustrades are provided to balcony areas. The balconies also provide for passive surveillance to Tomaree Road.</p>	<p>Yes – complies.</p>
<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"> • For buildings less than ten storeys in height the maximum number of 	<p>The proposed lobby fronting Tomaree Road provides a reasonable level of amenity to residents and is sufficiently sized to cater for the three proposed apartments.</p>	<p>Yes – complies.</p>

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apartments off a circulation core on a single level is eight.		
<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>The proposal includes a common lobby area which functions as a meeting point for residents. There are no other common circulation spaces within the development, given only three apartments are proposed.</p> <p>Each apartment includes its own lobby, outside the lift and stair area which is communally accessible. From the lobby access to the apartments is via a secure front door.</p>	Yes – complies.
<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"> • Studio apartments – 4m². • One bedroom apartments – 6m². • Two bedroom apartments – 8m². • Three + bedroom apartments – 10m². • At least 50% of the required storage is to be located within the apartment. 	<p>Storage is catered for in the living/dining area and further space is available within the laundry for freestanding furniture. Additional storage is allocated in the basement car park.</p>	Minor non-compliance supported.
<p><i>4G-2 Common Circulation and Spaces</i></p> <p>Additional storage is conveniently located, accessible and nominated for individual apartments.</p>	<p>Storage is conveniently located within apartments and garage areas to maximise accessibility and usability.</p>	Yes – complies.
<p><i>4H-1 Acoustic Privacy</i></p> <p>Noise transfer is minimised through the siting of buildings and building layout.</p>	<p>The design of the building, which includes only one apartment per floor would limit noise transfer between apartments. Separation distances between buildings on adjoining sites are adequate to limit noise transfer between lots.</p>	Yes – complies.

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<p><i>4H-2 Acoustic Privacy</i></p> <p>Noise impacts are mitigated within apartments through layouts and acoustic treatments.</p>	<p>As above, noise impacts are effectively mitigated via the building design and separation distances.</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 proposal is not located in proximity to any noisy or hostile environments.</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 proposal is not located in proximity to any noisy or hostile environments.</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>The development does not provide any variation in apartment design however, given the scale of the development comprising only three apartments, any variation between apartment size and layouts would represent minimal benefit to the overall housing mix of the locality.</p>	<p>Minor non-compliance supported.</p>
<p><i>4K-2 Apartment Mix</i></p> <p>The apartment mix is distributed to suitable locations within the building.</p>	<p>All apartments are uniform in size and layout.</p>	<p>N/A.</p>
<p><i>4L-1 Ground Floor Apartments</i></p> <p>Street frontage is maximised where ground floor apartments are located.</p>	<p>The proposal does include any ground floor apartments.</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>The proposal does include any ground floor apartments.</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 amended proposal includes an articulated façade facing Tomaree Road, which is well proportioned and includes an appropriate mix of material finishes and colour choice.</p> <p>The bulk of the large side walls of the building are effectively broken up through changes in material, colour and through the inclusion of recessed and protruding wall features.</p>	Yes – complies.
<p><i>4M-2 Facades</i></p> <p>Building functions are expressed by the façade.</p>	<p>The building façade expresses function through the balcony design which provides articulation and improves visual interest. The balcony also acts to highlight the lobby entrance.</p>	Yes – complies.
<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 roof form has been amended to a skillion design comprising two sections, of varying pitches, which provide improved visual interest.</p>	Yes – complies.
<p><i>4N-2 Roof Design</i></p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p>	<p>Utilisation of the rooftop area for communal space are limited due to the height limit of the site. As discussed elsewhere communal space is not required for a development of this scale.</p>	N/A.
<p><i>4N-3 Roof Design</i></p> <p><i>Roof design incorporates sustainability features.</i></p>	<p>The roof design does not incorporate sustainability features, but would be suitable for retrofitting with PV solar panels is desired in the future.</p>	Minor non-compliance supported.
<p><i>4O-1 Landscape Design</i></p> <p>Landscape design is viable and sustainable.</p>	<p>The landscape design consists of mainly native plantings, which can be sustained subject to the recommended conditions for maintenance.</p>	Yes – subject to conditions.
<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>	Yes – subject to conditions.

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<p><i>4P-1 Planting on Structures</i></p> <p>Appropriate soil profiles are provided.</p>	<p>The proposal includes 18% total landscaped areas.</p> <p>A single deep soil planting area has been provided in the front setback, comprising mature tree plantings to attenuate the front visitor space and built form. In addition, a condition is recommended to provide native tree plantings within the front setback.</p> <p>Deep soil planting with mature tree plantings is also provided to the rear of the site, adjacent the communal open space to enhance amenity for residents and provide some visual screening of the property from neighbouring residences to the rear.</p> <p>Whilst the proposed landscaping does not meet the 25% numerical requirement, as outlined above, the proposed planting approach is acceptable.</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>Species selection is appropriate for the climate and can be maintained subject to the recommended conditions.</p>	<p>Yes – subject to conditions.</p>
<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>A deep soil planting area has been provided in the front setback, comprising mature tree plantings to attenuate the front visitor space and built form. In addition, a condition is recommended to provide native tree plantings within the front setback.</p>	<p>Yes – subject to conditions.</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"> • A benchmark of 20% of the total apartments incorporate the Liveable 	<p>The apartments do not incorporate the Liveable Housing Guidelines silver level universal design features. This requirement is not considered necessary for the development due to the minor scale of apartment yield.</p>	<p>Non-compliance supported.</p>

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Housing Guidelines silver level universal design features.		
<p><i>4Q-2 Universal Design</i></p> <p>A variety of apartments with adaptable design are provided.</p>	The development does not provide any variation in apartment design however, given the scale of the development comprising only three apartments it is not considered reasonable to impose this design guide requirement.	Non-compliance supported.
<p><i>4Q-3 Universal Design</i></p> <p>Apartment layouts are flexible and accommodate a range of lifestyle needs.</p>	The development does not provide any variation in apartment design however, given the scale of the development comprising only three apartments, it is not considered reasonable to impose this design guide requirement.	Non-compliance supported.
<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>	The proposal does not involve adaptive re-use.	N/A.
<p><i>4R-2 Adaptive Reuse</i></p> <p>Adapted buildings provide residential amenity while not precluding future adaptive reuse.</p>	The proposal does not involve adaptive re-use.	N/A.
<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>	The proposal is not a mixed use development.	N/A.
<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>	The proposal is not a mixed use development.	N/A.

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<p><i>4T-1 Awnings and Signage</i></p> <p>Awnings are well located and complement and integrate with the building design.</p>	<p>The proposal does not include awnings or signage.</p>	<p>N/A.</p>
<p><i>4T-2 Awnings and Signage</i></p> <p>Signage responds to the context and desired streetscape character.</p>	<p>The proposal does not include awnings or signage.</p>	<p>N/A.</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>A screened clothes drying areas is provided on balcony areas.</p>	<p>Yes – complies.</p>
<p><i>4U-2 Energy Efficiency</i></p> <p>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.</p>	<p>The proposed building layout and orientation provides for good cross ventilation and solar access. A valid BASIX certificate has been submitted.</p>	<p>Yes – Complies.</p>
<p><i>4U-3 Energy Efficiency</i></p> <p>Adequate natural ventilation minimises the need for mechanical ventilation.</p>	<p>Adequate window openings are provided with the opportunity for cross ventilation available.</p>	<p>Yes – Complies.</p>
<p><i>4V-1 Water Management and Conservation</i></p> <p>Potable water use is minimised.</p>	<p>A valid BASIX certificate has been provided. A condition of consent is recommended requiring compliance with the BASIX requirements has been recommended.</p>	<p>Yes – complies subject to conditions of consent.</p>
<p><i>4V-2 Water Management and Conservation</i></p> <p>Urban stormwater is treated on site before being discharged to receiving waters.</p>	<p>The proposed development includes a stormwater treatment system to ensure that stormwater is appropriately treated prior to discharge.</p>	<p>Yes – complies.</p>
<p><i>4V-3 Water Management and Conservation</i></p> <p>Flood management systems are integrated into the site design.</p>	<p>The proposed development includes a stormwater treatment system to ensure that stormwater is appropriately treated prior to discharge.</p>	<p>Yes – complies.</p>

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<p><i>4W-1 Waste Management</i></p> <p>Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.</p>	<p>The proposal includes a basement level garbage room which measures 12m². The garbage room provides for a screened bin storage location with external access to enable transport of bins to the kerbside.</p>	<p>Yes – complies.</p>
<p><i>4W-2 Waste Management</i></p> <p>Domestic waste is minimised by providing safe and convenient source separation and recycling.</p>	<p>The basement level garbage room provides sufficient space for sorting and separation of garbage between Council 240L general and recycling waste bins.</p>	<p>Yes – complies.</p>
<p><i>4X-1 Building Maintenance</i></p> <p>Building design detail provides protection from weathering.</p>	<p>Robust materials have been proposed and design solutions.</p>	<p>Yes – complies, subject to conditions of consent.</p>
<p><i>4X-2 Building Maintenance</i></p> <p>Systems and access enable ease of maintenance.</p>	<p>Accessible service areas have been proposed.</p>	<p>Yes – subject to conditions.</p>
<p><i>4X-3 Building Maintenance</i></p> <p>Material selection reduces ongoing maintenance costs.</p>	<p>A condition has been recommended requiring graffiti removal. Robust materials have been proposed and design solutions.</p>	<p>Yes – subject to conditions.</p>

Port Stephens Local Environmental Plan 2013 (LEP)**Clause 2.3 – Zone Objectives and Land Use Table**

The proposed development is defined as a Residential Flat Building which is permissible with consent in the R3 Medium Density Residential Zone.

The objectives of the zone are:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

The development addresses the objectives of the zone through the provision of increased residential housing in an accessible location, close to amenities and services which meet the day to day needs of residents.

Clause 2.7 – Demolition requiring 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.

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The proposed development requires the demolition of an existing single storey dwelling. Accordingly, conditions of consent have been recommended 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.

The subject site has a total area of approximately 533m² which provides more than the 450m² area required to facilitate the proposed development, in accordance with the requirements of this clause.

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 9m height limit applies to the subject development.

The proposed development has a maximum height of 10.75 metres above existing ground level, which is above the maximum permissible building height of 9m metres specified on the Height of Buildings Map. The proposed variation represents a 1.75m or 19.4% variation to the standard. Accordingly, a request to vary the development standard has been submitted to support the application. The clause 4.6 request is considered elsewhere in this report.

Clause 4.6 – Exceptions to development standards

The proposal exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the Port Stephens LEP 2013 (PSLEP). The DA has a maximum building height of 10.75m, which exceeds the 9m height limit and represents a 19.4% variation to the development standard.

A request to vary the building height development standard has been submitted by the applicant in accordance with Clause 4.6 of the PSLEP. That request has been reviewed and the following is noted:

- There are a number of comparatively tall or taller buildings in the nearby area, including the neighbouring 4 storey residential flat building to the north and a 7 storey tourist and visitor accommodation building, directly opposite the site on Tomaree Road. Other comparatively tall buildings are prevalent in the broader Shoal Bay area.
- The design includes articulation and changes in colours and material finishes in order to adequately address the developments perceived bulk and scale. As a result, the development would not be inconsistent with the character of the area.
- The hierarchy of centres is not disrupted given there are several taller buildings existing in the shoal bay area which establish the hierarchy of the centre well above what is proposed by the development.
- With further regard to the hierarchy of centres, the neighbouring Crest apartments to the north is a comparatively tall development, however, does not fully utilise the available 15m height limit. The proposal has a maximum height of 10.75m, which despite the variation, is considerably less than the adjoining height limit of 15m.
- When viewed from the street, the highest point corresponds with the ridge of the skillion roof at 10.75m, which decreases to a height of 10.2m (13% variation) across the frontage.

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- The site slopes upward toward the rear of the site. Due to the proposed cut into this slope, at the rear of the development, the highest point is 9.3m, representing only a minor variation.
- The proposed development maintains acceptable privacy and solar access to neighbouring properties, consistent with the requirements of the ADG, despite the height variation.

The zone objectives and objectives of Clause 4.3 are achieved despite the non-compliance. There are sufficient environmental planning grounds to justify contravening the height of buildings standard and compliance with the standard is unnecessary in the circumstances of this application.

On this basis, the building height variation is supported. A detailed assessment against Clause 4.6 is contained within **Attachment 1 - Clause 4.6 Assessment Report**.

Clause 5.10 – Heritage conservation

There are no Aboriginal sites or places located on the subject site, nor are there any heritage items listed under Schedule 5 of the PS LEP. In addition, the subject site has been previously developed for the purposes a single storey dwelling. Due to the extent of existing disturbance to the site it is unlikely that the proposed earthworks will impact upon Aboriginal relics. Notwithstanding, an advisory note is recommended of providing that works should cease and that Heritage NSW be notified in the event that any Aboriginal relics are encountered during works.

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 5 acid sulfate soils. The proposed development proposed excavation to a depth of 2.7m to provide a level building footprint and support the basement car park. Despite the site being located within 500m of adjacent class 4 ASS mapped land, the proposed cut is to RL 13.00 and is not anticipated to lower the water table below 1m AHD on adjacent class 1,2,3 or 4 land. On this basis it is not expected that acid sulfate soils would be encountered during works and as such, development consent is not required under this clause.

Clause 7.2 – Earthworks

The application proposes earthworks on the site to achieve a level building platform through the use of balanced cut and fill to a maximum depth of 2.7 (RL 13.00). The proposed earthworks are minor in nature and are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place. No material is proposed to be imported or exported from the subject site and accordingly, the development accords with the requirements of this clause.

In addition, the subject site has been previously developed for the purposes a single storey dwelling. Due to the extent of existing disturbance to the site it is unlikely that the proposed earthworks will impact upon Aboriginal relics. Notwithstanding, an advisory note is recommended of providing that works should cease and that Heritage NSW be notified in the event that any Aboriginal relics are encountered during works.

Clause 7.3 – Flood Planning

The proposed development is not located on land mapped as being Flood Planning Area.

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 Councils requirements. The subject land also maintains direct access to Tomaree Road, meeting the requirements of this clause.

Clause 7.8 – Drinking Water Catchments

The proposed development is located within a drinking water catchment and accordingly, the requirements of this clause apply. The subject development has been designed so as not to result in negative impacts on the quality or quantity of water entering the drinking water storage through

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the use of an on-site stormwater management system. The on-site system has been designed in accordance with Councils requirements to reduce the levels of identified pollutants to acceptable levels, prior to discharge from the site. There are no anticipated adverse impacts on the drinking water catchment as a result of the proposed development.

In addition, the application was referred to Hunter Water Corporation (HWC). In response, HWC made no objection to the application, noting that the water quality modelling provided with the application appears to meet neutral or beneficial effect.

Section 4.15(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(a)(iii) – any development control plan

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.

Chapter B1 – Tree Management

The development application seeks consent for the removal of two existing trees including a mature native tree and exotic palm located in the front setback of the existing dwelling. The removal is supported as replacement landscaping is proposed by the applicant consistent with Council's landscape technical specifications.

Chapter B2 – Natural Resources

The two existing trees located on the subject site, including a mature native tree and exotic palm located in the front setback of the existing dwelling do not hold any environmental significance. Moreover, the site is not mapped as being likely to contain any environmentally significant 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 on the fringe of the Shoal Bay local centre the proposed development, subject to the recommended conditions of consent, is not considered likely to have any adverse impacts upon the natural environment.

Chapter B3 – Environmental Management

Acid Sulfate Soils

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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 the recommended 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 the recommended conditions of consent, the application is satisfactory in regards to noise management.

Earthworks

As discussed at clause 7.2 above, the proposed development involves minor earthworks to achieve a level building platform through the use of balanced cut and fill to a maximum depth of 2.7m (RL 13.00). The impacts of the proposed earthworks can be mitigated through the recommended 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 area within the basement car park catering for residential waste generated by the three dwellings. Sufficient space is available for kerbside pick-up and the development can be serviced by Council for waste collection. Conditions of consent are recommended to 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.

Chapter B4 – Drainage and Water Quality

A stormwater management plan was submitted with the application and includes adequate quality and quantity controls as required by Councils policy. The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has been recommended requiring the provision of detailed engineering plans, prior to the issue of a construction certificate.

Chapter B5 – Flooding

The site is not identified as being with a flood planning area.

Chapter B7 – Heritage

There are no Aboriginal sites or places located on the subject site, nor are there any heritage items listed under Schedule 5 of the PS LEP. The site displays evidence of prior ground disturbance and it is therefore unlikely that the proposal will impact upon Aboriginal relics.

Notwithstanding, an advisory note is recommended of providing that works should cease and that Heritage NSW be notified in the event that any Aboriginal relics are encountered during works.

Chapter B8 – Road Network and Parking

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The potential impacts of the development to the local road network have been assessed and it has been determined that subject to the recommended conditions of consent the development is satisfactory. The applicant submitted a traffic, car parking and access assessment to support the application, prepared by SECA Solution (dated 24 November 2020) to assess the proposal with respect to access and traffic.

With regard to traffic generation, the applicant's assessment finds the additional trips associated with this development over those of the existing dwelling will be minimal, being 1 trip in the peak hour and an extra 11 trips per day (one additional trip per hour). The key intersection most likely to be impacted by the proposal is the signalised intersection at Shoal Bay Road and Government Road. The traffic assessment concludes that one additional trip per hour will have a minor and acceptable impact on this intersection. The application has been reviewed by Council's traffic engineer who concurred with the conclusions of the applicant's traffic assessment. To manage traffic during construction, a condition is recommended requiring that a traffic management plan be prepared prior to the issue of a Construction Certificate.

The proposed access via Tomaree Road provides appropriate sight distances and would not likely result in queuing on Tomaree Road.

The following car parking rates are applied to residential flat buildings, in accordance with Figure BT of the PS DCP:

- 1 car space for one and two bedroom dwellings
- 2 car spaces for three or more bedroom dwellings
- 1 visitor space for every three dwellings

The proposal includes 3 dwellings, each comprising four bedrooms. Accordingly, the car parking demand generated is 7 spaces.

A shortfall of one space is attributed to visitor parking requirements. To address the shortfall, the applicant included a car parking assessment, reviewing the availability of on street car parking to accommodate the shortfall. The car parking assessment notes that as there is no parking permitted along the site frontage, a visitor to the site will be required to park elsewhere. The car parking assessment identifies Messines Street, to the south of the site, as having adequate to accommodate the one space, even during busy times when foreshore public parking is heavily utilised. Given the shortfall can be accommodated through on-street parking without adverse impact, the proposed car parking is supported.

Chapter C – Development Types

The proposed development is that of a residential flat building. As discussed elsewhere in this report, the development is not subject to the requirements of SEPP65, as the RFB contains less than 4 dwellings. Notwithstanding, a merits based assessment has been given against the ADG above.

Similarly, Chapter C5 - Multi-dwelling housing or Seniors Housing is not directly applicable to the proposed development, as it applies only to multi-dwelling housing and seniors housing. Despite this, a merits based assessment has been given against Chapter C5 below.

Chapter C5 – Multi-dwelling housing or Seniors Housing

This chapter does not apply to the proposed development as the development type is not characterised as either multi-dwelling housing or Seniors Housing. Chapter C5 references SEPP

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65 for development defined as a RFB and therefore the ADG, has been used to inform a merits assessment of the application with regard to design quality.

Chapter D – Specific Areas

There are no site specific areas relevant to the 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 that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**Social and Economic Impacts**

The proposed development would provide additional housing opportunities that can rely upon existing social and recreational infrastructure existing within the Shoal Bay Centre. The development adds to the local housing mix to serve the needs of the local community.

The proposal will allow for the use of existing services and facilities in the locality without requiring upgrades that burden the public. The construction of the proposed development will provide employment opportunities in the locality and support the local building and development industries. This will have direct monetary input to the local economy, and the increased number of residents in the locality will provide ongoing economic input through daily living activities. There are no anticipated adverse social or economic impacts as a result of the proposed development.

Impacts on the Built Environment

The proposed development will reinforce the medium density residential nature of the locality and is characteristic of other developments in both the local and wider community. Due to the ageing appearance of the subject site, the proposal will improve the streetscape and contribute to the character of Shoal Bay.

The overall aesthetics of the development are of good quality incorporating a range of materials and colours in conjunction with the articulation of building facades. The design effectively reduces the perceived bulk and scale of the development, ensuring consistency with surrounding development. It is considered that the design achieves a built form that has good proportions and a balanced composition of elements. The development aligns with the intended future character of Shoal Bay, and will encourage infill development of underutilised lots in and surrounding the town centre of Shoal bay.

Although the building exceeds the maximum building height as prescribed under PSLEP2013, it is considered that the bulk and scale of the building is comparable with surrounding development and reflects the desired medium density character of the Shoal Bay centre. The proposal addresses the street and provides logical and convenient connections to the road network and pedestrian facilities in the locality. It is considered there are no unreasonable impacts on the built environment as a result of the proposed development.

Impacts on the Natural Environment

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The development includes water quantity and quality control devices to reduce the impact of the development on the natural environment. The site does not contain any natural habitat or native vegetation and there are no anticipated adverse impacts expected to occur to the natural environment. The planting of a wide variety of trees, plants and shrubs, will improve the environmental values of the site and result in a betterment to natural outlook. On this basis, no adverse impacts to the natural environment are expected.

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 accordance with the applicable planning controls including the Port Stephens LEP, Development Control Plan and ADG. The subject site is located within an established residential area, within close proximity to the town centre of Shoal Bay and does not contain any natural habitat or native vegetation. The site has access to all relevant services and the proposed development makes good use of the available land. The proposed development will not result in any unreasonable impacts on the amenity of surrounding development and will contribute to the revitalisation of Shoal Bay. It is therefore considered that the site is suitable for the proposed development.

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

Public Submissions

The application was exhibited from 22 December 2020 – 25 January 2021, in accordance with the provisions of the Port Stephens Council Community Participation Plan. 21 submissions were received from 26 individuals during this time. The matters raised during the exhibition period have been detailed in the table below.

Comment	Council response
Height of Building <ul style="list-style-type: none"> - The proposed development exceeds the maximum building height control. - The proposed height of the building is out of character with the area - The clause 4.6 variation is unreasonable, misleading and extremely major in variation. - NSWLEC90 [2015] Four2five Pty Ltd v Ashfield Council establishes that it is necessary to show that the application of the development standard is unreasonable or unnecessary not merely because the development is consistent with the objectives of Clause 4.3 – Building Height. - The proposal has not demonstrated that there are sufficient environmental planning grounds to justify 	<ul style="list-style-type: none"> - The proposal has been modified to reduce the maximum building height from 12.9m to 10.75m, now representing a 19.4% variation. - The proposal has been found to be consistent with the objectives of clause 4.3 for the following reasons: <ul style="list-style-type: none"> • There are several comparatively tall buildings in the immediate visual catchment of the site. • The proposal includes design elements to reduce the perceive bulk and scale of the building and the development would not be inconsistent with the character of the area. • The hierarchy of centres is not disrupted given there are several taller buildings existing in the shoal bay area which establish the hierarchy of the centre. • When viewed from the street, the highest point corresponds with the ridge of the skillion roof at 10.75m, which decreases to a height of 10.2m across the frontage. • The site slopes upward toward the rear of the site. Due to the proposed cut into this slope, at the rear of the development, the highest point is 9.3m, representing only a minor variation. • The proposed development maintains acceptable privacy and solar access to neighbouring properties,

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<p>contravening the development standard</p> <ul style="list-style-type: none"> - Council should consider the precedent set by undermining the building height control. - The objectives of the standard will obviously NOT be thwarted if Council enforces the current height limit. 	<p>consistent with the requirements of the ADG, despite the height variation.</p> <ul style="list-style-type: none"> - The additional reasons relevant to the application are as follows: <ul style="list-style-type: none"> • The PSLEP supports the construction of a residential flat building (RFB) on small lots, like the site. However, opportunity to construct an RFB, which must include 3 or more dwellings, would be limited without some degree of variation to the 9m building height limit. • The exceedance of the height limit allows for the construction of the building without the need to reduce internal ceiling heights which would reduce the internal amenity of apartments. • Amenity impacts relating to overshadowing, privacy, and streetscape setting are adequately addressed, demonstrating no additional benefit would be derived from a reduced building height. - Sufficient environmental planning grounds are noted to have been achieved despite the proposed height variation. Amenity impacts relating to overshadowing, privacy, and streetscape setting are adequately addressed, demonstrating no additional benefit would be derived from a reduced building height. - As stated above, the proposed height variation has been found to be acceptable and therefore no adverse precedent would be set by granting approval. Future applications seeking to vary a development standard would be subject to further assessment, with regard to the particulars of that development. - The incorrect reference to clause objectives in the applicant's original clause 4.6 request has been rectified in an amended version of the document. - Council's support for the proposed height variation does not rely on the applicant's assertion that the objectives of the standard would be thwarted if Council enforces the current height limit.
<p>Bulk, scale and aesthetics</p> <ul style="list-style-type: none"> - The bulk and scale of the development is excessive and not in keeping with the character of the area. - The building is not aesthetically pleasing. - The portico that encroaches the Council setback is too large. - The visual impact assessment is insufficient for assessment 	<ul style="list-style-type: none"> - Overall the proposal is considered to achieve a scale, bulk and height appropriate for the area. The proposal is of a similar height to the adjoining development to the north and considerably less than the 7 storey building on the opposite side of Tomaree Road. The perceived bulk and scale of the building is adequately addressed through the use of articulation to the façade and side walls. The bulk of the side walls of the building are effectively broken up through changes in material, colour and through the inclusion of recessed and protruding wall features. The upper most storey is visually recessed through the changes in material finish.

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and should consider different view points.	<ul style="list-style-type: none"> - The proposed front setback of the balcony/portico is considered appropriate and contributes to the articulation of the buildings front façade. - The visual impact assessment includes view points of the development from key positions which enables adequate assessment of the application.
Site Suitability <ul style="list-style-type: none"> - The size and dimensions of the lot are not adequate for the scale of the proposal. - The lot should be amalgamated with the adjoining property. 	<ul style="list-style-type: none"> - The narrow lot width has necessitated reduced side setback distances that do not comply with the ADG. To mitigate the reduced building separation, the development includes appropriate design strategies to address privacy concerns, overshadowing and impacts to the built environment, as outlined in this report. - In accordance with Clause 4.1B of the PSLEP, the minimum lot size required for the erection of a residential flat building is 450m².
Privacy <ul style="list-style-type: none"> - Privacy impacts to the apartments in the Crest apartment building to the north of the site. - Privacy impacts to the communal open space of the Crest apartment building to the north. - Privacy impacts to the site to the east (47-49 Ronald Avenue Shoal Bay). - Privacy impacts to the south. 	<ul style="list-style-type: none"> - The proposed setbacks do not comply with the ADG requirements, as outlined elsewhere in this report, notwithstanding, the privacy objectives are achieved through the use of highlight windows and privacy screening where appropriate. In addition, a condition of consent is recommended for the inclusion of privacy screens on the north elevation of balconies to prevent sight through the windows of the existing apartment to the north.
Acoustics <ul style="list-style-type: none"> - Reliance on balconies for POS will generate noise. - The apartments could be used for holiday letting causing noise impacts. 	<ul style="list-style-type: none"> - Proposed balconies are oriented to the street rather than toward adjoining properties, which would prevent direct and unimpeded noise travel between residences. - Noise disturbance caused by use of Private open space can be controlled and monitored by the Protection of the Environment Operations Act (POEO Act).
Setbacks <ul style="list-style-type: none"> - There is no front setback from the street front. - The northern side setback is a breach of the PSDCP controls and is not acceptable due to the resulting impacts including, privacy, proximity to communal open space, overshadowing. - Side setbacks do not comply with the DCP and are inadequate. 	<ul style="list-style-type: none"> - Front Setback: The ADG does not provide standards for front setbacks. The front setback of the building is 4.5m, with the proposed decks projected forward of this building line, setback 3m from the front boundary. Although not applicable to the development, this distance is compliant with the max. 1.5m encroachment allowed for any dwelling, dual occupancy or secondary dwelling under the PSDCP. - The narrow lot width has necessitated reduced side setback distances that do not comply with the ADG. To mitigate the reduced building separation, the development includes the following measures: <ul style="list-style-type: none"> • The use of highlight and opaque windows incorporated along the side elevations. • Screening devices provided for all habitable rooms; • Recommended conditions for privacy screening on balconies. • The use of landscaping, wall articulation, materials and finishes to ameliorate visual impact; and • Main living spaces being provided with larger openings orientated to the front of the site to achieve

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	<p>reasonable levels of external and internal visual privacy.</p> <p>Despite the numerical non-compliance, the design strategies adopted have achieved an acceptable outcome given the infill typology of the site and development.</p>
<p>Overshadowing</p> <ul style="list-style-type: none"> - Overshadowing of the Crest apartment building to the north of the site. - Overshadowing impacts to property to the south of the site. - Overshadowing impacts to the site to the east (47-49 Ronald Avenue Shoal Bay). The private open space of Unit 2 currently only receives sunlight after 12:00pm, which would be affected. 	<ul style="list-style-type: none"> - Loss of natural light in the crest apartments to the north of the site would be minimal given solar access is primarily derived from the north, east and west. - At least 50% of the POS neighbouring dwelling to the south at No. 12 achieves solar access for 3 hours in mid-winter, in excess of the minimum 2 hours required by the ADG. However, the north facing windows of the dwelling would not receive any direct sunlight during mid-winter. Despite this, the overshadowing is considered acceptable given the orientation of the lot is such that overshadowing of this extent is inevitable even from a development that is compliant with the 9m height limit. - The west facing Unit 2 of 47-49 Ronald Avenue 'Bahia' apartment complex is the most affected apartment within the building. Amended solar diagrams have been prepared which include a reduced building height and include the footprint of the building at 47-49 Ronald Avenue. The revised plans indicate that Unit 2 would receive solar access during the hours of 12:00pm – 2:00pm, noting that solar access is already obstructed during the morning.
<p>Density and FSR</p> <ul style="list-style-type: none"> - The development is non-compliant with FSR. - The proposal is an overdevelopment of the site. 	<ul style="list-style-type: none"> - There is no FSR applicable to the subject site. - In the absence of a FSR control for the site, an appropriate density of development is determined by the achievement of reasonable setbacks, provision of open space and seep soil for landscape, and an appropriate height. Despite the variations to the numerical ADG setback requirements and height limit, the variations are not considered to be of an extent that would unacceptably compromise communal open space, amenity or landscaping. - On its merits, the development represents an appropriate density for the site.
<p>Traffic and parking</p> <ul style="list-style-type: none"> - The telegraph pole in front of the site would obscure sight distances. - Safety implications of the relocated driveway - Sight distance measurements in the Traffic Assessment should be verified by Council's road safety officer. - Traffic management plan must be developed for the site - The shortfall of one visitor parking space assessed in the traffic assessment does not account for the busy holiday period. 	<ul style="list-style-type: none"> - The proposed access via Tomaree Road provides appropriate sight distances and would not likely result in queuing on Tomaree Road. This was verified in both the applicant's traffic assessment and Council's traffic engineer's subsequent review. - A condition is recommended requiring that a traffic management plan be prepared prior to the issue of a construction certificate. - The car parking assessment provided with the application identifies Messines Street, to the south of the site, as having adequate capacity to accommodate the one space, even during busy times when foreshore public parking is heavily utilised. Given the shortfall can be accommodated through on-street parking without adverse impact, the proposed car parking is supported. - Short term rental accommodation (holiday letting) is governed by Clause 7.18 of the PSLEP and does not

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<ul style="list-style-type: none"> - If the proposal is used for holiday letting, car parking demand will increase. 	<p>require consent. Clause 7.18 does not have any specific car parking requirements.</p>
<p>Air flow and ventilation</p> <ul style="list-style-type: none"> - Airflow to the crest apartments to the north of the development will be compromised. 	<ul style="list-style-type: none"> - The development is not of a scale, orientation or proximity to nearby residences that would adversely affect the enjoyment of airflow of the existing development to the north. The development is to the south of the crest apartments and therefore would not block the prevailing north east summer sea breezes.
<p>View Loss</p> <ul style="list-style-type: none"> - District views from the Crest apartment would be lost. - View loss to the site to the east (47-49 Ronald Avenue Shoal Bay) 	<ul style="list-style-type: none"> - No important views from the Crest apartments would be lost or obstructed as a result of the proposal. - Water views of Shoal Bay from residential properties to the east of the site on Ash Street would be obstructed as a result of the proposal. Tenacity Consulting v Warringah Council (2004) NSWLEC 140 ('Tenacity'), establishes the general principles for assessing view loss. Assessment against the four step process concluded: <ol style="list-style-type: none"> 1. The extent of the views from the site to the east toward the waters of Shoal Bay are largely obstructed by existing buildings, which limits the value of the view. 2. Views are generally obtained from balcony areas or living rooms. Views are captured as a result of the existing development on the subject site being single storey in nature. 3. The views currently held by the site to the east will be entirely obstructed as a result of the proposal, however due to the views already being largely obstructed, the magnitude of change from these locations is moderate. 4. The proposal is generally compliant with the applicable environmental planning instruments with the exception of building height. Despite this, a design with a compliant building height would result in the same or similar impact, given views are currently only available due to the existing development on the site being single storey. <p>Having regard to the Tenacity principles, whilst the view loss of the site to the east is considered moderate, the impact is reasonable given a compliant building height would result in the same or similar impact and given there is no or minimal opportunity for an alternate design to prevent view loss.</p>
<p>Precedent</p> <ul style="list-style-type: none"> - The number of excessive control breaches, including the building height limit and Chapter C5 of the PSDCP 2014 and will set a precedent. 	<ul style="list-style-type: none"> - It is noted that the provisions of Chapter C5 of the PSDCP 2014 do not apply to residential flat buildings. Despite the proposed variations to the numerical ADG setback requirements and the LEP height limit, the variations are not considered to be of an extent that would unacceptably compromise solar access, privacy, communal open space, amenity, landscaping or the developments streetscape setting. - Each application is assessed on its merits. Should any future development seek similar variations to development

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	controls or standards, such matters and others as relevant would have to be satisfactorily addressed in order for the variation to be supported.
Services <ul style="list-style-type: none"> - The development will place further demands on already poorly coping infrastructure including health and emergency services, roads, parking, telecommunications and water. 	<ul style="list-style-type: none"> - The development has access to all essential services in accordance with clause 7.6 of the PSLEP. - Growing demand for access to health and emergency services are a matter to be considered by the state government and are not a relevant matter for consideration with regard to the proposal.
Landscaping <ul style="list-style-type: none"> - There is a lack of landscaping on the front and side boundaries. 	<ul style="list-style-type: none"> - Landscaping of the side boundaries is not viable as the orientation of the lot is such that solar access is limited at these locations. - Landscaping forward of the building line, including a mature tree planting and shrub plantings is considered complimentary to the streetscape setting and adequately softens the visual impact of the proposed building.
Construction <ul style="list-style-type: none"> - Damage to foundations of adjoining buildings - There is no construction space for delivering of concrete trucks or materials causing traffic impacts. - Construction of the building will decrease parking supply. - The traffic assessment does not include any commentary regarding traffic impacts during construction. - Construction and demolition should not be permitted on weekends and demolition not permitted during peak periods. - The build cost is unrealistic. 	<ul style="list-style-type: none"> - A condition of consent is recommended requiring the undertaking of a dilapidation report of neighbouring properties prior to construction commencing. - Temporary traffic impacts during construction will be managed through the implementation of a traffic management plan. - Council's standard permitted construction hours are 7.00am to 5.00pm Monday to Saturday inclusive. Work is not to be carried out on Sundays or Public Holidays. - The estimated cost of works has been prepared by a quantity surveyor and is considered to be a reasonable estimate of the construction costs.
Earthworks <ul style="list-style-type: none"> - The application does not address the difference in levels between the site and 47-49 Ronald Avenue. Damage could occur during construction. 	<ul style="list-style-type: none"> - The change in levels between the site and 47-49 Ronald Avenue is currently dealt with by a retaining wall. The proposed underground car park is 3m from this retaining wall. A dilapidation report for the adjoining property will be required prior to works commencing.

Section 4.15(1)(e) the public interest

The proposed development does not raise any significant 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.

The proposal represents additional residential accommodation in the Shoal Bay centre to service the needs of the community, whilst not anticipated to have any significant adverse impacts on

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surrounding properties or the amenity of the locality. The proposed development reinforces the residential nature of the land and is in keeping with the character of surrounding developments.

The proposed development is considered to be in the public interest.

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

The application proposes the demolition of a single dwelling and the construction of a residential flat building incorporating three dwellings. It is noted that subdivision is not being proposed. There will be an increase in two dwellings as a result of the development and therefore contributions are applicable in accordance with s7.11.

A condition of consent is recommended in accordance with the Local Infrastructure Contribution Plan.

DETERMINATION

The application is recommended to be approved by Council, subject to the recommended conditions of consent provided as contained in the notice of determination.



Attachment 1 - Clause 4.6 ASSESSMENT REPORT

Clause 4.6 – Exceptions to Development Standards**CLAUSE OBJECTIVES AND EXCLUSIONS****Clause 4.6(1) – Clause Objectives**

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.

Clause 4.6(2) – Exclusions to the operation of clause 4.6

The development standard(s) is not excluded from the operation of clause 4.6 (Refer clauses 4.6(2); 4.6(6); and 4.6(8) of PSLEP).

PROPOSED REQUEST**Clause 4.6(3) – Request to vary development standards**

The development application includes a written request to vary development standard(s) in the *Port Stephens Local Environmental Plan 2013* (PSLEP).

The relevant development standard(s) and the extent of the proposed variation(s) is:

Development Standard	Proposed Variation	Extent of Variation (%)
Clause 4.3 of the PSLEP	1.75m	19.4%

As the proposed variation is greater than 10%, the development application is required to be determined by the elected Council.

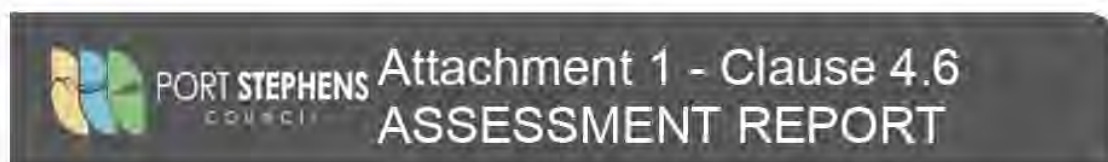
The assessment of the applicant's clause 4.6 variation request is set out below:

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

Clause 4.6(3)(a) requires the application to justify the contravention of the development standard(s) by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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. The clause 4.6 request makes reference to the following two reasons identified in the *Wehbe v Pittwater Council* case:

1. The objectives of the standard are achieved notwithstanding non-compliance with the standard.



2. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Having regard to these reasons, 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 built form is consistent with the buildings surrounding the site.
- The roof incorporates a skillion design to limit any detrimental impacts on the adjacent properties or surrounding area.
- The roof height on adjoining properties is higher than proposed under this application and therefore no views will be obstructed.
- The proposal is consistent with DCP controls relating to overshadowing, privacy and amenity and no unreasonable impact would occur to adjacent properties.
- The development provides contemporary architectural design, matches desired built form of the area and promotes liveability.

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

Clause 4.6(3)(b) requires an application to justify the contravention of the development standard(s) by demonstrating that there are sufficient environmental planning grounds to justify contravening the development standard.

The applicant notes that sufficient environmental planning grounds are met in that the proposal would achieve the desired built form and character of Shoal Bay within the R3 Zone, contributing to the diversity of housing and contemporary design sought within the peninsula. The Clause 4.6 request states that the built form does not pose any issues with regard to views, overshadowing or character. The applicant also submits that the development is consistent with the relevant objectives (height and zoning) as described in the discussion against Clause 4.6(3)(a) above.

ASSESSMENT

Clause 4.6(4) – Assessment of request to vary development standards

Clause 4.6(4)(a)(i) – Adequacy of the applicant's request

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied the Clause 4.6 Application has adequately addressed the matters set out in clause 4.6(3) of the PSLEP listed above.

The applicant's Clause 4.6 variation request relies on two of the five ways in which a request to vary a development standard may be determined to be well founded outlined in *Wehbe*.



Having regard to the first test set down in *Wehbe*, it is noted that the objectives of Clause 4.3 is to ensure 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.

With regard to the context and character of the area, it is noted that there are several comparatively tall buildings in the immediate visual catchment of the site, including the neighbouring 4 storey residential flat building to the north and a 7 storey tourist and visitor accommodation building, directly opposite the site on Tomaree Road. Single storey dwellings are located further to the south. Whilst it is acknowledged that the proposal is of a contrasting scale to the nearby single storey dwellings, the proposal remains consistent with the future desired character of the area, established by the medium density zoning and existing taller buildings within the locality. Furthermore, the design includes articulation and changes in colours and material finishes in order to adequately address the developments perceived bulk and scale. As a result, the development would not be inconsistent with the character of the area.

With regard to the latter clause objectives relating to hierarchy of centres and land-use structure, the hierarchy of centres is not disrupted given there are several taller buildings existing in the shoal bay area which establish the hierarchy of the centre, well above what is proposed by the development. Furthermore, the neighbouring Crest apartments to the north is a comparatively tall development, however, does not fully utilise the available 15m height limit. The proposal has a maximum height of 10.75m, which despite the variation, is considerably less than the adjoining height limit of 15m. The proposal is of a density and scale that is reflective of the land-use structure being the R3 Medium Density Zone.

On this basis, the objectives of Clause 4.3 are achieved, despite the numerical non-compliance. Subsequently, compliance with the standard is considered unnecessary in this instance.

With regard to the second *Wehbe* test referenced in the Clause 4.6 variation request, the applicant asserts that the underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable. The second *Wehbe* test is not considered relevant to the proposal and is not sufficient to justify that compliance with the standard is unreasonable.

Sufficient environmental planning grounds are noted to have been achieved on the basis that despite the proposed height variation, amenity impacts relating to overshadowing, privacy, and streetscape setting are adequately addressed, demonstrating no additional benefit would be derived from a reduced building height. Moreover, resultant environmental impacts of the proposal have been assessed as outlined elsewhere in this report and are satisfactory.

Consistent with subsequent case law (*Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC90), in addition to demonstrating that the first method identified in *Wehbe* is



adhered to, it is necessary to find other ways to demonstrate compliance with the standard is "unreasonable and unnecessary". The additional reasons relevant to the application are as follows:

- The PSLEP supports the construction of a residential flat building (RFB) on small lots, like the site, noting that in accordance with Clause 4.1B of the PSLEP the minimum lot size required for the erection of a residential flat building is 450m² in the medium density zone. However, opportunity to construct an RFB, which must include 3 or more dwellings, would be limited without some degree of variation to the 9m building height limit.
- The exceedance of the height limit allows for the construction of the building without the need to reduce internal ceiling heights which would reduce the internal amenity of apartments.
- Amenity impacts relating to overshadowing, privacy, and streetscape setting are adequately addressed, demonstrating no additional benefit would be derived from a reduced building height.

Clause 4.6(4)(a)(ii) - Public interest – consistency with objectives of the standard and objectives of the zone

Clause 4.6(4)(a)(ii) requires the consent authority to be satisfied 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.

As outlined above, notwithstanding the non-compliance with the standard, the objectives of clause 4.3 are achieved noting that the proposal is in keeping with the context and character of the area and is reflective of the hierarchy of centres.

Furthermore, the proposal is consistent with the zone objectives, achieved through the provision of housing supply to meet the needs of the community whilst causing no undue amenity impacts as a result of the variation.

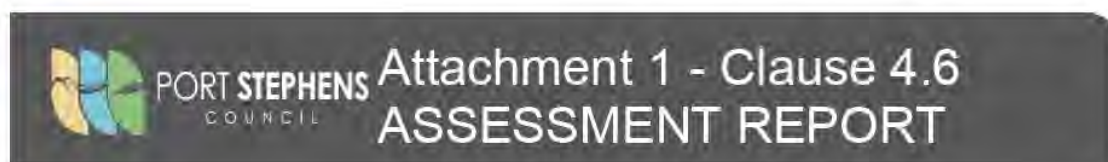
The proposed variation, if replicated in future approvals would cause no undue cumulative impacts by way of undermining the objective of the development standard.

Clause 4.6(4)(b) - Concurrence of the Secretary

In accordance with the assumed concurrence, notified in [Planning Circular PS 08-003](#), the concurrence of the Secretary has been obtained (Clause 4.6(4)(b) of PSLEP).

CONCLUSION

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The proposed development is considered to be consistent with the objectives of Clause 4.6 as in these particular circumstances, the objectives of the development standard are achieved notwithstanding non-compliance.



APPLICATION REFERENCES

Application Number	16-2019-679-1
Development Description	Demolition of existing dwelling, construction of multi-dwelling housing and 2 commercial units
Applicant	MR P M LUBRANO
Land owner	MR P M LUBRANO
Date of Lodgement	31/03/2021
Value of Works	\$750,000.00
Submissions	2

PROPERTY DETAILS

Property Address	26 King Street RAYMOND TERRACE
Lot and DP	LOT: 1 DP: 862816
Current Use	Vacant single storey building
Zoning	B3 COMMERCIAL CORE
Site Constraints	<p>Weed infestation Alligator Weed – standard conditions/advice</p> <p>OEH Referral – HV Flood Mitigation Scheme – Flood Gate Structure and Levee</p> <p>Acid Sulfate Soil – Class 1 & 5</p> <p>Koala Habitat Planning Map – Preferred, Clear, Clear Buffer</p> <p>Biodiversity Values Map – Core Habitat within an approved Koala Plan of Management (SEPP 44)</p> <p>SEPP Coastal Management – Coastal Environmental Area and Coastal Use</p> <p>RAAF Base Williamstown – 45m height referral to DoD</p> <p>RAAF Base Williamstown – Bird strike group A</p> <p>Stormwater Drainage Requirement Area – For development 100 year ARI detention is required</p> <p>Combined Corridor – Local Link</p> <p>Wharfs – Wharfs riverside Park Jetty</p>

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	Flood Prone land – High Hazard Flood Way LEP – Height of buildings – 12m LEP – Heritage Conservation Area – General DCP – D11 Raymond Terrace Centre
State Environmental Planning Policies	SEPP – Coastal Management SEPP – Koala Habitat

BACKGROUND

A development application was lodged with Council on 24 October 2019 for:

- the demolition of existing commercial development,
- construction of shop top housing (2 x commercial tenancies and 2x dwellings), and
- detached dwelling.

After the initial assessment, the application was not supported by Council officers due to the high hazard floodway flood category applicable to the site.

The application was called to Council and reported to the meeting on 25 August 2020. The elected Council resolved to defer a decision to support the development application to allow the applicant to review the draft conditions that included removal of the:

- detached dwelling,
- proposed fence along the rear boundary, and
- registration of easement for public access along the rear of the site.

The applicant reviewed the information and lodged an amendment to the application under Clause 55 of the Environmental Planning and Assessment Regulations on 23 April 2021. The amended application replaced the detached dwelling with two dwellings, thereby increasing the density of the proposal and changing the description of the proposal to a mixed use that includes:

- the demolition of existing commercial development,
- construction of 2 x commercial tenancies, and
- multi dwelling housing.

This report has been prepared to provide an assessment of the amended application.

PROPOSAL

The amended application proposes demolition of the existing single storey structure on the site to facilitate the construction of two buildings that include:

- Building 1 – 2 storey building containing 2 commercial tenancies on the ground floor and 2 dwellings above with a frontage to King Street (Figure 1).
- Building 2 – 3 storey building located to the rear of the site with a frontage to the Hunter River comprising two residential dwellings.

The applicant has defined the development as mixed-use development, including multi-dwelling housing (4 dwellings) with a commercial component (two (2) commercial units).

For the purpose of this assessment, the two dwelling units proposed above the commercial units are identified as dwelling 1 and dwelling 2; and those located at the rear of the site dwelling 3 and dwelling 4.

The commercial units located on the ground floor have a frontage to King Street. Each unit measures 3.2m wide x 15.06 long (48.162m²), a finished floor level (FFL) of 2.8m and includes a kitchenette

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and unisex disabled amenities. Each commercial unit has a front porch measuring 3.5m wide x 2.6m long (9.1m²). A 3m wide driveway runs between the two units providing access to the rear of the site.

In Building 1, dwelling 1 and dwelling 2 have access from the rear of the commercial units via a stairwell. The proposed dwellings in Building 1 are comprised of 2 bedrooms, an open plan living, kitchen/dining area, bathroom and laundry area. Each unit measure 4.92m wide x 19m long (93.48m²). There are two balconies proposed for each unit, one accessed via the bedrooms at the front of the building looking over King Street and the other to the rear of the unit accessed via the dining area with an outlook to the rear of the property. The proposed units have a FFL of 6.10m. There is access to the rooftop of each dwelling via the stairs located to the rear of the dwelling.



Figure 1: proposed commercial units and dwellings above



Figure 2 – north elevation of attached dwellings

Dwelling 3 and dwelling 4 located are located at the rear of the site and are accessed via stairs from the ground floor car park (Figure 2). The dwellings are both three storeys in height, with the ground floor containing car parking. The first floor includes an open plan living, kitchen and dining area, bedroom, bathroom and laundry and has a FFL of 5.9m. The second floor comprises of three

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bedrooms including the master bedroom with an ensuite and walking in robe; living area and bathroom and has a FFL of 8.70m. Each dwelling has an outdoor deck on the first and second floor looking out over the Hunter River.

SITE DESCRIPTION

The site is identified as 26 King Street, Raymond Terrace; legally identified as Lot 1 DP 862816. The site has a frontage to King Street and a rear to the Hunter River. The site has an area of 691.48m², is oriented south-east and is relatively flat. A flood levee is located toward the rear of the site which then falls to the river bank.

The existing structure on the site is to be demolished as part of the development application. There is no vegetation removal proposed with the application. The site to the west includes a three storey commercial premises tenanted by the Department of Defence and to the east is the Scout Hall.



Figure 3: GIS aerial image of the subject site

The structure on the site is pre-dates Councils record system. The following applications have occurred on the site:

- Refused shoptop housing including two commercial units, detached dwelling and demolition of existing (16-2018-827-1)
- Approval for deck application (16-2015-1324-1)
- Approval for demolition of building (16-2009-972-1)
- Refused commercial premises and private jetty (7-1996-1559-1)
- Approved shop fitting (7-1989-60574-1)
- Approved additions to dwelling (7-1989-60571-1)
- Approved Change of use from bike shop to hairdressing shop (7-1989-4270-1)

SITE INSPECTION

A site inspection was carried out on 25 May 2021. The subject site can be seen in images below:



Photo 1: Existing single storey vacant building on the site



Photo 2: Eastern side of existing building on the site



Photo 3: Subject site facing toward to the rear



Photo 4: looking from the rear to the existing building on the site

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PLANNING ASSESSMENT

The application was assessed, and comments provided, by the following external agencies and internal specialist staff:

Internal

Development Engineer – Councils Development Engineer noted the amended design includes an additional residential dwelling at the rear in Building 2, in addition to the original proposal for two residential units above commercial units on the site. The DCP precludes residential development (other than a single dwelling) within the High Hazard Floodway flood category.

Advice from Council Development Engineer noted the amended design demonstrates an appropriate flood refuge for the dwellings at the rear in Building 2; however, for the residential dwellings in Building 1 at the front of the site, access to the rooftop is not deemed an appropriate flood refuge.

On this basis, the application is not supported by Council's Development Engineers and Flooding Engineer due to the flood risk associated with the proposal. The information provided relating to water quality and traffic was considered suitable for the site.

The application is recommended for refusal as the proposed use and flood hazard are not considered to be suitable.

Flood Advisory Review Panel – The amended application was referred to the Flood Advisory Review Panel (FARP) following the completion of the engineering assessment. The proposed use, flood hazard and risk to life and property associated with the development was considered. FARP did not support the proposed development and advised the residential use is not considered suitable within the flood risk category applicable to the site.

The revised design provided in April 2021 remains unsuitable as it proposes to intensify residential development in a high hazard category. The application is recommended for refusal as the proposed use and flood hazard are not considered to be suitable.

Vegetation Management – Supported without conditions

Spatial Services – Supported with conditions

Building Surveyor – A referral for the revised plans has not been completed. The initial application was supported with conditions

Heritage Officer - Supported with conditions

External

Biodiversity Conservation Division (BCD) – No response has been received from BCD following the Clause 55 amendment to the application in April 2021.

The subject site is located in a declared flood plain and the proposed development includes the construction of two attached dwellings adjacent to the levee bank. As such, concurrence under Section 256 of the Water Management Act is required for the proposal.

The applicant has liaised directly with BCD to resolve the stormwater design in relation to the levee bank. In the event of an approval by Council, a condition will be imposed that requires a detailed stormwater design be endorsed by BCD prior to the release of the Construction Certificate.

Department of Defence – The initial application was referred to the Department of Defence (Defence) to provide comment. Defence noted the proposed development and subject site is outside of the 20 contour 2025 ANEF for the RAAF Base Williamstown. However, the site will be subject to

ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.

aircraft flying over and would experience some level of aircraft noise. The site is within an area mapped as Bird strike Group C and certain uses have the potential to attract wildlife and increase the risk of bird strike for aircraft operating from RAAF Base Williamstown. In the event the application is supported, advice to adhere to bird strike requirements would need to be included.

Natural Resource Access Regulator – The initial application was referred to NRAR to provide advice on the requirement for an 'activity approval' for works within 40m of waterfront land. For the works associated with the rear dwellings, it is noted activities with respect to dwellings are exempt from requiring controlled activity approval under Schedule 4, Clause 29 of the Water Management (General) Regulation 2018 as long as they are not carried out on or on the bed or bank of any river. The stormwater works, based on the detail on the drawing provided, will not require a new connection and would not require any works on waterfront land. A controlled activity approval was therefore not required.

Further, the amended design does not change proposed drainage works or require a new connection for stormwater on waterfront land, therefore no activity approval is required in this regard.

Environmental Planning and Assessment Act 1979***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).

Section 4.15(a)(i) - any environmental planning instrument

An assessment has been undertaken against each of the applicable environmental planning instruments (EPI's), as follows:

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 No. 55 – Remediation of Land

Clause 7 of SEPP 55 requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in Council's system. The land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the commercial and residential use is not listed as a possible contaminating use, per Table 1 of the Guidelines. Noting this, the proposed development satisfies the requirements of SEPP No. 55.

State Environmental Planning Policy (Koala Habitat Protection) 2021

This policy aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline. This Policy commenced on 17 March 2021.

The development does not propose the removal of koala habitat as there is no vegetation or trees on the site. The site currently supports a dilapidated building and is vacant at the rear. The proposed

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development is likely to have low or no impact on koalas or koala habitat. Noting this the proposed development satisfies the requirements of the SEPP.

State Environmental Planning Policy Coastal Management 2018

The subject land is located within the Coastal Environment Area and Coastal Use Area as such the following general matters are required to be considered when determining an application.

As per Clause 13 of the SEPP, development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The proposed development is sufficiently setback from the Hunter River waterbody and the development will not likely result in any adverse impacts.

As per Clause 14 of the SEPP, development consent must not be granted for development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

It is considered that the proposed development is an appropriate type and design for the location. The proposed use of the site for commercial and residential purposes and adopting a sustainable built form will ensure that the visual amenity of the river is protected. The building envelope and scale of the development is compatible with the coastal setting and will not adversely impact view corridors. The exclusion of the rear fence is considered consistent with Clause 14 of the State Environmental Planning Policy Coastal Management, as it will result in a loss of existing access along the foreshore. On this basis, the application can be supported.

Clause 15 of the SEPP requires consideration to whether the development would increase the risk of coastal hazards. The proposed development is suitably designed and located to not increase risk to coastal hazards.

The application generally satisfies the objectives of the SEPP and the other matters for consideration stipulated under Clause 13, 14 and 15 with the exception of the rear fence.

Port Stephens Local Environmental Plan 2013 (LEP)

Clause 2.3 – Zone Objectives and Land Use Table

The proposed development is defined as a mixed use development that includes a commercial premises and multi-dwelling housing, both of which are permissible with consent in the B3 Commercial Core zone. The development proposes 4 dwellings in total, 2 above the commercial units in Building 1 and 2 located to the rear of the site in Building 2, which are accessed via stairs from the ground floor car park.

The residential component of the amended design can be characterised as multi-dwelling housing under the LEP, which is defined as 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

The development addresses the objectives of the zone by providing commercial units that can be used to support a range of uses to service the needs of the local and wider community including retail, business, office, entertainment, community and other suitable land uses. The development encourages employment opportunities in accessible areas. The development integrates residential and commercial uses, which encourages walking and cycling and facilitates and supports the growth of the Raymond Terrace regional centre.

ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**Clause 2.7 – Demolition requiring 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 single storey building on the site. Accordingly, conditions of consent have been included 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.

B3 Commercial Core is not listed as a prescribed zone under CI 4.1B, as such there is no minimum lot size applicable to the multi dwelling housing component of the application.

Clause 4.3 – Height of Buildings

The proposed development has a maximum height of 11.75 metres, which is below the maximum permissible building height of 12 metres specified on the Height of Buildings Map.

Clause 5.10 – Heritage conservation

The application proposes demolition of a building and the construction of buildings within a heritage conservation area, as such requires development consent. The building is not listed as a local or state heritage item. The building has a small amount of significance as one of the early structures within the street circa the 1890s. It is considered to have little intrinsic heritage significance and therefore can be supported for demolition.

According to the Statement of Heritage Impact (SOHI) prepared to support the application, the only criterion under which the existing building demonstrates significance is that of historic association – specifically that the building originally housed the “Gloucester Examiner” newspaper. This association would of course be lost by the total demolition of the building. The photographs which provide the evidence would remain however and would continue the association meaning that the impact of the demolition would be ameliorated. The fact that the building is not a heritage item means that the impact is not immediately affecting a built heritage item. Consent to demolish this building was previously granted in 2010 under DA 16-2009-972-1.

The replacement of the existing building with a new, sympathetically designed commercial building will continue and enhance the interpretation of King Street as an important part of the development of Raymond Terrace and the centre of commercial activity and social life. It will also reinforce the historic character of the street as a commercial and residential use area. The overall impact of the development will be negligible for King Street. The design requires the fixtures and fitting fronting King Street to be sympathetic with the surrounds.

The proposed development and information supplied has been considered suitable by Council’s heritage advisor. The demolition of the existing structure, as found in the SOHI and will not adversely impact on the heritage character of the area.

Noting this, any potential impact to the heritage significance of the site is considered reasonably avoided and/or mitigated. Subsequently, the development is consistent with the objectives of this clause.

Recommended conditions relating to archaeological assessment of the site, in the event of approval have been provided by the Heritage Advisor.

ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**Clause 7.1 – Acid Sulfate Soils**

The subject land is mapped as containing potential Class 1 and 5 acid sulfate soils. The class 1 soil is located on the river side of the levee on the site and the remainder of the site is mapped as class 5. The proposed development is not anticipated to entail excavations below 2 metres, however, given the site proximity to the waterway, exposure of Class 1 ASS is anticipated. If supported, a condition would be required on any consent relating to the requirement of a geotechnical report and associated ASS report.

Clause 7.2 – Earthworks

The application proposes earthworks on the site to achieve a level building platform through the use of balanced cut and fill. Earthworks are minor in nature and are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place. No material is proposed to be imported or exported from the subject site and accordingly, the development accords with the requirements of this clause.

Clause 7.3 – Flood Planning

Development on land identified as flood prone is required to demonstrate minimal flood risk to life and to property and to achieve development that is compatible with the lands flood hazard to avoid significant adverse impacts on the flood behaviours and in the environment.

The flood category for the development area is High Hazard Floodway, the entire site and adjoining properties are mapped as the same hazard category.

A detailed assessment has been undertaken against Chapter B.5 of DCP 2014, for both the residential accommodation and commercial component of the proposal. It is considered that the risk to life from flood has not been managed in either residential or commercial component of the proposal. The proposal will also result in an unsustainable social and economic cost to the community as a consequence of flood and will be subject to dangerous flood impacts.

The development will result in unacceptable risk to life and property and cannot be supported.

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 King Street, meeting the requirements of this clause.

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

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

Section 4.15(a)(iii) – any development control plan**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.

Chapter B2 – Natural Resources

The application does not include the removal of any significant trees on the site. The site inspection did not identify any trees on the site. The development meets the objectives of this section in this regard.

ITEM 2 - ATTACHMENT 2 PLANNERS ASSESSMENT REPORT.**Chapter 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 is not anticipated to entail excavations below 2 metres, however, given the site proximity to the waterway, exposure of Class 1 ASS is anticipated. If supported, a condition would be required on any consent relating to the requirement of a geotechnical report and associated ASS report.

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 excavation to create a level building footprint. 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.

Chapter B4 – Drainage and Water Quality

The subject site is identified within a drainage requirement area. Given the location and proximity of the site to the Hunter River on-site detention is not considered an effective stormwater management approach. The preferred strategy is to release the water as opposed to retaining stormwater on-site. However, the use of rainwater tanks that maximise the water re-use on the site are recommended on the site to reduce the total volume of stormwater on the site.

Amended plans received in April 2021 did not propose changes to the stormwater management of the development on the site. The amended plans still included 4 x 3000L rainwater tanks for Building 1. Building 2 to the rear will discharge to the Hunter River. The stormwater management plan proposes a 12m² rain garden collecting overflow, which is then directed from the site to the Hunter River via the flood levee pipe at the rear of the site. The flood levee pipe is a BCD asset used as part of the Hunter River flood mitigation scheme, therefore any works to this pipe require approval from BCD prior to commencement. In the event of approval, a condition would need to be imposed requiring BCD concurrence prior to the release of a Construction Certificate.

The stormwater drainage and water quality for the development can be supported subject to conditions.

Chapter B5 – Flooding

The site is mapped as being within the Flood Planning Area. Chapter B5 outlines objectives to inform and assist with determining development suitability on land designated in particular flood hazards. All new developments are required to address the development control within this part of the DCP to mitigate risks and considered suitability.

Chapter B5 of the DCP 2014 provides more detailed provisions to inform the assessment against the LEP 2013 provisions. The DCP chapter was amended in December 2020 which included performance based solutions for certain development in flood prone areas. Figure B1 indicates that residential accommodation (other than a dwelling) on land categorised as High Hazard Floodway are unsuitable land uses on flood prone land, commercial development can only be supported where it complies with the performance based solutions contained in Chapter B5.18 to B5.20.

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As stated above, Figure B1 states that development for residential accommodation in High Hazard Floodways are not supported and no further assessment against the DCP provisions are required.

The commercial component must be assessed against the performance based solutions contained in Chapter B5.18 to B5.20 to ascertain whether it can be supported.

The applicant provided a Flood Impact Assessment for the proposal that included flood modelling for a range of flood events on the existing site prior to the amendments to the DCP and no further comment on the amended provisions were received. However, Council staff undertook a review against these provisions.

The current flood levels applicable to the site and the proposed commercial development include finished floor level (FFL) as follows:

LEP/DCP Requirement	Height	DA Proposed	Commercial Development
1% AEP (Current day)	4.8m	Ground floor FFL	2.8m

Chapter B5.18, in considering the risk to life, requires that evacuation access to an area free of risk from flooding must be provided in a PMF flood. Although the site and its surrounds are significantly flood affected, it is considered that the commercial development is a suitable land use from a risk to life perspective. No residents are expected to use the tenancies for habitable purposes and relatively safe egress is possible during emergency event during business hours. As a result, the DA meets the performance based solution contained in Chapter B5.18 of DCP 2014.

Chapter B5.19 requires development to address the risk to property during various flood events. The proposal will be located approximately 2m below the 1% AEP level (4.8m AHD). The design of the DA will therefore result in significant property damage during large flood events. As a result, the DA does not meet the performance based solution contained in Chapter B5.19 of DCP 2014.

Chapter B5.20 requires the development to be compatible with the flood hazard category of the site. The site is located within a High Hazard Floodway with high velocity rates. As the site is located well below the 1% AEP level, the proposed commercial development will be inundated during large flood events and will be contrary to the flood plan management study for the area.

With consideration of the above, the DA is unable to be supported. The DA is inconsistent with the provisions of both LEP 2013 and DCP 2014 as the DA is not compatible with the flood hazard category applying to the site.

Chapter B7 – Heritage

As discussed under Clause 5.10 of the LEP, the subject site is located within the Raymond Terrace Heritage Conservation Area. The development is considered to have limited impact on the heritage conservation area of Raymond Terrace. The development is likely to result in a design that is sympathetic to the conservation area.

The proposed development is considered to be consistent with chapter B8 of the DCP.

Chapter B8 – Road Network and Parking

The subject site is identified in the Raymond Terrace Town Centre under Chapter D11 of the DCP. Chapter D11 includes separate parking requirements for the site, permitting a 100% reduction in the total number of parking spaces required. A detailed assessment has been completed below against chapter D11.

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Chapter C – Development Types

The proposed development includes multi-dwelling housing and commercial units, therefore the provisions of chapter C2 and C5 are applicable.

Chapter C2 – Commercial

Reference	Control	Assessment
Objective C2.A Requirement C2.1-2.5	Height <ul style="list-style-type: none"> To ensure development is of an appropriate height that minimises privacy loss and over-shadowing To ensure that floor to ceiling height allows for flexible uses overtime 	<p>Building 1 is below the 12m requirement of the LEP. The minimum ground floor height requirement for all new developments within a commercial zone is 3.5m. The proposed floor to ceiling height in the commercial units is 3m which does not meet this requirement of the DCP. In the event that the application is supported, the non-compliance is minor as the amenity of the commercial unit is not significantly impacted.</p> <p>The heritage design of the building fronting King Street includes a parapet with a height of 0.85m.</p> <p>The privacy impact of the units on adjoining developments has been assessed and as the surrounding development include commercial and recreation structures, there is no adverse impact to privacy a result of residential development.</p>
Objective C2.B Requirement C2.6-C2.14	Site Frontage and Setbacks <ul style="list-style-type: none"> To ensure development provides continuity and consistency to the public domain 	<p>The ground floor of the development is built to the front boundary, which meets the requirement of the DCP for new developments. The proposed site frontage allows for the zone objectives to be achieved while maintaining the existing character of the area. The DCP requires the second storey to be setback 3.5m from the front boundary for mixed-use development. The upper level residential units have decks facing the street frontage, which provide sufficient articulation of the building and meet the intent of the DCP control.</p> <p>Commercial units at the ground floor include a porch entry to each of the units is 2.6m deep, the width of each commercial unit is 3.2m, facilitating a 3m wide driveway to occur through the middle of the building. The building is built to the boundary for both side setbacks.</p>
Objective C2.C Requirement C2.15-C2.16	Building Form and Massing <ul style="list-style-type: none"> To ensure development reinforces, compliments and enhances the visual character of the street 	<p>The development is a two storey building that is built to the front and side boundary for the first 19m of the site. The siting of the development is a replacement of the existing structure on the site and continuation the character of the King Street precinct. The dwellings above the commercial units are to be located in front portion of the site while the attached dwellings 3 and 4 are located within the rear of the site.</p> <p>The design of the building facing King Street is a reflection of the heritage buildings along the street, including a colour bond roof and a parapet in keeping with the character of the street.</p>

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Objective C2.D Requirement C2.17-C2.21	Facades <ul style="list-style-type: none"> To ensure street activation and passive surveillance through active street frontage To facilitate development that is safe and secure for pedestrians and contributes to public domain safety by incorporating principles of CPTED, such as: <ul style="list-style-type: none"> - Territorial re-enforcement - Surveillance - Access Control - Space/Activity Management To ensure the bulk of large floor plate development is concealed by a sleeve of smaller buildings fronting the street 	<p>The design proposed the commercial use on the ground floor will create an active streetscape through the use of floor to ceiling glazing and a clearly identifiable pedestrian entry. The frontage of the building includes a 3m wide driveway through the middle of the structure to provide access to the parking areas located behind the building line.</p> <p>The materials and finishes for the King Street frontage are primarily masonry works, whereas the building to the rear is a lightweight clad with colour bond. The design of the two buildings is an attempt to reflect the historic nature of previous structures within Raymond Terrace. The proposed building to the rear is to reflect previous light weight, boat shed structures along the riverfront, and the building facing King Street is a reflection of historic terrace style development similar to those remaining along King Street.</p> <p>A public footpath exists along the King Street front boundary; this meets the requirement of providing clear pedestrian access to the site from the street.</p>
Objective C2.E Requirement C2.22	Awnings <ul style="list-style-type: none"> To ensure continuous awnings along pathways to provide shelter where most pedestrian activity occurs To ensure awning design is integrated with the building façade to integrate with adjoining buildings 	<p>An awning is proposed along the frontage of the commercial units providing shelter along the pedestrian pathway. The awning is in keeping with the King Street heritage character and ensures shelter is provided to encourage pedestrian activity along the street.</p>
Objective C2.F Requirement C2.23-C2.24	Building Entries <ul style="list-style-type: none"> To provide clear direction to access points 	<p>The building entries for the commercial units are located to ensure clear and direct access to the buildings.</p>
Objective C2.G Requirement C2.25-C2.26	Building Facilities and Services <ul style="list-style-type: none"> To appropriately locate building facilities and services that do not adversely impact on the public domain 	<p>Facilities and services can be located to the rear of the building to mitigate visible impact from the street, park and adjoining lots.</p>
Objective C2.H Requirement C2.27	Public Art <ul style="list-style-type: none"> To ensure that features of the public domain contribute to identity, character, safety, amenity and accessibility 	<p>The proposed development does not exceed \$2 million dollar and as such, public art is not required under the DCP.</p>
Objective C2.J Requirement C2.31-C2.35	Landscaping <ul style="list-style-type: none"> To enhance the appearance and amenity of developments through the retention and/or planting of large and medium sized trees 	<p>The application does not include detail regarding the proposed landscaping for the site. Through discussions with Council Vegetation Management Officer, the subject site and its constraints and the proposed development do not allow for a practical landscaping outcome. The absence of landscaping is not considered to adversely affect the subject site or the character of the area.</p>

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	<ul style="list-style-type: none"> • To encourage landscaping between buildings for screening • To ensure landscaped areas are consolidated and maintainable spaces that contribute to the open space structure of the area • To improve the aesthetics of commercial areas, especially major commercial road corridors, through landscape works and co-ordination of architectural and signage elements • To reduce hydrocarbon emission by providing shading of untendered vehicles • To reduce energy consumption through microclimate regulation • To reduce air borne pollution by reducing the heat island effect • To intercept stormwater to reduce stormwater runoff 	
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Chapter C5 – Multi-dwelling housing or Seniors Housing

Reference	Control	Assessment
Objective C5.A Requirement C5.1-C5.3	Landscaping <ul style="list-style-type: none"> • To enhance the appearance and amenity of developments through the retention and/or planting of large and medium sized trees. • To encourage landscaping between buildings for screening. • To ensure landscaped areas are consolidated and maintainable spaces that contribute to the open space structure of the area. • To add value and quality of life for residents and occupants within a development in terms of privacy, outlook, views and recreational opportunities. 	<p>The application does not include detail regarding the proposed landscaping for the site. Through discussions with Council Vegetation Management Officer, the subject site and its constraints and the proposed development do not allow for a practical landscaping outcome. The absence of landscaping is not considered to adversely affect the subject site or the character of the area.</p>

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	<ul style="list-style-type: none"> To reduce energy consumption through microclimate regulation To reduce air borne pollution by reducing the heat island effect To intercept stormwater to reduce stormwater runoff 	
Objective C5.B Requirement C5.4-C5.5	Height <ul style="list-style-type: none"> To ensure building height is appropriate for the context and character of the area. To ensure building heights reflect the hierarchy of centres and land use structure. To ensure ceiling heights achieve sufficient ventilation and daylight access. To ensure ceiling heights increase the sense of space and provides for well-proportioned rooms. To ensure ceiling heights contribute to the flexibility of building use over the life of the building. 	<p>Per the assessment against the LEP and Chapter C2 the proposed height of the buildings is considered to be consistent and appropriate for the context and character of the area.</p> <p>The ceiling heights proposed achieves the minimum floor to ceiling heights of 2.4m.</p>
Objective C5.C Requirement C5.6-C5.18	Setbacks <ul style="list-style-type: none"> To ensure development provides continuity and consistency to the public domain. To ensure adequate space between buildings to enable effective landscaping. To alleviate impacts on amenity including privacy, solar access, acoustic control and natural ventilation. To reduce the visual bulk of buildings from the street. To maintain the rhythm and built form on the street. 	<p>Building 2 located to the rear of the site that includes dwelling 3 and 4 is located behind the building facing King Street. It has been designed with a frontage to Hunter River, setback 20.18m from the river bank.</p> <p>The side setbacks for dwelling 3 and 4 are:</p> <ul style="list-style-type: none"> Ground floor car parking and stair access to each of the dwelling is setback 0.648m from the side boundaries. The ground floor is not enclosed; and Upper floor (first and second floor) are setback .240m from the east side boundary and 0.045m from the west boundary. <p>The design is not compliant with the side setback requirement provisions of the DCP. The non-compliance is considered acceptable due to the limitations and constraints of the site width. The design does provide a practical use of the site whilst maintaining access to the rear river through the ground floor setback.</p> <p>The ground floor design is not an enclosed design, which mitigates the impact on bulk scale and impacts at the ground level.</p> <p>It is also considered consistent with the character of King Street and heritage nature of the street. The construction to the boundaries is considered not likely to unreasonably impact on solar access, privacy or noise impact on adjoining sites.</p>

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Objective C5.D Requirement C5.19-5.21	Natural Ventilation <ul style="list-style-type: none"> To ensure all habitable rooms are naturally ventilated. To ensure a comfortable indoor environment is created for residents. 	Each dwelling and habitable room have been designed to create for cross flow ventilation. Ensuring all habitable rooms have natural ventilation to create a comfortable indoor environment.
Objective C5.E Requirement C5.22-C5.32	Streetscape and Privacy <ul style="list-style-type: none"> To ensure development activates streetscape to provide passive surveillance and privacy 	<p>The proposed development has a frontage to the street and includes balconies that overlook the street and the publicly used river frontage. The design of the development provides passive surveillance while maintaining privacy for surrounding properties.</p> <p>Each dwelling has sheltered access to and from the front door to the designated parking spaces.</p> <p>This will limit privacy impact and overlooking into dwellings contained on the site.</p> <p>The proposed design of both buildings does not include windows on the side elevations, which are blank walls. This is not consistent with the DCP requirement C5.30 however due to the building being built to the side boundaries in an area where the existing structures are built boundary to boundary this design is not considered to be unreasonable or inconsistent with the character of the area.</p> <p>The balcony design for the building fronting King Street includes walls, which restrict overlooking into the side boundaries.</p>
Objective C5.F Requirement C5.33-C5.36	Noise <ul style="list-style-type: none"> To minimise noise transfer through the siting of buildings and building layout To ensure noise impacts are mitigated within units through layout and acoustic treatments 	The proposed development is not likely to result in an excessive increase in noise level from the property. The main proposed use is residential with commercial on the ground floor. Further, each dwelling only shares one-part wall within the adjoining dwelling. Limiting the impact on noise on the proposed dwellings.
Objective C5.G Requirement C5.37-5.41	Car Parking and Garages <ul style="list-style-type: none"> To ensure car parking caters for anticipated vehicle movements to and from the development and does not adversely impact on building articulation. To ensure vehicular access has minimal impacts on neighbouring dwellings. To ensure that vehicular access points and parking is safe and convenient for residents, visitors and service providers. 	<p>The DCP requires a common driveway to have a minimum width of 3.6m, the proposed design proposes a driveway width of 3m which does not achieve the minimum driveway width.</p> <p>The driveway does not cause visual impact or require traffic calming devices as it is not considered necessary or appropriate as the driveway is not considered long enough.</p>
Objective C5.H	Private Open Space <ul style="list-style-type: none"> To ensure private open space with solar access is 	The DCP requires private open (POS) space be allocated on the ground floor each dwelling. The design of the development does not facilitate for POS

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Requirement C5.42-C5.47	provided to allow the opportunity for passive and active outdoor recreation	<p>on the ground floor. As such, where development cannot provide POS on the ground floor a balcony of not less than 16m² with a minimum width of 2.4m and minimum depth of 1.5m for use of POS is to be dedicated to each dwelling. The design proposes the following areas for POS:</p> <ul style="list-style-type: none"> - Dwelling 1 - 3.7m x 3.6m= 13.3m² - Dwelling 2 - 3.7m x 3.6m= 13.3m² - Dwelling 3 - 3m x 4.3m= 12.9m²; and - Dwelling 4 - 3m x 4.3m= 12.9m². <p>Dwelling 1 and 2 does not achieve the minimum POS area requirement, a shortfall of 2.7m².</p> <p>A shared balcony is proposed on the second floor of dwelling 3 and 4, which is accessed by both dwellings. The balcony is 3m deep x 9.9m wide with a total area of 29.7m. In the event that the applications supported a divide between the two units needs to be included on the plans. As privacy and amenity, concerns may become an issue with the shared balcony. As a result, dwelling 3 and 4 will have POS via two balconies with a total area of 27.27m². Achieving the requirements of the DCP.</p> <p>Solar access requirements include a minimum of 2 hours sunlight to the POS for each dwelling between the hours of 9am-3pm. The site is oriented south-east, and the siting of the development is the most practical for the site location and character.</p>
Objective C5.1 Requirement C5.48-C5.54	<p>Site Facilities and services</p> <ul style="list-style-type: none"> • To ensure development provides appropriate facilities and services in the most appropriate site location 	<p>The design does not specifically allocate areas for waste storage & recycling, mailboxes or clothes drying facilities. There is adequate space behind the commercial units for waste and recycling to be stored being the building line for all the units on the site. In the event that the application is supported, a condition of consent will require mailboxes and street/unit numbers are appropriate located on the site.</p> <p>No designated storage areas have been proposed as required by C5.54.</p>

Chapter D11 – Raymond Terrace

Site specific development controls are applicable to the proposed development and have been assessed below as follows.

D11.D King Street Heritage CharacterDesign

The site is identified in the King Street Heritage Precinct as identified in Figure DT of the DCP. The proposed development has been designed in a manner to reflect the heritage character of the street.

Under this chapter, development is to provide a frontage to King Street that retains the heritage character and has cohesive riverfront built edge that reflects the area river port origin. Building 2 includes two dwellings and rear fence on the levee bank, which will support the cohesive riverfront built edge, however the fence will restrict the further development of public domain elements such

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as a footpath. Creation of an accessible riverfront boardwalk is proposed to be located above the levee. The development does not consider the boardwalk as part of the design for the river frontage. In the event of any approval, a condition will be required to remove the rear fence proposed on the levee bank.

The development proposes a common entry/egress point to the site from King Street, showing a design, that maintains integrity of the streetscape.

Parking

Development within the King Street Precinct is eligible to receive a 100% reduction in the total parking required. However, comments received from Councils Traffic Engineer indicate that the current parking of King Street is at capacity. Residential street parking is inadequate and any parking that cannot be catered for on the site is likely to result in residents having to park at a distance from the site. In this regard, four (4) residential car parking spaces have been provided. Bicycle parking is required to be provided under this chapter the DCP. Noting this, the proposal includes adequate car parking on the site.

Clause D11.22 requires development within the flood planning area to not contribute to the flood hazard and must be able to satisfy the provisions of the LEP relating to flooding. A detailed assessment against the flooding character of the site has been completed above against the LEP and DCP chapter B5. The proposed development is not considered suitable for the subject site due to the flood hazard.

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

There are no regulations that apply to the proposal.

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

Social and Economic Impacts

The proposal will result in 4 residential units and 2 commercial units on the site, increasing the housing stock and diversity of the area. The construction of the development would result in employment opportunities during and after the development of the structures and having a monetary contribution to the local area. The development will also however result in adverse social and economic impacts by increasing the risk to life and property associated with the flood hazard categorisation of the site.

Impacts on the Built Environment

As detailed in the SoHI, the subject building is not of heritage significance. The proposed design is considered sympathetic to the King Street historic character. The development will not result in adverse impacts to the surrounding development privacy or solar amenity.

Impacts on the Natural Environment

The proposed development is not considered to be compatible with the flood risk associated with the land and may result in unacceptable impact to life. The proposed development is not considered to align with a suitable use of the site and does not align with Councils endorsed policies.

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

The subject site is located in a mixed-use area within the Raymond Terrace Town Centre. The proposal in its current form does not demonstrate a suitable use for the site given the flood category of the land. The residential units are not a considered a suitable use in a high hazard floodway. Further to this, there is limited information provided with the application to demonstrate the safety of residents for dwelling 1 and 2 would be achieved in the event of a significant PMF event on the

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subject site. The current design would be inundated by flood waters with no adequate flood refuge for the residents or flood free access.

Based on the information provided for assessment the development cannot be support and is not considered to be a suitable use for the site.

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

Public Submissions

The application was re-notified following the Clause 55 amendment submission to Council in April 2021. The application was notified from 12 May 2021 to 26 May 2021. No submissions were received during this notification period.

The application was notified from 12 November 2019 to 26 November 2019 in accordance with the provisions of the Port Stephens Council Community Participation Plan. One submission received during this time. The matters raised during the exhibition period have been detailed in the table below.

Comment	Council response
Car parking spaces – site area not sufficient to provide car parking spaces on the site for both retail and residential requirements	<p>This has been taken into consideration through the assessment of the application. The subject site is identified within the Raymond Terrace Town Centre under Chapter D11 of the DCP, which includes additional requirements that apply to King Street, these include car parking.</p> <p>The objective of the D11.6 –D11.7 to provide incentive for the retention and redevelopment of King Street heritage. The requirements note sites within the King Street Precinct (which the site is identified within) receive a 100% reduction in the parking requirement under B9 of the DCP.</p> <p>The proposal includes four on-site parking spaces and within the provision of Councils controls.</p>
Amenity – the proposed 1m high fence around the property boundary to the waterfront. This restrict the amenity and access of the area.	<p>The proposed 1m high fence is not supported by BCD or Council; and a condition is required to remove the rear fence.</p>
Materials – the proposed materials, the large expansive concrete wall and the corrugated iron of the detached dwelling	<p>Due to the construction requirements relating to fire-rating and safety for building built to boundaries, masonry walls are required and have been proposed. The building elements built to the side and front boundary create a continuous and active street frontage along King Street, which is consistent with the provisions of Council controls.</p> <p>The detached dwelling is no longer proposed; however the building to the rear is still proposed to be lightweight cladding and corrugated steel.</p> <p>The application has been submitted with a supporting Statement of Heritage Impact (SoHI); which has been considered and supported by council's heritage advisor. While a mimic heritage style development is not preferred; the proposal does present a design which is sympathetic to the heritage character of the street and has been supported by the SoHI.</p>

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Density of development – site coverage. The level of residential density is not There is not a development within the street which has the same bulk and scale.	The proposed residential component of the application is not considered a suitable use on the site with consideration of the flood hazard applicable to the site.
Soil and Water – limited detail on the proposed stormwater management.	The stormwater management plan has been assessed and adequately meets the requirements of Council specifications subject to conditions.
Waste – likely to have 10 bins on the site for all the uses. Where will the bins site for collection? How will this affect parking on the site? Goes back to density on the site.	There is suitable space behind building frontage to store waste bins.

One submission was received from a stakeholder body outside of the initial notification period. The Waterfront Action Group NSW submission argued that the current owner's waterfront property rights will be undermined by the acquisition of a right of way along the rear of the allotment.

As the report is recommending refusal of the application due to the location of the proposed residential development within a high flood hazard, the matters relating the loss of privacy and amenity; and security concerns relating to the proposed detached dwelling at the rear was not considered.

Section 4.15(1)(e) the public interest

The proposed development is not considered to be in the public interest as the proposed residential component is not consistent or suitable with the flood category applicable to the subject site and associated planning controls. The impact and increase in risk to life and property as a result of the development on the site, in a significant flood event, precludes Council staff from being able to provide support to the application.

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

In the event of approval, development contributions would be applicable to the application for the total of 3 additional dwellings on the site. The commercial portion would not be subject to s7.12 contributions.

DETERMINATION

The application is recommended for refusal by the elected Council.