

ATTACHMENTS UNDER SEPARATE
COVER

ORDINARY COUNCIL MEETING
23 MAY 2023



PORT STEPHENS
C O U N C I L

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DEVELOPMENT ASSESSMENT REPORT

APPLICATION REFERENCES

Application Number	16-2022-855-1
Development Description	Carpark extension (temporary) - construction of 314 new parking spaces, conversion of 756 airport parking spaces to service the Astra Aerolab Business Park, associated stormwater drainage, security boom gates, pedestrian pathways, fencing and lighting
Applicant	BARR PROPERTY AND PLANNING PTY LTD
Land owner	Greater Newcastle Aerotropolis PTY LTD
Date of Lodgement	15/11/2022
Value of Works	\$2,505,572.00
Submissions	0

PROPERTY DETAILS

Property Address	38 Cabbage Tree Road WILLIAMTOWN
Lot and DP	LOT: 11 DP: 1036501
88B Restrictions on Title	Nil
Current Use	Airport Car Parking / Vacant
Zoning	B7 BUSINESS PARK / PART RU2 RURAL LANDSCAPE
Site Constraints	Weed infestation Bushfire Prone Land Acid Sulfate Soils - Class 5 Koala Habitat Planning Map - Preferred and 50m buffer over cleared land Endangered ecological community - Swamp Schlerophyll Forest Biodiversity values map ANEF 35-40 and 40+ RAAF Base Williamtown height trigger map - refer structures higher than 7.5m RAAF Base Williamtown bird strike - Group C

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	RAAF Base Williamtown and Newcastle Airport extraneous lighting – Zone C, D and 6km radius controlled light installation area RAAF Base Williamtown engine run up facility Hunter Water Special Area – Tomago NSW Wildlife Atlas (Fauna) – Koala, Shy Albatross, White-bellied Sea-Eagle, Little Bentwing Bat, Eastern Freetail-bat, Wallum Froglet, Greater Broad-nosed Bat, Southern Myotis, Grey-headed Flying Fox, Long-nosed Potoroo, Black-necked Stork, Squirrel Glider, Emu and swift parrot NSW Wildlife Atlas (Flora) – Eucalyptus parramattensis subsp. Decadens, Maundila triglochinos PFAS Contamination Management Area (primary and Secondary Management Area) Flood Prone Land
State Environmental Planning Policies	State Environmental Planning (Resilience and Hazards) 2021 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021

PROPOSAL

The proposed development seeks consent for the extension of the Long Stay 1 car park from 1484 spaces (905 approved and 579 existing) to 1798 spaces, to support new commercial and industrial development within Stage 1 of the Astra Aerolab Business Park. **Figure 1** below illustrates the proposed site plan with the car park extension shown in red. The proposal also involves the reallocation of 756 approved/existing Long Stay 1 spaces to service Stage 1 of the Astra Aerolab development, rather than the airport. This rationalisation of parking creates a total of 1070 spaces to service the Astra Aerolab Business Park as shown in **Figure 2** below.

The key elements of the proposal include the following:

- Extension of the Long Stay 1 car park which comprises 1484 spaces (905 approved and 579 existing) with 314 new spaces to be constructed, including 6 accessible spaces;
- Installation of security boom gates, landscaping, pedestrian pathways, fencing and lighting;
- Installation of barriers within the approved airport carpark to reallocate 756 approved/existing Long Stay 1 car spaces to the Astra Aerolab Business Park, creating a total of 1070 spaces to service the Astra Aerolab (see **Figure 2**);
- Two way access road and round-about;
- Installation of 15 EV charging points;
- Installation of electrical conduits to allow for additional future EV charging points. It is intended that 5% of all carparks in the approved and proposed extension to Long Stay 1 Carpark have EV charging capability;

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- Extension of existing footpaths from Stage 1 of the Astra Aerolab development to the car park;
- Stormwater drainage to be managed in accordance with the Astra Aerolab stormwater management strategy;
- Associated earthworks in the form of fill to achieve flood immunity; and
- Associated landscaping comprising couch grass as a ground cover.

An extension of the existing Long Stay 1 Car Park is currently under construction to increase the number of spaces from 579 spaces to 1484. The extension was approved under DA 16-2021-1153 in April 2022. The proposed development seeks to further extend this car park with 314 new spaces and reallocate 756 approved/existing Long Stay 1 spaces to service Stage 1 of the Astra Aerolab development, rather than the airport.

The car park is proposed to operate with security boomgates with access from Aerospace Avenue from the south. Access is proposed to be provided to authorised users and visitors of the Astra Aerolab precinct only.

The proposed car park subject of this application is located within Stages 2B and 2D of the Astra Aerolab precinct (DA16-2009-324). The proposed car park sought for approval is temporary and is to be decommissioned prior to Stages 2B and 2D of DA 16-2009-324 commencing. A condition of consent has been included to reflect the temporary nature of the carpark.

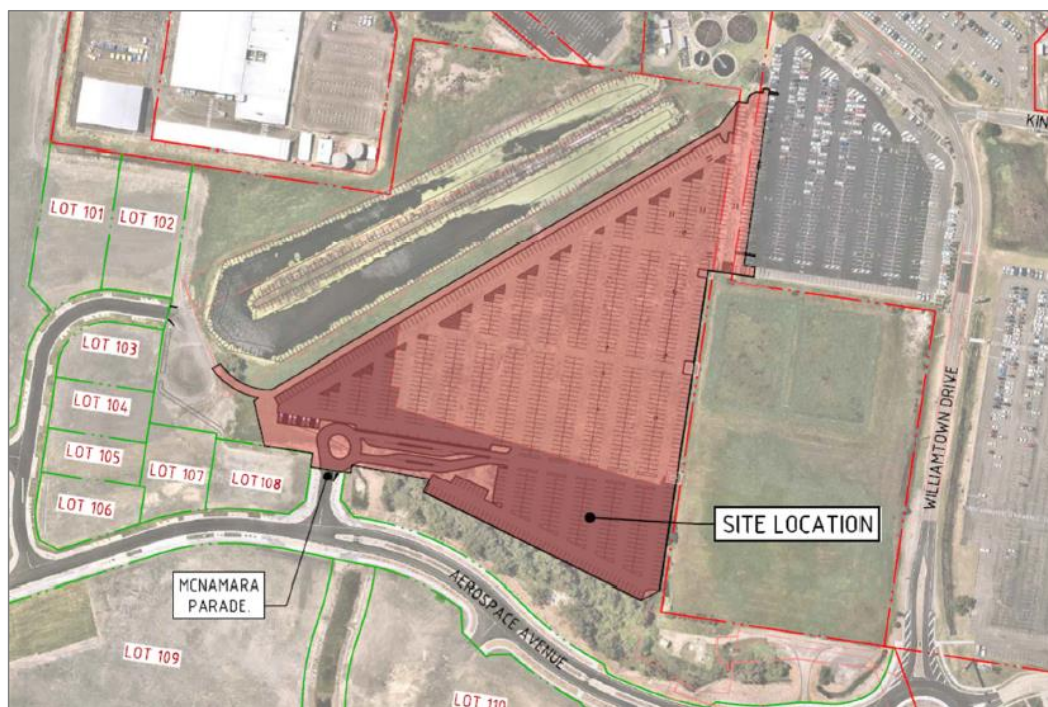


Figure 1: Site Plan of Proposed Car Park Extension (Extension shown in dark red)

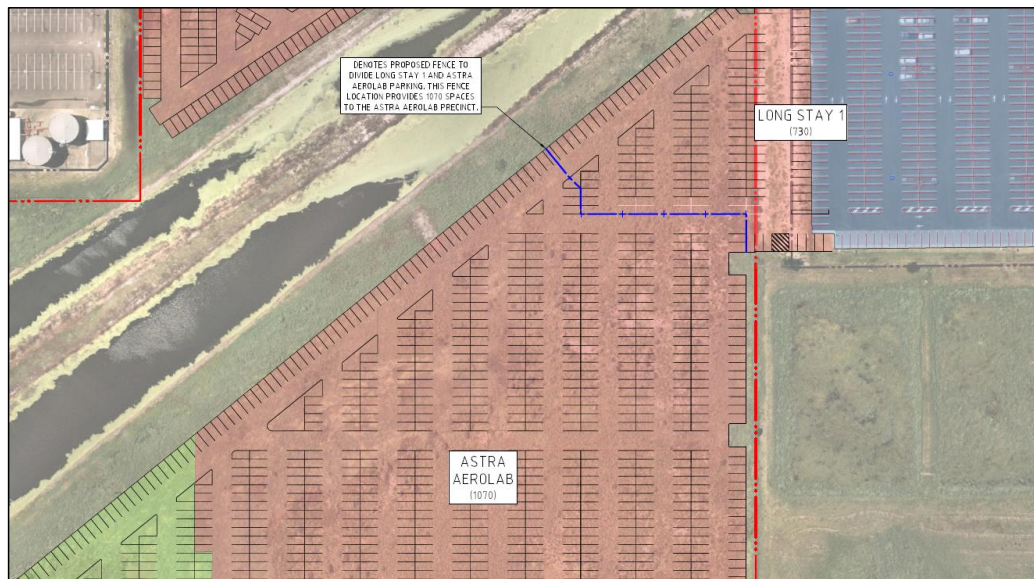


Figure 2: Proposed fence to split airport and Astra Aerolab car parking

SITE DESCRIPTION

The development is proposed to take place at 38 Cabbage Tree Road, Williamtown, legally identified as LOT: 11 DP: 1036501. The proposed carpark is within the Stage 2B and 2D of the Astra Aerolab development and is to be decommissioned prior to the stage being completed. The site area is shown in **Figure 3** below, and will be herein referred to as 'the site'. The site is located to the south west of Newcastle Airport and the Royal Australia Air Force (RAAF) Base Williamtown. Development has commenced on the site for Stage 1 of the Defence and aerospace business park, comprising 101 lots known as the 'Astra Aerolab' (DA 16-2009-324), as shown in **Figure 4** below.

The topography of the site is flat and contains some remnant vegetation in the south west corner, which is approved for removal under the Astra Aerolab approval. The site is accessed via Aerospace Avenue. Aerospace Avenue is the main carriageway through the Astra Aerolab precinct and connects to Williamtown Drive to the east, which services the Newcastle Airport and a small number of commercial uses including a Mercure Hotel. Roads within the Astra Aerolab are not currently accessible to the public due to the Subdivision Certificate for the parent subdivision not released, nor lots formally registered.

The broader Astra Aerolab Business Park, within which the site is located, is zoned B7 – Business Park. Land to the north, including the Newcastle Airport and Williamtown RAAF Base are zoned for various SP2 – infrastructure purposes including Defence, Air Transport Facility and Public Utility uses. Land to the east, south and west of the site primarily consists of rural land and is zoned RU2 Rural Landscape. A number of smaller lots exist to the north east, accessible via Williamtown Drive and include various commercial uses related to the airport. The Mercure Hotel exists on the corner of Williamtown Drive and Technology Place.



Figure 3: Satellite Image of the Site



Figure 4: Approved Subdivision Layout of Stage 1 Astra Aerolab Development

The site is located within the draft Williamstown Special Activation Precinct (SAP) which is to be implemented under *State Environmental Planning Policy (Precincts-Regional) 2021* (Precincts Regional SEPP). Newcastle Airport and Royal Australian Air Force (RAAF) Base are at the core of the SAP, allowing the area to capitalise on the emerging aerospace industry and become a leading defence and aerospace precinct. Once finalised, the SAP master plan will be the 40-year strategic plan for the precinct. The SAP draft master plan was placed on public exhibition from 25 January –

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22 February 2023. The Astra Aerolab, including the site is located within the Regional Enterprise Zone of the SAP, which has been identified as the commercial centre of the precinct.

The SAP draft master plan as well as the Astra Aerolab subdivision approval identifies a swale and road within the location of the proposed car park, refer to **Figure 5**. The applicant has confirmed that the car park is proposed to be temporary and will be decommissioned prior to the completion of Stage 2B and 2D of the Astra Aerolab development. Moreover, the road and swale cannot be constructed until the defence transpiration ponds located to the north of the car park are decommissioned. To address the temporary nature of the carpark, a condition has been recommended stipulating that the proposed car park cannot be decommissioned until alternative car parking has been provided to cater for developments to which the carpark serves. In addition, the applicant has supplied a draft plan of easements, which includes an easement benefitting Council across the temporary car park area. A condition has been recommended requiring this easement be registered prior to commencement of use of the car park. Subject to these conditions and the temporary nature of the carpark, the proposal remains consistent with the SAP Masterplan.

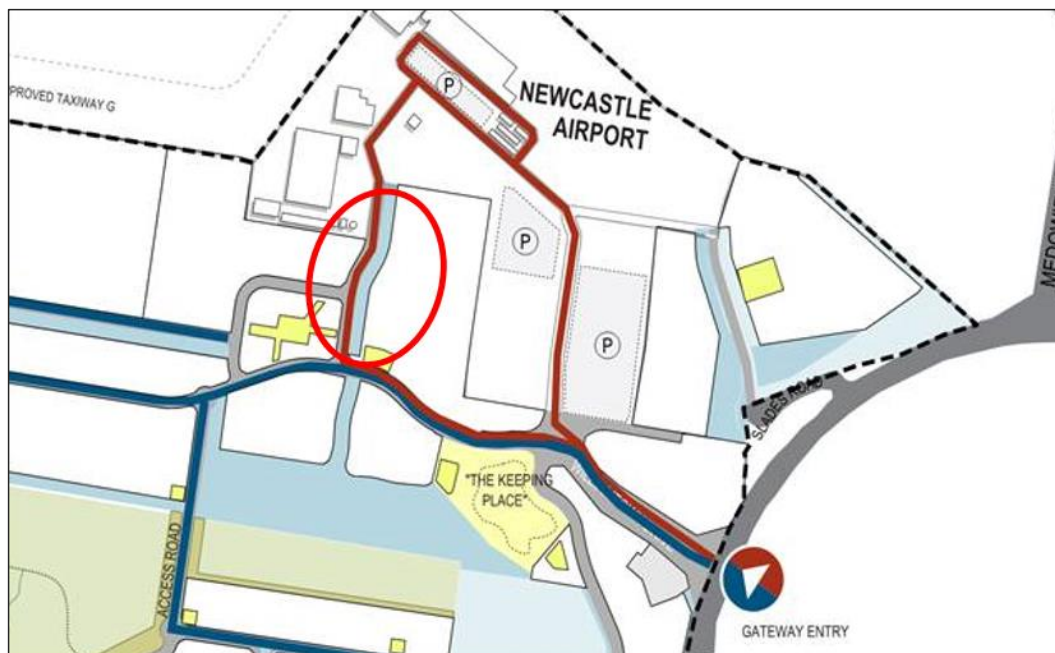


Figure 5. Location of the swale and road within the proposed car park area

SITE HISTORY

The site forms part of the Astra Aerolab Business Park, first approved by Council in January 2011 (DA No. 16-2009-324-1). The approved Astra Aerolab development comprised subdivision of the land into 103 lots for defence and airport related purposes. A modification application was lodged in February 2019 (DA No. 16-2009-324-2) and was later withdrawn. Another modification application was determined by Council (16-2009-324-3) in March 2022, which amended the approved lot layout including the reduction in lots from 103 to 101, as well as amendments to the approved road network, staging, stormwater design and conditions. The proposed car park subject of this application is located within Stages 2B and 2D of DA16-2009-324 (as modified). The proposed car park sought for approval is temporary and is to be decommissioned prior to Stages 2B and 2D of DA 16-2009-324-3 commencing. A condition of consent has been included to reflect this.

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An extension of the existing Long Stay 1 Car Park is currently under construction to increase the number of spaces from 579 spaces to 1484, as shown in **Figure 6** below. The extension was approved under DA 16-2021-1153 in April 2022. The proposed development seeks to further extend this car park with 314 new spaces and reallocate 756 approved/existing Long Stay 1 spaces to service Stage 1 of the Astra Aerolab development, rather than the airport.

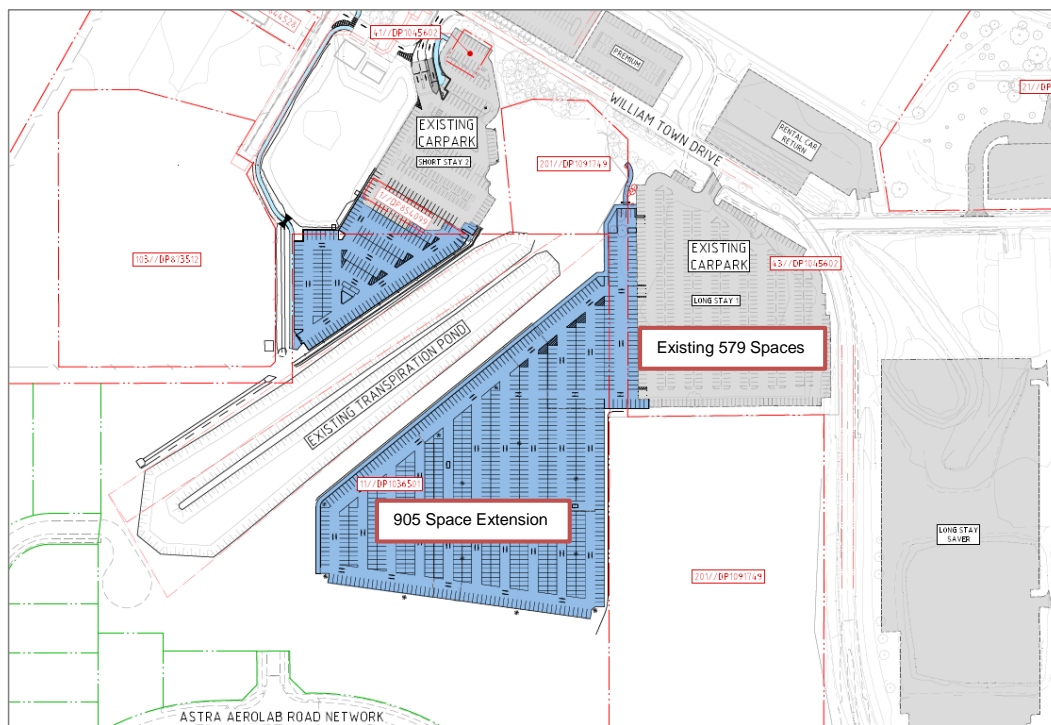


Figure 5: Approved Extension to Long Stay Car Park 1

The subject site is subject to several other current or historic development approvals. The relevant approvals for each lot are summarised in **Table 1** below.

Table 1: History of Development Approvals

DA Number	Proposal Description	Date of approval
16-2009-324-3	S.4.55(2) modification to 101 lot subdivision known as the 'Astra Aerolab'	23 March 2022
16-2021-1153	Extension of an existing carpark, including 175 new short stay carparks and 905 long stay car parks	29 April 2022
16-2022-663-1	Industrial development – warehouse (building 1), site works and establishment of building footprints	Currently under assessment to be determined by the HCCRPP
16-2022-834-1	Commercial development comprising 8 storey office premises with ground floor retail and food and drink premises	Currently under assessment to be

		determined by the HCCRPP
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SITE INSPECTION

A site inspection was carried out on 23 November 2022. The subject site can be seen in the images below.



Image 1: View north towards proposed car park



Image 2: View east across proposed car park location

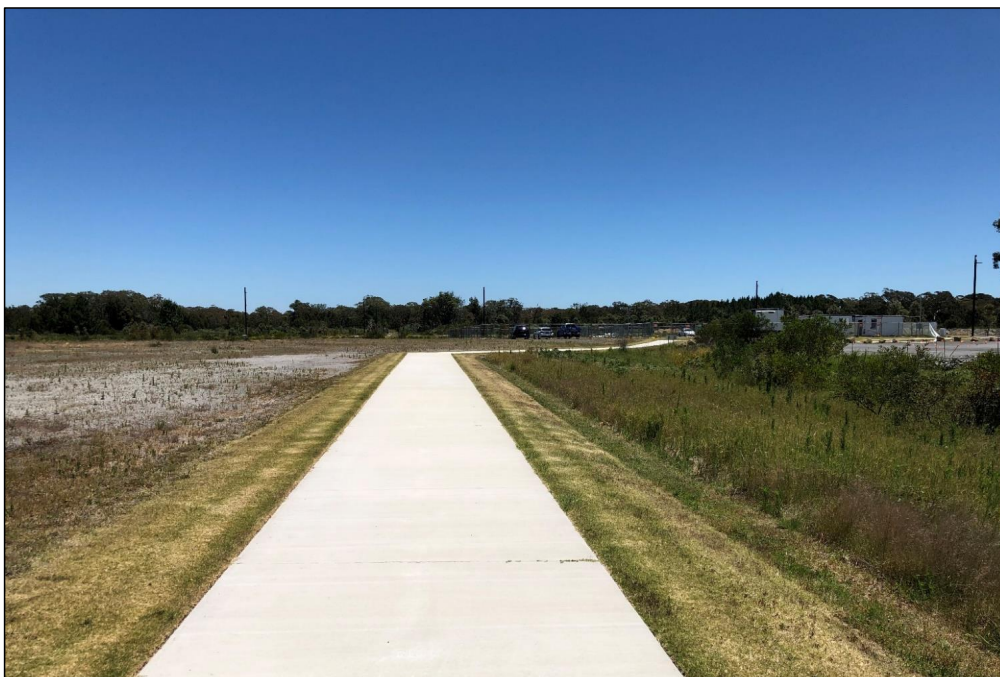


Image 3: Existing footpath connecting proposed car park and Stage 1 Astra Aerolab development lots

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

Internal

Development Engineer – Supported with conditions.

Development Contributions - Supported with fixed development contribution condition.

External

Department of Defence – The application was referred to the Department of Defence (Defence) in accordance with the Memorandum of Understanding between Defence and Port Stephens Council. The site is also located within a birdstrike, height trigger and extraneous light controlled area relating to Newcastle Airport and RAAF Base Williamtown.

“Defence seeks an assurance that the proposed development of the land and the creation of hard stand areas will not divert any additional stormwater back onto the Base. Defence expects that post development flows would not exceed pre-development flows and stormwater runoff from the base should not be impeded from leaving the base.”

The application proposes to manage stormwater in accordance with the strategy approved with the Astra Aerolab development under DA 16-2009-324-3. Under this approved stormwater strategy, water ultimately discharges to Nelson Bay Road. The approved strategy includes detention basins that ensure post-development flows do not exceed pre-development flows. The proposed carpark development will not cause nuisance flows to nearby Defence assets.

Hunter Water Corporation – The application was referred to Hunter Water Corporation due to the site being located within the Tomago drinking water catchment. In response, HWC did not object to the application, subject to the following:

- Stormwater is managed in accordance with the stormwater strategy for the Stage 1 Astra Aerolab subdivision;
- Adequate arrangements are made for ongoing maintenance of raingardens and vegetated swales;
- Erosion and sediment controls; and
- Best practice storage and disposal of oils and fuels during construction and site operation.

Conditions of consent have been recommended to address the above HWC comments.

Environment Protection Authority - The proposed development was referred to the Environmental Protection Authority (EPA) as the site is located within the Primary PFAS Management Area. In response, the EPA made no objection to the application, subject to conditions relating to the management of PFAS during construction. The EPA referral has been included as a part of the recommended conditions.

Transport for NSW – The application was referred to Transport for NSW (TfNSW) as the proposal is Traffic Generating Development, in accordance with State Environmental Planning Policy (Transport and Infrastructure) 2021. In response, TfNSW raised no objection to the DA, and noted that there is no inherent traffic generation as part of this application as all traffic generation is derived from other proposed developments within the Astra Aerolab Business Park. TfNSW issued advice that appropriate traffic measures should be implemented during construction and that Council review internal traffic and pedestrian movements. Conditions of consent to this effect have been recommended requiring the implementation of traffic management measures during works. Council's engineers have reviewed internal traffic and pedestrian movements, finding the proposal to be suitable in this regard. On this basis, the TfNSW advice has been appropriately addressed.

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Regional Growth NSW Development Corporation – Due to the sites location within the Williamstown SAP, the application was referred to Regional Growth NSW Development Corporation (RGDC). The referral comments from RGDC notes that consideration should be given to the Draft Williamstown Special Activation Precinct Master Plan. It was identified that the carpark proposes an alternate approach to stormwater drainage to that which Council approved as part of DA 16-2009-324-3 (Astra Aerolab subdivision) and that this design has informed the stormwater management actions proposed in the revised draft revised SAP Masterplan. RGDC encouraged Council to seek clarification as to how the alterations to the stormwater impacts will be managed to ensure general consistency with the draft revised SAP Masterplan. The applicant has acknowledged that the proposed car park is currently inconsistent with the draft revised SAP Master Plan and the approved Astra Aerolab subdivision. Notwithstanding, the applicant noted that the carpark is an interim measure to be utilised until the transpiration ponds servicing the RAAF Base are decommissioned and removed by Defence. Following removal of the transpiration ponds, the full extent of the approved road and the swale are proposed to be constructed as per existing approvals (Stage 2B). Therefore, upon final completion of all stages of the approved subdivision, the final form of the development will be consistent with the draft SAP Masterplan.

The RGDC referral also noted that the proposed carpark appears to be a permanent solution given it is servicing parking for Stage 1 development within the Astra Aerolab. Concern was raised that there may be a permanent shortfall in parking should the carpark be removed being temporary in nature as advised by the applicant. RGDC encouraged Council to ensure development provides adequate on-site parking consistent with the Port Stephens Development Control Plan 2014 (DCP) – Section B, to avoid future conflicts with users of the business park and SAP area, and those of the airport.

The initial concerns raised by RGDC were addressed through the receipt of additional clarification from the applicant and further correspondence was received from RGDC on 27 March 2022 that clarified the 'the development proposed includes light infrastructure that will not prevent or impede future development of the area in support of the Draft Williamstown Special Activation Precinct Masterplan'. On this basis, RGDC ultimately supported the proposed carpark works.

A condition has been recommended which stipulates that the proposed car park cannot be decommissioned until alternative car parking has been provided to cater for developments to which the carpark serves. In addition, the applicant has supplied a draft plan of easements which includes an easement benefitting Council across the temporary car park area. A condition has been recommended requiring this easement be registered prior to commencement of use of the car park.

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 does not require approval under any of the Acts listed under Section 4.46 of the EP&A Act and therefore is not integrated.

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

The proposed development is mapped as bushfire prone land and therefore requires assessment under the NSW RFS Planning for Bushfire Protection 2019 (PBP). The proposed development is located within the Astra Aerolab Business Park, which has been predominately cleared for subdivision purposes. A remnant strip of vegetation exists to the south of the proposed car park and another small parcel of remnant vegetation further to the south of Aerospace Avenue, representing the only bushfire threat within 100m of the site. The remnant vegetation measures less than 1ha in size and in accordance with PBP is considered a low hazard and APZ setbacks and building construction standards for these may be the same as for rainforests. The proposed development is set setback 10m from the low threat hazard, and as a result would be BAL 40. The proposed

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development is for a car park and therefore there are no construction standards that apply, however, the following bushfire protection measures are afforded to the proposal:

- Access provided in accordance with PBP, including defensible space;
- Management of the entire site as an inner protection area; and
- Fire hydrants accessible from the Stage 1 Astra Aerolab development.

As a result, the proposal conforms to the requirements of PBP and the requirements of S4.14 are satisfied.

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 (Biodiversity and Conservation) 2021

Chapter 2 Vegetation in Non-Rural Areas

Chapter 2 Vegetation in Non-Rural Areas of the Biodiversity and Conservation SEPP aims to protect the biodiversity values and preserve the amenity and other vegetation in non-rural areas of the State. The chapter 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 2.3 of the chapter 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 chapter further provides that Council may issue a permit for tree removal.

The site contains some remnant vegetation that has been approved for removal under the Astra Aerolab subdivision approval and no further vegetation removal is proposed, beyond that already approved.

Subject to a condition requiring vegetation clearing occur in accordance with DA 16-2009-324-3 prior to works commencing, the proposal is consistent with the provisions of this chapter.

Chapter 4 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.

The proposed development is located within an area mapped as preferred, buffer over cleared and on Council's Koala Habitat Planning Map (2000), as shown in **Figure 7** below. The site contains some remnant vegetation that has been approved for removal under the Astra Aerolab development consent. No further vegetation removal is proposed, beyond that already approved. Impacts to koala were considered as part of the parent approval, which did not identify the need for a koala corridor through the site. A koala corridor exists to the west of the site and is proposed to be secured as conservation land as part of the Williamstown SAP.

Subject to a condition requiring vegetation clearing occur in accordance with DA 16-2009-324-3 prior to works commencing, the proposal is consistent with the Port Stephens Comprehensive Koala Plan of Management (CKPoM), which constitutes compliance with Chapter 4 of this SEPP.

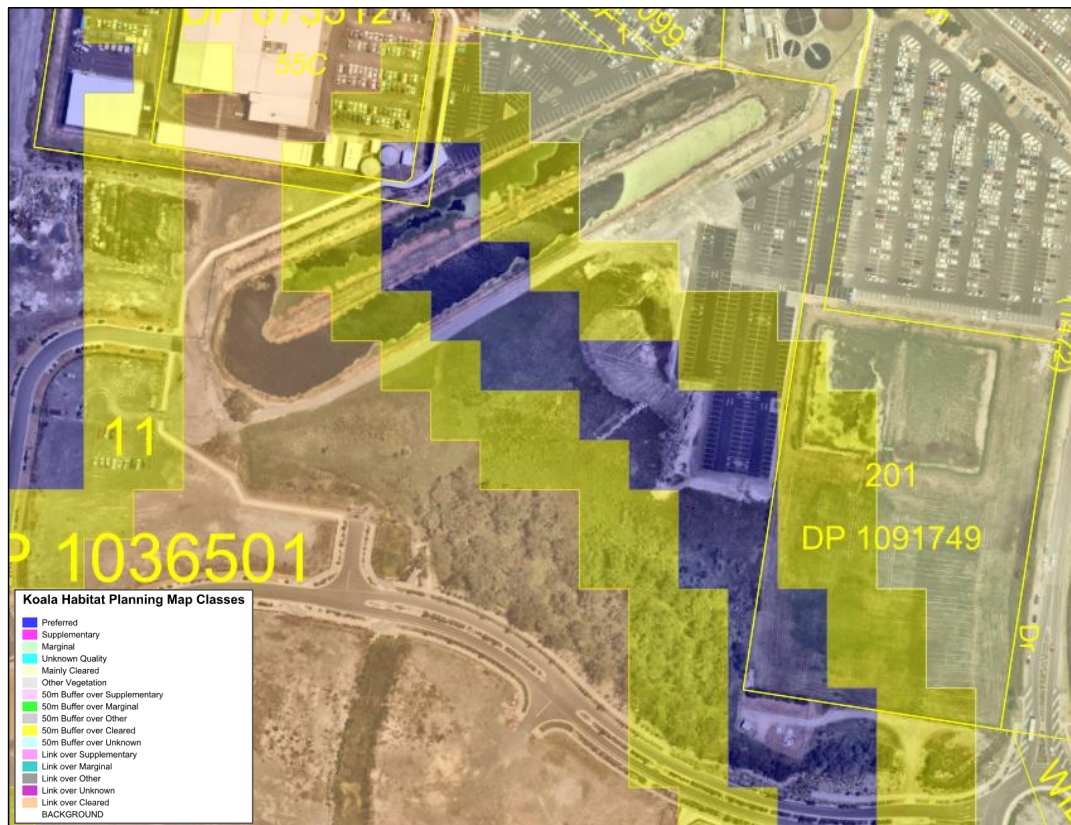


Figure 7: Koala Habitat Planning Map 2000

Chapter 4 Remediation of Land

Section 4.6 of Chapter 4 of the Resilience and Hazards SEPP provides that a consent authority must not grant consent unless:

- (a) *it has considered whether the land is contaminated, and*
- (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

A Preliminary Contamination Assessment (PCA) was submitted with DA 16-2021-1153-1 for the original 905 space car park. Given the proposal subject to this application is for the use of part of the carpark approved under DA 16-2021-1153-1, and for a small portion of new car parking area, the findings of the prior Contamination Assessment remain relevant to inform the assessment of the subject application. The PCA assesses the likelihood of contamination to be present from past and current site activities, including both desktop review and soil sampling. Two Areas of Environmental Concern (AECs) were identified based on the site history and site observations, including a stockpile of imported fill and PFAS contamination, noting the site is within the PFAS Management area for RAAF Base Williamtown.

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Based on the findings of the assessment, it is considered that the site is not contaminated. The site is suitable for the proposed development (car parks), if the following recommendations are implemented:

- Due to the presence of PFAS contaminated groundwater at shallow depths, a management plan would be required for construction workers during construction of the car parks.
- An Unexpected Finds Procedure is prepared and implemented during the construction works.
- The results of the stockpile sampling and analysis showed that it does not meet the criteria for ENM, however, the assessment showed that the stockpile is suitable for onsite re-use.

Section 4.6(2) provides that before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.

Sub section (4) provides that the land concerned is—

- (a) land that is within an investigation area,*
- (b) land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
- (c) to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—*
 - (i) in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

The proposed development involves a change of use to a car park. However, the proposed car park is not located on land specified in subsection (4) as the land is not within an investigation area, is not land for a potentially contaminating purposes listed in table 1 of the contaminated land planning guidelines is being, or is known to have been, carried it. The proposal is not for residential, educational, recreational or child care purposes, or for the purposes of a hospital and therefore (i) and (ii) do not apply.

On this basis, the jurisdictional pre-requisites of Section 4.6 are met.

The application was also referred to EPA for comment regarding PFAS contamination as the EPA is the lead authority regarding management of PFAS in NSW. In response, the EPA highlighted that the management of PFAS through the implementation of various management plans to be implemented throughout construction was appropriate and supported the application with conditions relating to the management plans. The conditions relate to PFAS sampling (in accordance with the PFAS National Environmental Management Plan), identification of potential interaction with groundwater or soils containing PFAS, sediment and erosion and methods of preventing contact and exposure of PFAS during construction.

Subject to the EPA conditions and the recommendations made within the Preliminary Contamination Assessment, the proposal is considered suitable for the proposed use and satisfies the provisions of Section 4.6 of the SEPP.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Section 2.119 of SEPP (Transport and Infrastructure) 2021 (SEPP Transport and Infrastructure) provides that the consent authority must not grant consent to development on land that has a

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frontage to a classified road unless it is satisfied that the matters listed under clause 2.119(2) have been satisfactorily addressed as follows:

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
 - (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

The south east corner of the site has a 400m frontage to Nelson Bay Road. However, vehicular access does not exist nor is proposed directly to Nelson Bay Road. Access to the site is currently via a 4 way round about Williamtown Drive, which connects the site to Nelson Bay Road a further 330m to the east. Once the site is subdivided, in accordance with the Astra Aerolab consent (DA 16-2009-324-3), access to the car park would be via Aero Space Avenue. Aerospace Avenue has been constructed but has not been formally gazetted as a road, nor has a subdivision certificate been issued. Referral comments received from TfNSW did not identify the need for any upgrade to the signalised intersection at Williamtown Drive and Nelson Bay Road, consistent with the recommendations made in the Traffic Assessment Statement, prepared by Northrop, dated 19 October 2022 submitted with application. An upgrade to the intersection of Williamtown Drive and Nelson Bay Road to include an additional turning lane on the western leg forms part of the Newcastle Airport Terminal expansion approved under DA 16-2008-940-6, however, this is not required to cater for this car park proposal. On this basis, the proposal would not adversely impact the safety, efficiency and ongoing operation of Nelson Bay Road. The proposed carpark is not a development type that is sensitive road noise or vehicle emissions.

Section 2.121 requires referral of traffic generating developments to TfNSW for comment. The development is traffic generating development as nominated under Schedule 3 of the SEPP as it includes a car park with more than 50 spaces with connection to a classified road (Nelson Bay Road). In response to the referral, TfNSW made no objection, concluding that there will be no significant impact on the nearby classified (State) road network, as traffic is not expected to be generated by the car park, rather it would be generated by development within the Astra Aerolab precinct. TfNSW issued advice that appropriate traffic measures should be implemented during construction and that Council review internal traffic and pedestrian movements. Conditions of consent have been recommended requiring the implementation of traffic management measures during works. Council's engineers have reviewed internal traffic and pedestrian movements, finding the proposal to be suitable in this regard. On this basis, the TfNSW advice has been appropriately addressed.

Port Stephens Local Environmental Plan 2013 (PSLEP)

Clause 2.3 – Zone Objectives and Land Use Table

The site is zoned B7 Business Park. The objectives of the B7 zone are as follows:

- To provide a range of office and light industrial uses.
- To encourage employment opportunities.

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- To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.
- To facilitate the future development of the land as an employment area relating to defence and airport operations to support the continued operation of the RAAF Base Williamtown Airport and the Newcastle Airport.

The proposed car park is a land use permitted with consent in the B7 Business Park zone. The proposed car park is consistent with the objectives of the B7 zone as it supports development within the Astra Aerolab business park, which will support a range of land uses such as light industry and offices associated with the RAAF Base Williamtown and Newcastle Airport, consistent with the objectives of the zone.

Clause 5.10 – Heritage conservation

The objectives of this clause are as follows—

- (a) *to conserve the environmental heritage of Port Stephens,*
- (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) *to conserve archaeological sites,*
- (d) *to conserve Aboriginal objects and Aboriginal places of heritage significance.*

In accordance with Clause 5.10.(4) the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

The area of proposed development does not contain and is not located in proximity to any Local or State listed heritage items. Impacts to Aboriginal heritage were assessed as part of the parent DA (16-2009-324), which required an Aboriginal Heritage Impact Permit covering the site area.

Subject to a condition requiring that the necessary Aboriginal Heritage Impact Permit for Stages 2B and 2D of DA 16-2009-324-3 to be obtained prior to works commencing, the proposal satisfies the requirements of this clause.

Clause 5.21 – Flood Planning

Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development complies with the following matters:

- (a) *is compatible with the flood function and behaviour on the land, and*
- (b) *will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) *will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood, and*
- (d) *incorporates appropriate measures to manage risk to life in the event of a flood, and*
- (e) *will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses*

Clause 5.21(3) provides that in deciding whether to grant development consent on land to which this clause applies, the consent authority must consider the following matters—

- (a) *the impact of the development on projected changes to flood behaviour as a result of climate change,*
- (b) *the intended design and scale of buildings resulting from the development,*
- (c) *whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood,*

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(d) the potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

The proposed development is located on land mapped as being Flood Planning Area. The proposed development includes fill to raise the finished level of the car park and appropriately mitigate the risk of flooding. Filling of the site area for flood immunity is already approved under DA 16-2009-324-3 and the associated flooding relating impacts were found to be acceptable. The proposed development is generally in line with the location, height and volume of filling approved under DA 16-2009-324-3 and on this basis there are no adverse offsite flooding impacts anticipated as a result of the proposed earthworks associated with the development. On this basis, the proposal satisfies the requirements of Clause 5.21.

6.1 Arrangements for designated State public infrastructure

The objective of this clause is to require satisfactory arrangements to be made for the provision of designated State public infrastructure before the subdivision of land in an urban release area to satisfy needs that arise from development on the land, but only if the land is developed intensively for urban purposes.

Clause 6.1(2) provides that development consent must not be granted for the subdivision of land in an urban release area if the subdivision would create a lot smaller than the minimum lot size permitted on the land immediately before the land became, or became part of, an urban release area, unless the Director-General has certified in writing to the consent authority that satisfactory arrangements have been made to contribute to the provision of designated State public infrastructure in relation to that lot. The proposed development does involve subdivision, therefore the provisions of this section do not apply.

6.2 Public utility infrastructure

Clause 6.2(1) provides that development consent must not be granted for development on land in an urban release area unless the Council is satisfied that any public utility infrastructure that is essential for the proposed development is available or that adequate arrangements have been made to make that infrastructure available when it is required.

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from hard stand areas can be catered for in accordance with Councils requirements and the wider precinct strategy. The subject land also maintains direct access to the local road network, meeting the requirements of this clause.

6.3 Development control plan

Clause 6.3(2) provides that development consent must not be granted for development on land in an urban release area unless a development control plan that provides for the matters specified in subclause (3) has been prepared for the land. The PSDCP 2104 includes Chapter D15 Williamstown Defence and Airport Related Employment Zone (DAREZ) which provides development controls for future development on the Astra Aerolab site where the proposed development is located. Consideration of the development against this chapter is provided in the DCP section elsewhere in this report.

Clause 7.1 – Acid Sulfate Soils

The objective of this clause is to ensure that development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

The subject land is mapped as containing potential Class 4 acid sulfate soils.

The proposed development involves filling to mitigate flooding impacts and as a result the proposal would not entail excavations that are expected to impact ASS. Under clause 7.1, consent is required for works more than 2 metres below the natural ground surface or works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface. However, the Preliminary

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Contamination Assessment (PCA) concludes that ASS would be expected at a depth of 3m below ground surface. The proposed development does not involve a maximum cut of 2m and therefore would not likely encounter ASS. On this basis, an ASS Management Plan is not considered necessary and the requirements of clause 7.1 are satisfied.

Clause 7.2 – Earthworks

The objective of this clause is *“to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.”*

In accordance with Clause 7.2(3) before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (b) the effect of the development on the likely future use or redevelopment of the land,*
- (c) the quality of the fill or the soil to be excavated, or both,*
- (d) the effect of the development on the existing and likely amenity of adjoining properties,*
- (e) the source of any fill material and the destination of any excavated material,*
- (f) the likelihood of disturbing relics,*
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The application proposes earthworks in the form of balanced cut and fill to level the site and to reduce flood risk and create a level building platform. The proposed earthworks are not anticipated to result in any adverse impacts on the subject, adjoining land, or any public place. Subject to conditions relating to the importation of materials, and sediment and erosion controls, the proposal satisfies the requirements of this section.

Clause 7.4 – Airspace Operations

Clause 7.4(2) provides that if a development application is received and the consent authority is satisfied that the proposed development will penetrate the Limitation or Operations Surface, the consent authority must not grant development consent unless it has consulted with the relevant Commonwealth body about the application.

The subject site is located within the Limitation or Operations Surface map in an area where all structures are to be referred to Defence.

Clause 7.4(3) provides that the consent authority may grant development consent for the development if the relevant Commonwealth body advises that—

- (a) the development will penetrate the Limitation or Operations Surface but it has no objection to its construction, or*
- (b) the development will not penetrate the Limitation or Operations Surface.*

The proposed development does not include any buildings, however, light poles are proposed which could present a navigational hazard. Accordingly, the proposal was referred to Defence and in response, no objection was made relating to the height of the proposal or with regard to lighting. Based on the Defence comments, the proposed development does not exceed the limitation or operation surface. Defence offered comments on the original 905 space Long Stay 1 car park

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extension approved under DA16-2021-1153-1, relating to extraneous lighting and glare and recommended that any development comply with the extraneous lighting controls detailed in NASF Guideline E, which has been included as a condition of consent. Subject to the condition, the proposal complies with the requirements of this section.

Clause 7.5 – Areas Subject to Aircraft Noise

Clause 7.5(2) applies to development that—

- (a) *is on land that—*
 - (i) *is near the RAAF Base Williamtown Airport, and*
 - (ii) *is in an ANEF contour of 20 or greater, and*
- (b) *the consent authority considers is likely to be adversely affected by aircraft noise. The car parking and road network land uses are not sensitive to aircraft noise. Aircraft noise impacts to the terminal building are to be assessed under any future applications that modify the terminal building.*

In accordance with clause 7.5(3), before determining a development application for development to which this clause applies, the consent authority—

- (a) *must consider whether the development will result in an increase in the number of dwellings or people affected by aircraft noise, and*
- (b) *must consider the location of the development in relation to the criteria set out in Table 2.1 (Building Site Acceptability Based on ANEF Zones) in AS 2021—2000, and*
- (c) *must be satisfied the development will meet the indoor design sound levels shown in Table 3.3 (Indoor Design Sound Levels for Determination of Aircraft Noise Reduction) in AS 2021—2000.*

The proposed development is located on land identified as being within the 2021 40+ ANEF contour. However, the proposed development for an airport car park is not a noise sensitive development and on this basis the requirements of this section do not apply.

Clause 7.6 – Essential Services

Cause 7.6 provides that development consent must not be granted to development unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available when required. The essential services include the following:

- (a) *the supply of water,*
- (b) *the supply of electricity,*
- (c) *the disposal and management of sewage,*
- (d) *stormwater drainage or on-site conservation,*
- (e) *suitable vehicular access.*

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from hard stand areas can be catered for in accordance with Councils requirements and the wider precinct strategy. The subject land also maintains direct access to the local road network, meeting the requirements of this clause.

Clause 7.8 – Drinking Water Catchments

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—

- (a) *the development is designed, sited and will be managed to avoid any significant adverse impact on water quality and flows, or*

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- (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

The proposed development is located within the Tomago 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 the use of a series of rain gardens and vegetated swales. The water quality management 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.

The application was referred to Hunter Water Corporation (HWC) due to the site location within the Tomago drinking water catchment. In response, HWC did not object to the application, subject to the following:

- Stormwater is in accordance with the stormwater strategy for the Stage 1 Astra Aerolab subdivision;
- Adequate arrangements are made for ongoing maintenance of raingardens and vegetated swales;
- Erosion and sediment controls; and
- Best practice storage and disposal of oils and fuels during construction and site operation.

Conditions of consent have been recommended to address the above HWC comments.

Clause 7.9 – Wetlands

The objective of this clause is to ensure that wetlands are preserved and protected from the impacts of development. Before determining a development application for development on land to which this clause applies, the consent authority must consider—

- (a) whether or not the development is likely to have any significant adverse impact on the following—*
(i) the condition and significance of the existing native fauna and flora on the land,
(ii) the provision and quality of habitats on the land for indigenous and migratory species,
(iii) the surface and groundwater characteristics of the land, including water quality, natural water flows and salinity, and
(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

In addition, development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—

- (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or*
(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.

The proposal is located on land identified as wetland. Despite this, all vegetation clearing has been approved under the Astra Aerolab consent (DA 16-2009-324), which includes the entire site area. As a result, no further vegetation clearing or impacts to local wetlands is required under this consent.

ITEM 1 - ATTACHMENT 3 PLANNERS ASSESSMENT REPORT.***Section 4.15(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition***

State Environmental Planning Policy (Activation Precincts) 2020 (Activation Precincts SEPP) seeks to promote economic development through the implementation of Activation Precincts. The draft masterplan to support the Williamstown Special Activation Precinct (SAP) was recently on exhibition and would include an amendment to this SEPP. However, no provisions specific to the Williamstown SAP have been exhibited in a proposed amendment to the SEPP. Notwithstanding, consideration has been given to the SAP masterplan that was exhibited from 25 January – 22 February 2023. The Astra Aerolab, including the site is located within the regional enterprise zone of the SAP which has been identified as the commercial centre of the precinct. The SAP draft master plan as well as the Astra Aerolab subdivision approval identifies a swale and road within the location of the proposed car park, as shown in **Figure 5** above. The applicant has confirmed that the car park is proposed to be temporary and will be decommissioned prior to the completion of Stage 2B and 2D of the Astra Aerolab development. Moreover, the road and swale cannot be constructed until the defence transpiration ponds located to the north of the car park are decommissioned.

A condition has been included on the consent regarding the decommissioning of the car park. In addition, the applicant has supplied a draft plan of easements which includes an easement benefitting Council across the temporary car park area. A condition has been included requiring this easement be registered prior to commencement of use of the car park. Given the temporary nature of the car park and conditions of consent that reflect this, it is considered that the proposal is consistent with the Williamstown SAP Masterplan.

There are no other draft environmental planning instruments that apply to the proposal.

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

This Part applies to the removal or pruning of trees or other vegetation within non-rural areas and gives effect to SEPP (Biodiversity and Conservation) 2021 by listing those trees or other vegetation that require approval.

The site contains some remnant vegetation that has been approved for removal under the Astra Aerolab development. No further vegetation removal is proposed, beyond that already approved. The proposal is consistent with the requirements of this chapter.

Chapter B2 – Natural Resources

This section applies to development located within 500m of environmentally sensitive areas, development that contains koala habitat, noxious weeds or development that is seeking to use biodiversity credits.

The site contains areas of environmental significance including koala habitat, therefore the provisions of this chapter apply. The site contains some remnant vegetation that has been approved for removal under the Astra Aerolab development. No further vegetation removal is proposed, beyond that already approved.

The proposed development is located within an area mapped as preferred, buffer over cleared and on Council's Koala Habitat Planning Map (2000). Impacts to koala were considered as part of the parent approval, which did not identify the need for a koala corridor through the site. A koala corridor exists to the west of the site and is proposed to be secured as conservation land as part of the Williamstown SAP.

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Given no additional vegetation is proposed for removal, the proposal is consistent with the Port Stephens Comprehensive Koala Plan of Management (CKPoM) and the proposal is consistent with the provisions of this chapter.

Chapter B3 – Environmental Management

Chapter B3 contains provisions relating to ASS, noise, air quality and earthworks. The relevant sections are considered in detail in the following section.

Acid Sulfate Soils (ASS)

As detailed within clause 7.1 discussion above, the proposed development could be undertaken, without impacts to ASS. In this regard, the development is consistent with the requirements of this section.

Earthworks

As discussed at clause 7.2 above, the proposed development involves fill to level the site and raise the car park to reduce flood risk. The impacts of the proposed earthworks can be mitigated through conditions of consent. The proposal is therefore consistent with DCP requirements relating to earthworks.

Noise

The separation distances incorporated into the development will limit any significant impacts on the adjoining development, noting the substantial distance to the nearest residential dwelling and existing background noise from airport and Defence operations. The impacts of the development during construction could be limited through conditions of consent. Subject to conditions, the application is satisfactory in regards to noise management.

The proposal is consistent with the ASS, earthworks and noise requirements of this chapter.

Chapter B4 – Drainage and Water Quality

This section applies to development that:

- Increases impervious surfaces; or
- Drains to the public drainage system; or
- Involves a controlled activity within 40m of waterfront land.

A stormwater management plan was submitted with the application. The stormwater management plan is in line with the strategy approved with the Astra Aerolab development under DA 16-2009-324-3, which drains to Nelson Bay Road. The proposed strategy includes detention basins that ensure post-development flows do not exceed pre-development flows and a series of raingardens for water quality control.

The stormwater drainage plan has been assessed as being consistent with the Infrastructure Specification and a condition of consent has been included in the consent requiring the provision of detailed engineering plans, prior to the issue of a construction certificate. Subject to the aforementioned condition, the proposal is consistent with the requirements of Chapter B4.

Chapter B5 – Flooding

This section applies to all development on flood prone land.

The subject land is mapped as being within the Flood Planning Area. Following from the discussion against clause 5.21 of the PSLEP above, the proposed development is acceptable in this regard. The proposed development includes fill to raise the finished level of the car park and appropriately mitigate the risk of flooding. The proposed fill is not of a scale or location that is expected to cause any adverse offsite flooding impacts. On this basis, the proposal is consistent with the requirements of this chapter.

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This section applies to development that is situated within the 2025 Australian Noise Exposure Forecast (ANEF), bird strike zone, extraneous lighting area or the Royal Australian Air Force (RAAF) Base Williamtown Obstacle Limitation map.

The impact of aircraft noise on the proposed development has been assessed in the discussion against clause 7.5 of the PSLEP above. The proposed development is located on land identified as being within the 2021 40+ ANEF contour. However, the proposed development being for an airport car park is not a noise sensitive land use and on this basis satisfies the requirements of this chapter. A condition been recommended on the consent, relating the management of organic waste to minimise risk of bird strike. With regard to extraneous lighting, conditions of consent have been included relating to control of lighting in accordance with the relevant Australian standards and NASF guidelines. Subject to the recommended conditions, the proposal is consistent with the requirements of this chapter.

Chapter B7 – Heritage

This section applies to development that is situated on land that contains a heritage item or within a heritage conservation area.

Following on from discussion against clause 5.10 of the PSLEP above, impacts to Aboriginal heritage were assessed as part of DA 16-2009-324-3, which required an Aboriginal Heritage Impact Permit covering the site area.

Subject to a condition requiring that the necessary Aboriginal Heritage Impact Permit for Stages 2B and 2D of DA 16-2009-324-3 be obtained prior to works commencing, the proposal satisfies the requirements of this clause.

The site is not located on land that contains any local or state listed heritage items and therefore the provisions of this section do not apply.

Chapter B8 – Road Network and Parking

This section applies to development with the potential to impact on the existing road network or create demand for on-site parking. This Part lists general requirements more specific requirements relating to development types may be provided under Section C Development types.

The application has the potential to impact the existing road network and therefore the provisions of this chapter apply. The application includes a Traffic Impact Statement (TIS), prepared by Northrop, reference no. NL182640 and dated 9 October 2022. The TIS assesses the traffic, car parking and access related impacts of the proposal.

Traffic Impacts

The TIS concludes the proposed development would not generate any additional traffic, as it is for car parking purposes only. The traffic demand will be generated by the Astra Aerolab development, which was assessed as part of the parent subdivision approval and will be assessed as part of future development proposed on the resulting Astra Aerolab lots.

Referral correspondence received from TfNSW makes the same conclusion that “there is no inherent traffic generation as part of this application as all traffic generation is derived from other proposed developments within the Astra Aerolab subdivision.” On this basis, traffic generation under the proposed carpark is consistent with anticipated future growth of the Astra Aerolab Business Park.

On-site Parking Provisions

The proposed development seeks consent for the extension of the Long Stay 1 car park from 1484 spaces (905 approved 579 existing) to 1798 spaces, to cater for new commercial and industrial development within Stage 1 of the Astra Aerolab. The proposal also involves the reallocation of 756

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Long Stay 1 spaces to service developments within Stage 1 of the Astra Aerolab precinct, rather than airport operations. Once the 314 new spaces are constructed under this application, a total of 1070 spaces will be provided to service future development in the Astra Aerolab, as shown in **Figure 8** below.

There is currently a total of 3,719 spaces either constructed or approved that are dedicated to airport operations. Even with the reallocation of 756 airport spaces under this proposal, a total of 2,963 spaces will remain dedicated to the airport. This notably exceeds the 2,134 spaces (1,676 customer and 458 staff/operations) required to cater for intended airport operations under the approved Airport Terminal Building expansion (approved under DA 16-2008-940-4), by 829 spaces. The Airport Terminal approval is based on the airport accommodating 2 million passengers per annum.

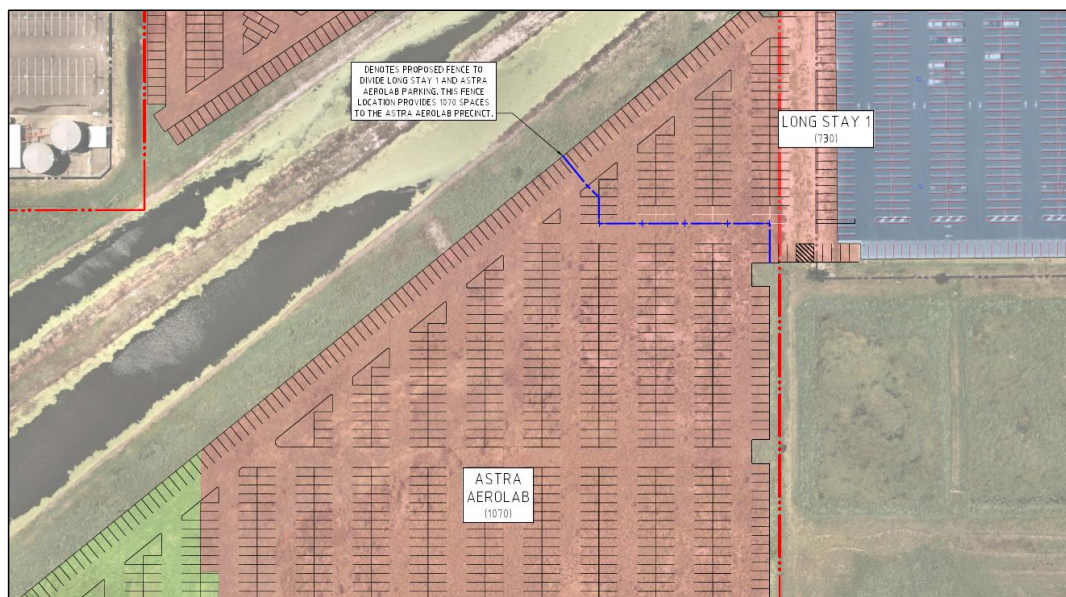


Figure 8: Proposed fence to split airport and Astra Aerolab car parking

The proposed 314 new car parks and reallocated 756 airport car parks result in a combined total of 1070 that are planned to service Stage 1 of Astra Aerolab, including the expected future developments identified in **Table 2** below. Given the proposed location of the road and swale through the western portion of the carpark under the SAP masterplan, 87 of these spaces (see **Figure 9**) will not form part of the easement to service the Stage 1 Astra Aerolab developments and will be used for overflow car parking for the Astra Aerolab instead. Notwithstanding, 983 spaces will still be provided to service Stage 1 of the Astra Aerolab, which exceeds the parking requirement.

Table 2: Estimated car parking demand for Stage 1 Astra Aerolab

Lot	Estimated Parking Demand	Estimated on-site parking provision	Parking Deficiency provided offsite	Basis for assessment	
103	172	0	172	Traffic Statement	Impact
104	151	0	151	Traffic Statement	Impact

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105	207	0	207	Traffic Statement	Impact
106	133	17	116	DA 16-2022-834-1	
107	43	0	43	Traffic Statement	Impact
108	38	0	38	Traffic Statement	Impact
109	144	63	81	DA 16-2022-663-1	
110	60	0	60	Traffic Statement	Impact
Total	948	80	868		

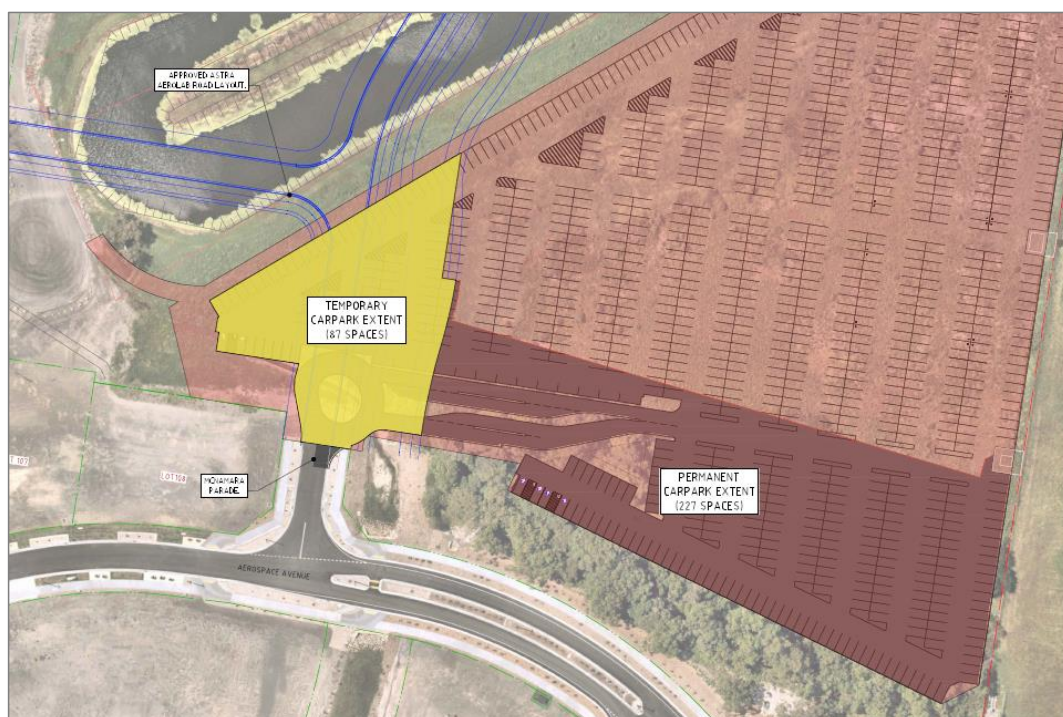


Figure 9: Temporary Car Park Extent

As outlined in **Table 2** above, a total of 868 spaces are estimated to be required within the common car park to service Stage 1 of the Astra Aerolab. The estimated demand of 868 spaces is derived by applying the DCP parking rates to DAs currently lodged or expected to be lodged in the future for Stage 1 of the Astra Aerolab. The proposed development includes provision for 1070 spaces within the common car park for use as part of Stage 1 of the Astra Aerolab and therefore is sufficient to meet the anticipated demand. The intention is to centralise grade parking within the Astra Aerolab Business Park to enable superior site and building design and avoid excessive hardstand on each lot within Stage 1. As illustrated in **Figure 10** below, the proposed car park is located in a walkable distance of no more than 500m from the furthest point in the car park to each of the proposed lots within Stage 1 of the Astra Aerolab via existing or proposed pedestrian footpaths.

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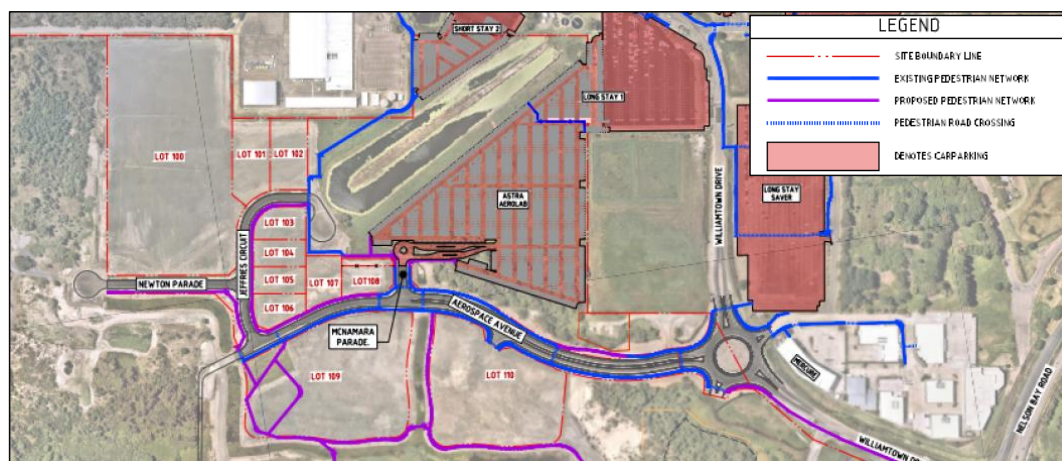


Figure 10: Proposed and Existing Pedestrian Network

The layout of the proposed car park is in accordance with AS/NZS 2890.1:2004 Parking facilities – Off-street car parking, with some spaces larger than the minimum 2.4m wide by 5.4m long minimum requirement.

Access

Access to the car park is proposed via Aerospace Avenue from the south via a two way road and round-about. A secure boom gate is proposed to limit access to authorised users and visitors of the Astra Aerolab precinct only. The proposed access arrangement provides sufficient manoeuvring areas for the types of vehicles expected to use the car park.

Chapter C – Development Types

The proposed development is not captured under any of the development specific chapters of the DCP.

Chapter D15 Williamtown Defence and Airport Related Employment Zone (DAREZ)

This chapter provides development controls for future development on the Astra Aerolab site (Lot 11 DP 1036501), where the proposed development is located. The relevant sections of the chapter are addressed as follows:

D15.A Lodgement requirements

The proposed development includes a landscaping plan. The Williamtown Aerospace Park Landscape Master Plan does not provide any guidance regarding planting at this location, noting that the master plan provides direction to the parent subdivision which covers the whole precinct and is approved under DA 16-2009-324. A condition of consent has been included requiring that the proposal does not comprise of reflective materials.

D15.B Setbacks

The proposed development does not include any buildings and therefore the building setbacks in this section do not apply.

D15.C Street layout

The proposal does not include any roads to be dedicated to the public and the provisions of this section do not apply.

D15.D – Drainage and Water Quality

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The proposed stormwater system is generally consistent with the approved Astra Aerolab development and the Williamstown Aerospace Park Flood Assessment and Stormwater Strategy, which involves use of a series of detention basins prior to discharge of stormwater at Nelson Bay Road.

D15.E – Flooding

The proposed car parks have a minimum finished level of 3.4m AHD, which complies with the minimum DCP requirement of 2.5m AHD.

D15.F Parking

The provisions of this section relate to car parking associated with new buildings. Notwithstanding, a landscape buffer between the proposed development and approved lots to the south is provided, in accordance with the requirements of this section.

D15.G Airport operational requirements

The impact of aircraft noise on the proposed development has been assessed in the discussion against clause 7.5 of the PSLEP above. The proposed development is located on land identified as being within the 2021 40+ ANEF contour. However, the proposed development being for an airport car park is not a noise sensitive land use and on this basis satisfies the requirements of this chapter. A condition has been recommended on the consent, relating to the management of organic waste to minimise risk of bird strike.

The proposed development does not include any buildings, however, light poles are proposed which could present a navigational hazard. Accordingly, the proposal was referred to Defence and in response, no objection was made relating to the height of the proposal or with regard to extraneous lighting. Based on the Defence comments, the proposed development does not exceed the limitation or operation surface. Defence offered comments on the original 905 space Long Stay 1 car park extension approved under DA16-2021-1153-1, relating to extraneous lighting and glare and recommended that any development comply with the extraneous lighting controls detailed in NASF Guideline E, which has been included as a condition of consent. The proposal does not include radio emitting devices.

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

There are no matters within the regulations that are relevant to the determination of the application.

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 will support the future development and operation of the Astra Aerolab precinct through the provision of common user car parking facilities. Temporary jobs will be created during the construction of the proposal as well as flow on impacts for suppliers. The development would not generate long term permanent jobs, however, would facilitate the ongoing and effective operation of Astra Aerolab's commercial core, which is expected to be a long term generator of employment within the Williamstown area.

Impacts on the Built Environment

The proposed development is an at grade car park that does not include any built structures. The proposed car parks are in keeping with those existing in the surrounding Newcastle Airport precinct and would not harm the existing character of the airport precinct. The provision of common user car parking facilities that will service Stage 1 developments in Astra Aerolab will result in a superior landscape and built form for future development in the precinct.

Impacts on the Natural Environment

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The site contains some remnant vegetation that has already been approved for removal under the Astra Aerolab development. No further vegetation removal is proposed, beyond that already approved. Accordingly, a condition has been included requiring vegetation clearing occur in accordance with DA 16-2009-324-3 prior to works commencing. In addition, the proposal includes appropriate stormwater management combined with sediment and erosion controls.

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

The proposed development occupies an area already approved for vegetation clearing, which minimises the environmental impacts of the proposal. The proposal includes adequate stormwater quantity and quality controls, in accordance with Council requirements to ensure no adverse impacts to water quality of nearby sensitive receivers

Flooding constraints are appropriately mitigated through the proposed filling works to reach the relevant flood planning level for the site.

Site constraints relating to aircraft operations can be adequately dealt with via conditions of consent, as confirmed by the referral comments received from Defence.

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

The application was exhibited from 29 November 2022 – 13 December 2022 in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. No submissions were received with relation to the subject development proposal.

Section 4.15(1)(e) the public interest

The proposed development provides additional car parking to service the future growth of the Astra Aerolab precinct, which is expected to be a significant generator of employment for the Williamstown area and wider Hunter Region.

The development is consistent with the relevant environmental planning instruments as outlined in this report. There are no unacceptable environmental impacts anticipated to occur as a result of the proposal and there are no site constraints that would prohibit the development.

The proposal is not inconsistent with the recently exhibited Draft Williamstown Special Activation Precinct Masterplan.

On this basis, the proposal is in the public interest.

Section 7.12 – Fixed Development Contributions

The proposal is subject to fixed development contributions in accordance with Council's Local Infrastructure plan. A condition of consent has been included requiring payment of the contributions prior to the issue of a Construction Certificate.

DETERMINATION

The application is recommended to be approved by Council, subject to the recommended conditions of consent.



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APPLICATION REFERENCES

Application Number	16-2022-223-1
Development Description	Demolition of existing dwelling and associated structures, construction of a five storey residential flat building with ground floor cafe and strata subdivision
Applicant	Soldier Pty Ltd
Land owner	Soldier Pty Ltd
Date of Lodgement	22/04/2022
Value of Works	\$7,149,200.00
Submissions	9 (original notification) 4 (amended application) (Total 13)

PROPERTY DETAILS

Property Address	18 Soldiers Point Road SOLDIERS POINT, 20 Soldiers Point Road SOLDIERS POINT
Lot and DP	LOT: 8 DP: 26597, LOT: 92 DP: 577122
88B Restrictions on Title	Nil
Current Use	Vacant land / residential
Zoning	B1 NEIGHBOURHOOD CENTRE
Site Constraints	Acid Sulfate Soils – Category 4; Koala Habitat Planning Map – Preferred; Coastal Environment Area Map / Coastal Use Area Map; and Height of Buildings – 15m.
State Environmental Planning Policies	State Environmental Planning Policy (Biodiversity and Conservation) 2021; State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004; State Environmental Planning Policy (Resilience and Hazards) 2021; and

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

EXECUTIVE SUMMARY

This development application (DA) was previously reported to Council at its meeting of 28 February 2023 with a recommendation for approval by Council planning staff. At the 28 February 2023 meeting, Council resolved to:

“defer Development Application DA No. 16- 2022-223-1 for a residential flat building comprising 18 units, ground floor café, basement parking and strata subdivision at 18 to 20 Soldiers Point Road, Soldiers Point (Lot 8 DP 26597, Lot 92 DP 577122), to allow for conversations between Council staff and the proponent, with the aim of reducing the building height to comply with the 15m height limit.”

Following the 28 February 2023 meeting, Council staff consulted with the applicant to reduce the height and undertake further community consultation. In response, the applicant advised consultation had occurred with a local community group, with a focus of explaining the context of the proposed development and responding to community objections raised during notification of the DA. Following the consultation process between the applicant and Council staff, the applicant elected to proceed to determination by elected Councillors without design amendments or a reduction in height.

Based on Council's original planning assessment under Section 4.15 of the EP&A Act which is provided below, it is recommended that the application be approved subject to conditions of consent.

PROPOSAL

The application seeks consent for the construction of a five storey residential flat building (RFB) comprising 18 apartments, ground floor café, demolition of an existing dwelling and shed, associated landscaping, civil works, car parking and 19 lot strata subdivision. Specific details of the proposal include:

- 1 x café tenancy with internal and external seating (located on ground level);
- 4 x 2-bedroom units, 11 x 3-bedroom units and 3 x 4-bedroom units (located throughout levels 1-4);
- Car parking area containing 47 spaces (located on ground level and basement level);
- Communal area (located on Level 1); and
- Ground level foyer, lobby, lift and pedestrian entrance.

The entry and exit point to the car parking area is provided via Soldiers Point Road. Landscaping has been provided in the front and rear setback to provide visual screening from the street frontage and adjoining properties and to increase the amenity qualities of the development for future occupants and the streetscape.

Visual renders of the proposed development are shown in **Figure 1** and **Figure 2** below.



Figure 1: Soldiers Point Road perspective (front)



Figure 2: Bennett Lane perspective (side)

SITE DESCRIPTION

The subject site is located at 18 and 20 Soldiers Point Road, Soldiers Point which shall be consolidated to form an irregular shaped lot with a relatively flat topography and a total area of 1,339.4m² (**Figure 3**). The site is located on the corner of Soldiers Point Road and Bennett Lane, within a well-established residential and commercial area. The site has an eastern frontage of 20.57m to Soldiers Point Road and a northern frontage of 50.935m to Bennett Lane. The site is

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largely undeveloped with a double storey brick dwelling and ancillary metal shed located over the south west corner of the site.

Soldiers Point Road is an established urban centre, undergoing a transition from low density residential to medium rise multi-dwelling and apartment type developments. The character of the area is typified by medium and low density developments, comprising older apartment stock in the form of three and four storey walk-up residential flat buildings, single dwellings and modern high density infill developments.

The development in the immediate vicinity consists of a range of built form elements, including:

North – To the north of the subject site at 16 Soldiers Point Road is a three-storey brick apartment complex that receives vehicular access from Bennett Lane adjoining the subject site. Development further north of the site is characterised by multiple five storey shop-top housing developments.

South – To the south of the subject site at 20A Soldiers Point is a single storey brick building operating as a hair salon, beyond is 22 Soldiers Point Road which is occupied by a single-storey brick dwelling with garage.

West – To the west of the subject site at 21 Sunset Boulevard is a double storey brick dwelling with double garage. To the southwest is a currently vacant site at 23 Sunset Boulevard, which benefits from development approval for a 3 x lot subdivision and associated dwellings.

East – To the east of the subject site beyond Soldiers Point Road, includes a various forms of residential housing, including a mixture of dwellings, dual occupancies, multi dwelling housing and residential flat buildings.

The original form of dwellings in the area enjoy generous, landscaped gardens that integrate well with the highly attractive, leafy visual context of the Soldiers Point area. Furthermore, there are a number of comparable development types in close proximity to the site, including a five storey mixed use development at 12 Soldiers Point Road, a five storey apartment development at 6 Soldiers Point Road and a 5 storey apartment building at 2 Soldiers Point Road.



Figure 3: Aerial image of subject site

SITE HISTORY

DA 16-2022-223-1

30 September 2021 - a Pre-DA Meeting was held for a 'Shop Top Housing' development (incorporating a 5 storey apartment complex, with a café and underground parking). The conceptual development included 18 residential apartments with a building height of 19.62m above ground level.

15 October 2021 - Urban Design Panel (UDP) review meeting was held for the conceptual 'Shop Top Housing' development. The development was conceptually supported by the UDP, subject to minor amendments including; adjustment of balcony layouts, re-orientation of bedroom windows, increased setbacks to the commercial space street façade, alterations to landscaped communal open space, sun shading opportunities and consideration to the redevelopment potential of 20A Soldiers Point Road, Soldiers Point, adjoining the site.

22 April 2022 - Development Application 16-2022-223-1 for 'Mixed Use Residential Flat Building' development (incorporating a 5 storey apartment complex, with a café and underground parking) was lodged with Council (see **Figure 4 below**). The DA was reviewed by Council staff and UDP, with additional information requested in relation to engineering, planning and architectural components of the application. The DA was notified from 10 May 2022 - 24 May 2022, with eight (8) submissions opposing the development. The DA was subsequently called to Council on 13 July 2022 in accordance with the 'Planning Matters Reported to Council' policy.

In response to community concerns regarding the overall height of the development, revised architectural plans were received by Council on 24 October 2022 (see **Figure 5 below**). The revised architectural plans included a 2.32m overall building height reduction, attributed to the removal of the rooftop communal area and associated lift and stair access.

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On receipt of amended plans, the DA was re-notified from 11 November 2022 – 24 November 2022, with a 14 day extension granted. During this notification period, two (2) submissions in support of the amended design and two (2) submissions opposing the amended design was received by Council. The amended plans are being presented for determination at the 28 February 2023 Ordinary Council Meeting.

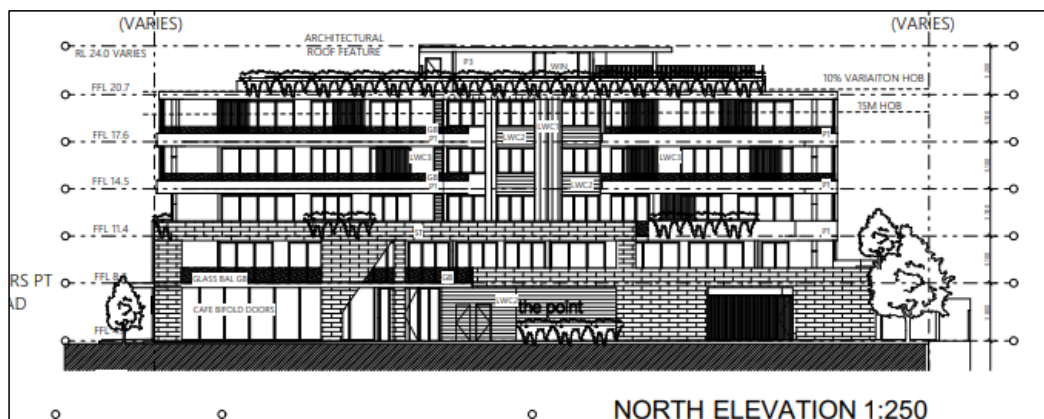


Figure 4: Original plans lodged with Council

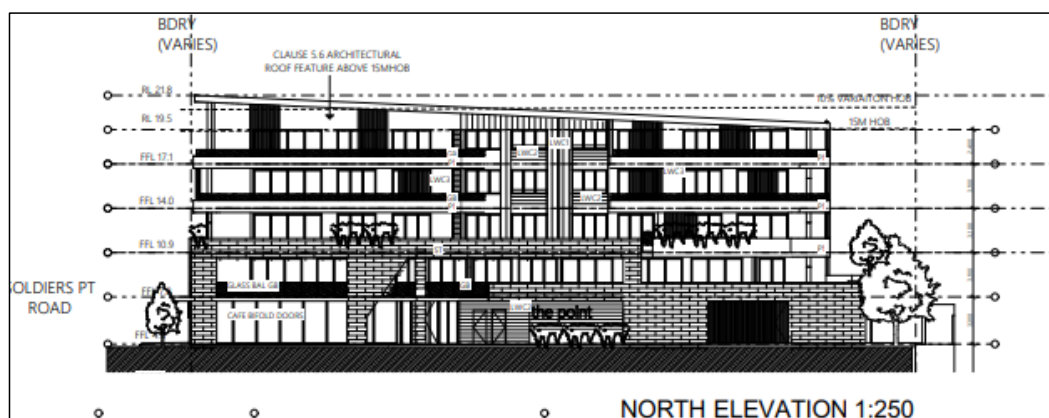


Figure 5: Amended plans with rooftop communal space removed

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The site benefits from an existing development consent (16-2002-1220-1) for a similar development (4 Level Residential/Commercial Building and Carpark) on 18 Soldiers Point Road, which utilised Bennett Laneway for 2 car access points/driveways. Physical works commenced on the associated development consent within five (5) years of the date of issue, and therefore the consent is active.

The previous approval included a zero laneway setback with minimal articulation for 4 storeys, with a western setback of approximately 2m at ground, 5m to balconies and approximately 5.5m to walls.



Figure 6: Visual render of approved development DA 16-2002-1220-1

SITE INSPECTION

A site inspection was carried out on 19 September 2022.

The subject site can be seen in the photos below:



Photo 1: View of the site from Soldiers Point Road



Photo 2: View of Bennett Lane adjoining the site



Photo 3: Battle-axe handle to 20 Soldiers Point Road, Soldiers Point. Hairdressing salon at 20A Soldiers Point Road, Soldiers Point adjoining access handle to the south.



Photo 4: Existing two-storey brick dwelling as viewed from the rear of 20 Soldiers Point Road, Soldiers Point



Photo 5: View of existing 5 storey mixed use building at 12-14 Soldiers Point Road, Soldiers Point



Photo 6: View of existing 5 storey mixed use buildings at 2- 8 Soldiers Point Road, Soldiers Point

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

Internal

Development Engineer – Further information was requested regarding; road access and car parking layout and water disposal/management. Further information including revised civil plans and a water sensitive urban design report was prepared in response to the further information request. The additional information provided addressed all requirements, and the application was subsequently supported subject to conditions.

Development Contributions – The application was referred to Council's contributions officer. It was determined that \$7.11 contributions apply and a condition has been recommended.

Building Surveyor – The application was referred to Council's Building Surveyor. It was determined that the development was capable of meeting the provisions of the BCA.

Spatial Services – The application was referred to Spatial Services for addressing details. Addressing has been provided for each unit.

External

Ausgrid – Given the site is located within the vicinity of Ausgrid assets the development was referred to Ausgrid for comment. Ausgrid's referral response noted supply of electricity requirements as well as construction requirements for development near Ausgrid assets. Overall, the application was supported, subject to conditions.

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 integrated as it requires approval under the following Acts:

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

The site is not mapped as bushfire prone land.

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 (Biodiversity and Conservation) 2021

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Chapter 2 Vegetation in Non-Rural Areas of the Biodiversity and Conservation SEPP aims to protect the biodiversity values and preserve the amenity and other vegetation in non-rural areas of the State. The chapter 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 2.3 of the chapter 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 chapter further provides that Council may issue a permit for tree removal.

The development application seeks consent for the removal of existing trees located along the access handle of 20 Soldiers Point Road and in the rear portion of the site. The removal is supported as the trees have limited ecological or amenity value and replacement plantings are proposed as part of the development consistent with Council's landscape technical specifications.

Chapter 4 – 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.

The site is incorrectly mapped as 'preferred koala habitat' on the koala habitat map. The site has been largely cleared of vegetation and exists in a highly altered state within an established urban area. The scattered vegetation to be cleared as part of the proposal have not been identified as koala habitat or koala feed-trees. One (1) koala feed tree '*Lophostemon confertus*' located on the adjoining site at 20A Soldiers Point Road, was identified as a tree potentially impacted through earthworks associated with the proposal. An arborist report was submitted to assess the impact of the development on this tree. The arborist report confirmed the tree is retainable during works for the proposed development subject to tree protection measures outlined in the arborist report.

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

A BASIX Certificate has been submitted for the proposed development, which demonstrates that the proposal can achieve required water and energy saving targets compared to the standard model house. A condition of consent has been included in the notice of determination requiring the development to be carried out in accordance with the BASIX Certificate.

State Environmental Planning Policy (Resilience and Hazards) 2021Chapter 2 Coastal Management

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

As per Section 2.10 of Chapter 2 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

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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 coastal environment area, being the Port Stephens – Great Lakes Marine Park, by approximately 120 metres. Water runoff from the building will be managed on site and through the public drainage network, as will sediment runoff during the construction process.

Section 2.11 of Chapter 2 of the SEPP, stipulates 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 represents an appropriate scale and design for the surrounding coastal setting. The proposed building comprises a sustainable built form to ensure that the visual amenity of the coastal landscape is maintained. The building materiality, including the incorporation of white rendered balustrades, timber lining and sandstone blocks on the podium will create a casual coastal colour palette. The building envelope and scale of the development is compatible with the natural setting and will not adversely impact important view corridors to or from the foreshore. The proposed development will not create visual unsightliness from nearby foreshore areas and has been designed to a height comparable with existing developments to the north. Moreover, the site is located centrally within the Soldiers Point peninsula, consequently when viewing the development from the foreshore areas at a human scale, the proposed building would be screened by existing dwellings and buildings constructed along the foreshore areas.

Section 2.12 of Chapter 2 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 Section 2.10, 2.11 and 2.12, and can therefore be supported.

Chapter 4 Remediation of Land

The object of this Chapter is to provide for a State-wide planning approach to the remediation of contaminated land. Section 4.6 requires that a consent authority must consider whether land is contaminated prior to granting development consent.

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 residential and cafe uses are not listed as potentially contaminating uses under Table 1 of the Contaminated Land Planning Guidelines. Noting the site history and ongoing use for residential purposes, the proposed development satisfies the requirements of this chapter.

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

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State Environmental Planning Policy State Environmental Planning Policy No. 65 – Quality Design of Residential Apartment Development (SEPP 65) aims to improve the quality of residential apartment development and provides an assessment framework in the Apartment Design Guide (ADG) to facilitate the assessment of 'good design'. This policy applies, as the development is for a residential flat building that is more than three storeys in height and contains at least four dwellings. The application was referred to Councils Urban Design Panel (UDP) for assessment against the ADG and the principles of Schedule 1 of this SEPP.

The application was initially reviewed by the UDP in a Pre-DA Meeting (18-2021-47-1) prior to DA lodgement on 15 October 2021. The plans were conceptual at this stage, however the UDP gave recommendations such as; adjustment of balcony layouts, re-orientation of bedroom windows, increased setbacks to the commercial space street façade, alterations to landscaped communal open space, sun shading opportunities and consideration to the redevelopment potential of 20A Soldiers Point Road, Soldiers Point, adjoining the site.



Figure 7: Pre-DA concept

The UDP reviewed the submitted DA design on 9 June 2022, and provided the following comments:

- The concept plan representing a possible re-development option for 20A Soldiers Point Road, Soldiers Point, demonstrates future development over this site can be integrated with the proposed development at 18-20 Soldiers Point Road, Soldiers Point.
- Generally supportive of the height exceedance – in part due to the high quality communal open space provided on the rooftop, and there being no evident adverse impacts arising from the additional height involved. Notwithstanding, the Panel recommended amended shadow diagrams be prepared to compare the impact of shadows from a 15m high building and the proposed 19.62m high building.
- Balcony setbacks and layouts have been adjusted and bedroom windows reorientated in alignment with UDP initial recommendations.
- Reiterated that increased setbacks to the commercial space street façade should be implemented.

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- Generally supportive of the proposed landscaping plans, however recommended arborist report be provided for potential impact to existing tree proposed to be retained at 20A Soldiers Point Road, Soldiers Point. Additional detail regarding soil volumes for each level and discrepancies between architectural plans and landscaping plans was identified.
- Allocation of separate storage areas for bulky items and bicycles within the basement level recommended.
- Sun shading opportunities for glazed areas reiterated.



Figure 8: DA lodged concept

The applicant incorporated the UDP recommendations into a revised design and supplied additional documentation on 8 September 2022. The additional documentation addressed the design amendments as suggested by the UDP, including an assessment of the potential impact of the development on the existing tree to be retained at 20A Soldiers Point Road. Amended architectural plans and documentation addressed all UDP recommendations, and further review of the proposal by the UDP was not requested.

Considering the final iteration of plans, the following table outlines each objective and how the final design has addressed each principle.

Table 1: SEPP 65 Schedule 1 Design Quality Principles

Criteria	Comments
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 B1 Neighbourhood Centre.</p>

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Criteria	Comments
	<p>Soldiers Point Road is an established urban center, undergoing a transition from low density residential to medium rise multi-dwelling and apartment type developments. The character of the area is typified by medium and low density developments, comprising older apartment stock in the form of three and four storey walk-up residential flat buildings, single dwellings and modern high density infill developments.</p> <p>Development to the north of the subject site includes a three-storey brick apartment complex and multiple five-storey mixed use shop top housing developments beyond, reflective of the 15m building height for land zoned B1 Neighbourhood Centre. Adjoining development to the east and west of the site include a mixture of detached and semi-detached dwellings and dual occupancies, reflective of the 9m building height limitation.</p> <p>The proposal is considered compatible with the larger scale apartment buildings in the locality. Furthermore, the development has been designed for integration with future redevelopment of the adjoining B1 zoned site to the south.</p> <p>The proposal responds to the emerging design trends by providing a high quality building design which is compatible with the future desired character of Soldiers Point.</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>There are several comparatively tall buildings in the immediate visual catchment of the site. Consequently, 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. 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</p>

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Criteria	Comments
	<p>recessed and protruding wall features. The upper most storey appears to be visually recessed through the changes in material finish.</p> <p>On this basis, the development is considered satisfactory with regard to built form and scale.</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 height.</p> <p>Despite the variations to the numerical ADG setback requirements, 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 neighbouring properties, consistent with the requirements of the ADG.</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 basement level and within the apartments.</p> <p>The proposed density of the development is reflective of other existing development in both the immediate locality and broader Soldiers Point 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</p>

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Criteria	Comments
	adequate levels of solar access and can be cross ventilated to maximise amenity and minimise reliance on powered heating and cooling.
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 26% total landscaped area, achieving the 25% numerical requirement. The proposal incorporates ample landscaping in the communal areas on the ground level and first level, as well as being interspersed on the outdoor areas on other levels.</p> <p>Deep soil planting areas have been provided across the rear and southern side boundary to provide visual screening of the property from neighbouring residences.</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 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. Generous sized balconies provide private open space and screened clothes drying areas. Roof and ground level communal open space is provided to the site.</p>

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Criteria	Comments
	Overall, the amenity of for the apartments 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.
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 activates both street frontages, 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 development provides housing choice, with a mix of apartment sizes proposed including the following:</p> <ul style="list-style-type: none"> - 4 x 2 bed - 11 x 3 bed - 3 x 4 bed <p>The UDP considered the housing mix as acceptable for a relatively small apartment building. Furthermore, the development includes multiple areas designated for communal use. These areas provide residents and guests an opportunity to utilise and interact within shaded open space.</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 articulated façades facing both street frontages, which is well proportioned and includes an appropriate mix of material finishes and colour choice.</p>

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Criteria	Comments
	<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> <p>The proposed roof will be an identifiable expression on the skyline and from the streetscape, its curved and expressive shape with timber look lining referencing the casual coastal colour palette of the area. The roof provides a good level of integration between the roof feature and equipment for servicing the building including the lift overrun and plant equipment, thus minimising any adverse visual impact which might otherwise be a consequence of the equipment itself.</p>

Table 2: Apartment Design Guide Assessment

Apartment Design Guide		
Quality design principles		
Principle	Assessment	
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 orientation of the development is pre-determined by the site, however the apartment layout has responded by locating the living spaces of the front apartments (facing Soldiers Point Road) on the sun exposed eastern alignments. Rear apartments (facing Bennett Lane) have been designed for living spaces to gain morning and afternoon sun from the north and west,	Yes – complies.

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	which is largely unobstructed by building elements.	
<p><i>3B-2 Overshadowing</i></p> <p>Overshadowing of neighbouring properties is minimised during mid-winter.</p>	<p>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 buildings (20A and 22 Soldiers Point Road) to the south. Some overshadowing would also occur in the morning to the dwellings at 21, 23 and 25 Sunset Boulevard to the west.</p> <p>It is noted there will be solar access impact to the POS of neighbouring sites to the south, however the POS of 22 Soldiers Point Road is already constrained by solar access in that it is located on the southern aspect and already impacted by the existing dwelling on the subject site and neighbouring dwelling on 20A Soldiers Point Road. Notwithstanding, most north facing windows of the affected buildings would receive direct sunlight during mid-winter. The overshadowing is considered reasonably unavoidable given the orientation of the lot is such that overshadowing of this extent is inevitable from any development to the 15m height limit. The site is also characterised by being the southernmost landholding located within the B1 zoned precinct in Soldiers Point, therefore any building height above 9m is likely to result in some form of overshadowing to 22 Soldiers Point Road.</p> <p>Some overshadowing of the dwellings at 21, 23 and 25 Sunset Boulevard to the west of the site would occur between the hours of 9:00 – 11:00am 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>	Yes – satisfactory.
<i>3C-1 Public Domain Interface</i>	The development provides a ground level lobby, which provides passive	Yes – complies.

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Transition between private and public domain is achieved without compromising safety and security.	surveillance to the street. The upper storey balconies also provide for further passive surveillance.	
3C-2 Public Domain Interface Amenity of the public domain is retained and enhanced.	The amenity of the public domain will be enhanced through the provision of landscape treatment.	Yes – complies.
3D-1 Communal and Public Open Space An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping. Numerical design criteria: <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>The previous design provided 359m² of communal open space via a landscaped rooftop terrace with multiple communal areas. Due to community concerns regarding the overall height of the development this rooftop communal area was removed, and revised architectural plans were provided that included a 2.2m overall building height reduction.</p> <p>Amended plans include a paved and landscaped communal open space area provided on the first level of the site with deep soil landscaping on the ground level. The communal space area measures a total area of 121.36m², representing 9% 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>	Yes – satisfactory.
3D-2 Communal and Public Open Space Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	The proposed communal open space will provide for a range of activities and includes areas for seating. Additionally, a communal garden area is proposed within the first floor level and contributes to a natural outlook.	Yes – satisfactory.
3D-3 Communal and Public Open Space Communal open space is designed to maximise safety.	The proposed communal open spaces are well defined, appropriately lighted and situated away from the streetscape. The communal garden area will be overlooked by the balconies of south facing apartments.	Yes – satisfactory.

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<p><i>3D-4 Communal and Public Open Space</i></p> <p>Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.</p>	<p>Public open space is not proposed as part of the application.</p>	<p>N/A</p>
<p><i>3E-1 Deep Soil Zones</i></p> <p>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Site area less than 650m² – no minimum dimension requirement and 7% of site area deep soil planting. <p>However, the design criteria may not be possible on some sites including:</p> <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. 	<p>The area of deep soil provided is 111.73m² (8.3%) of the site area with a 3m width across the rear and southern side boundary, satisfying the requirements of this section. The deep soil area includes 19 plantings which provide screening to properties adjoining the site. Two trees and multiple shrubs are proposed across the street elevations as amenity planting.</p>	<p>Yes – complies.</p>
<p><i>3F-1 Visual Privacy</i></p> <p>Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • 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): 	<p>The DCP provides setbacks for commercial buildings, generally requiring zero street setback for the first 2 levels with a 3.5m setback above. The proposed basement carpark, ground floor (café and carpark) and Levels 1 and 2 (apartment units) of the development, has been designed as a solid podium. This podium proposes a zero front and side setback to Soldiers Point Road and Bennett Lane respectively from Level 1, and is consistent with the established pattern of commercial development in the street. Notwithstanding this podium design, the café component of the building includes generous setbacks</p>	<p>Yes – complies.</p>

<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>along the north and east elevations (2.2m and 1.2m respectively), creating a passive corner element at ground level whilst creating sufficient area to accommodate alfresco seating.</p> <p>The ground level podium is setback 3m from the southern side and rear boundaries (adjoining R2 zoned land), 5m from Level 1 and 6m for Levels 2-4, thus complying with ADG requirements. All levels of the building have been designed to the boundary on the southern boundary (adjoining B1 zoned land), allowing for development potential on the adjoining commercial site to be achieved.</p> <p>Upper-levels of the building (Levels 3-5) are setback from the eastern boundary and northern boundary to improve privacy, amenity and solar access for balconies on these levels. Encroachments are allowed within the upper setback for articulation purposes, and the proposed variation to the 3.5m setback requirement for these upper setbacks is supported.</p> <p>The building setbacks comply with the separation distances required by the ADG. It is considered that these setbacks meet the intent of Objective 3F-1 and is therefore supportable on merit.</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>	<p>Yes – complies.</p>

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<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 clearly defined pedestrian entries for both the commercial and residential component of the development. Pedestrian access to the café is proposed from Soldiers Point road, and pedestrian access to the apartments is proposed from Bennett Lane.</p>	<p>Yes – complies.</p>
<p><i>3G-2 Pedestrian Access and Entries</i></p> <p>Access, entries and pathways are accessible and easy to identify.</p>	<p>Awnings, blade walls and signage has been incorporated into the development design to ensure building entries are clearly identifiable from the street.</p>	<p>Yes – complies.</p>
<p><i>3G-3 Pedestrian Access and Entries</i></p> <p>Large sites provide pedestrian links for access to streets and connection to destinations.</p>	<p>The proposed development does not require the provision of a pedestrian link through the site.</p>	<p>N/A.</p>
<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>The driveway is located along the south-eastern boundary. The driveway achieves adequate manoeuvrability and sight lines.</p> <p>Separate pedestrian entry has been provided to ensure there are no conflicts with vehicles.</p> <p>The driveway door is largely imperceptible when viewed from Soldiers Point Road, and supports appropriate finishes to help reduce visual prominence.</p>	<p>Minor non-compliance supported.</p>
<p><i>3J-1 Bicycle and Car Parking</i></p> <p>Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • 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 	<p>Sufficient car and bicycle parking is provided as detailed elsewhere in this report, against Chapter B8 of the DCP.</p>	<p>Yes – complies.</p>

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<p>Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</p> <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><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 storage areas provided in the basement carpark.</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 car parking area is access via a security gate.</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 a basement level car park, which aids in concealing much of the visual bulk associated with the basement 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>The on-grade car parking proposed will be largely screened from the site's two road frontages, through a combination of building design features including; car-park location, blade walls, privacy screens and landscaping.</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 a basement level car park, which aids in concealing much of the visual bulk associated with the basement car parking level.</p>	<p>Yes – complies.</p>
<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>	<p>The design has demonstrated that 100% of dwellings achieve 2hrs of midwinter sun to decks and 72.2% of dwellings receive 2hrs or greater mid-winter sun to living areas. Due to the inclusion of deeper balconies, a smaller number of units receive 3hrs within the living room however it is clear that this is not due to compromised amenity, but</p>	<p>Minor non-compliance supported.</p>

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<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. 	rather from the luxury of having extensive outdoor living areas with excellent access to sun during the day. In this coastal location and mild climate this is considered to be an appropriate design response.	
<p><i>4A-2 Solar and Daylight Access</i></p> <p>Daylight access is maximised where sunlight is limited.</p>	The development suitably captures solar access opportunities through siting of balconies and windows.	Yes – complies.
<p><i>4A-3 Solar and Daylight Access</i></p> <p>Design incorporates shading and glare control, particularly for warmer months.</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.	Yes – complies.
<p><i>4B-1 Natural Ventilation</i></p> <p>All habitable rooms are naturally ventilated.</p>	Each habitable room can be naturally ventilated.	Yes – complies.
<p><i>4B-2 Natural Ventilation</i></p> <p>The layout and design of single aspect apartments maximises natural ventilation.</p>	The development does not include any single aspect apartments.	N/A.
<p><i>4B-3 Natural Ventilation</i></p> <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for Residents.</p> <p>Numerical design criteria:</p>	16 of 18 units are cross flow units, with windows provided on multiple orientations.	Yes – complies.

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<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>4C-1 Ceiling Heights</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>The following ceiling heights have been provided:</p> <ul style="list-style-type: none"> Habitable rooms (levels 1-4) – 3.1m, Non-habitable (basement, ground floor and roof) – 3m, 3.8m and 3.2m respectively. <p>There are no two storey apartments or attic spaces proposed.</p>	Yes – complies.
<p>4C-2 Ceiling Heights</p> <p>Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.</p>	<p>The proposed ceiling heights comply with the 2.7m height requirement, which combined with the open plan dining/living provides an adequate sense of space.</p>	Yes – complies.
<p>4C-3 Ceiling Heights</p> <p>Ceiling heights contribute to the flexibility of building use over the life of the building.</p>	<p>A 3.8m ceiling height has been proposed for the ground floor of the building, ensuring flexibility of the commercial unit over the life of the building.</p>	Yes – complies.
<p>4D-1 Apartment Size and Layout</p> <p>The layout of rooms within an apartment is functional, well</p>	<p>As outlined in Table 3 below, each apartment includes an internal floor area which exceeds the requirements of this clause.</p>	Yes – complies.

<p>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 – 90m²• 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>Table 3: Internal floor areas of proposed dwellings</p> <table><tr><th colspan="4">Internal floor areas</th></tr><tr><th>Level</th><th>2br-dwelling(s)</th><th>3-br dwelling(s)</th><th>4br dwelling(s)</th></tr><tr><td>Level 1</td><td>89.38m² – 95.04m²</td><td>136m² – 151.8m²</td><td>N/A</td></tr><tr><td>Level 2</td><td></td><td>147.04m² - 154.04m²</td><td>159.14m²</td></tr><tr><td>Level 3</td><td></td><td>147.04m² - 156.99m²</td><td>159.14m²</td></tr><tr><td>Level 4</td><td></td><td>147.04m² - 156.99m²</td><td>159.14m²</td></tr></table> <p>Each habitable room can be naturally ventilated and receive natural light.</p>	Internal floor areas				Level	2br-dwelling(s)	3-br dwelling(s)	4br dwelling(s)	Level 1	89.38m ² – 95.04m ²	136m ² – 151.8m ²	N/A	Level 2		147.04m ² - 154.04m ²	159.14m ²	Level 3		147.04m ² - 156.99m ²	159.14m ²	Level 4		147.04m ² - 156.99m ²	159.14m ²	
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<p>4D-2 Apartment Size and Layout</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.</p> <p>Adequate lighting is afforded to each habitable room.</p>	Yes – complies.																								
<p>4D-3 Apartment Size and Layout</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).	<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.	Yes – complies.																								

<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> All apartments with a cross-over typology are at-least 4m in width. 	
<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>Apartments 13 and 18 have been provided with two balconies, exceeding ADG requirements. All balconies exceed the numerical design criteria for two and three bedroom apartments.</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 balcony that is accessible via stacked sliding doors from the open plan living/dining area.</p>	<p>Yes – complies.</p>

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<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, solid balustrades and colours which provide articulation of the front façades. The upper three levels of the building are visually recessed through changes in material finish (sandstone to colorbond cladding).</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 Soldiers Point Road and Bennett Lane.</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 apartments off a circulation core on a single level is eight. 	<p>The proposed lobby fronting Bennett Lane provides a reasonable level of amenity to residents and is sufficiently sized to cater for the 18 proposed apartments. A total of six apartments are accessed off an internal corridor throughout Level 1, with four apartments per level accessed off an internal corridor throughout Levels 2-4.</p>	<p>Yes – complies.</p>
<p><i>4F-2 Common Circulation and Spaces</i></p> <p>Common circulation spaces promote safety and provide for social interaction between residents.</p>	<p>The proposal includes multiple common circulation spaces including a ground floor lobby, commercial café and four internal corridors providing safe social interaction opportunities for residents. Safety through environmental design is incorporated throughout these areas including, legible signage, lighting at night, separate commercial and residential entries and splays of tight corners and spaces.</p>	<p>Yes – complies.</p>
<p><i>4G-1 Storage</i></p> <p>Adequate, well designed storage is provided in each apartment.</p> <p>Numerical design criteria –in addition to storage in kitchens,</p>	<p>Internal layouts allow for ample storage, with further space available within the laundry for freestanding furniture. An additional 14 storage units are allocated in the basement car park.</p>	<p>Yes – complies.</p>

<p>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>4G-2 Storage</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>	<p>Yes – complies.</p>
<p>4H-1 Acoustic Privacy</p> <p>Noise transfer is minimised through the siting of buildings and building layout.</p>	<p>Adequate building separation is provided within the development and from neighbouring buildings/adjacent uses. The design of the building has been carefully considered with window and door openings generally orientated away from noise sources including the ground floor café and communal areas. Separation distances between buildings on adjoining sites are adequate to limit noise transfer between lots.</p>	<p>Yes – complies.</p>
<p>4H-2 Acoustic Privacy</p> <p>Noise impacts are mitigated within apartments through layouts and acoustic treatments.</p>	<p>As explained above, noise impacts are effectively mitigated via the building design and separation distances.</p>	<p>Yes – complies.</p>
<p>4J-1 Noise and Pollution</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>4J-2 Noise and Pollution</p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and</p>	<p>The proposal is not located in proximity to any noisy or hostile environments.</p>	<p>N/A.</p>

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choice of materials are used to mitigate noise transmission.		
<p>4K-1 Apartment Mix</p> <p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p>	The development provides a range of two and three bedroom apartments with unique layouts and style, effectively catering for different household types now and into the future.	Yes – complies.
<p>4K-2 Apartment Mix</p> <p>The apartment mix is distributed to suitable locations within the building.</p>	The apartment mix is suitably distributed throughout the development.	Yes – complies.
<p>4L-1 Ground Floor Apartments</p> <p>Street frontage is maximised where ground floor apartments are located.</p>	The proposal does not include any ground floor apartments.	N/A.
<p>4L-2 Ground Floor Apartments</p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	The proposal does not include any ground floor apartments.	N/A.
<p>4M-1 Facades</p> <p>Building facades provide visual interest along the street while respecting the character of the local area.</p>	<p>The proposal includes articulated façades facing Soldiers Point and Bennett Lane, which is well proportioned and includes an appropriate mix of material finishes and colour choice fitting for a waterside setting.</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>4M-2 Facades</p> <p>Building functions are expressed by the façade.</p>	Commercial and residential functions of the building are distinguished through a combination of signage, design features (including blade walls, street awnings and outdoor seating), materials and colour selection. These components assist in defining building	Yes – complies.

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	function, whilst providing articulation and improving visual interest from both street frontages.	
<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 proposed roof achieves a more aesthetic form than a flat concrete roof, expressing the dynamic nature of the corner site. The proposed roof will be an identifiable expression on the skyline and from the streetscape, its curved and expressive shape with timber look lining references the coastal and nautical character of the Soldiers Point area. The roof design provides a good level of integration between the roof and equipment for servicing the building including the lift overrun and plant equipment, thus minimising any adverse visual impact which might otherwise be a consequence of the equipment itself.</p> <p>A condition of consent has been imposed to ensure that all roof mounted equipment is concealed within the external walls of the development or adequately screened so as not to be visible from a public place.</p>	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>	Utilisation of the rooftop area for communal space has been removed due to the height limit of the site. Communal space has been reduced due to the community's preference for a reduced building height.	Yes – complies.
<p><i>4N-3 Roof Design</i></p> <p><i>Roof design incorporates sustainability features.</i></p>	The roof design incorporates sustainability features such as PV solar panels, as identified on the BASIX report.	Yes – complies.
<p><i>4O-1 Landscape Design</i></p> <p>Landscape design is viable and sustainable.</p>	The landscape design consists of mainly native plantings installed as a combination of deep soil and planter boxes over multiple levels of the building. This landscape design can be sustained over the life of the development, subject to the recommended conditions for maintenance.	Yes – subject to conditions.

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<p><i>4O-2 Landscape Design</i></p> <p>Landscape design contributes to the streetscape and amenity.</p>	<p>Subject to the recommended conditions of consent, the proposed landscape design is considered to contribute to the streetscape.</p>	<p>Yes – subject to conditions.</p>
<p><i>4P-1 Planting on Structures</i></p> <p>Appropriate soil profiles are provided.</p>	<p>The proposal includes a total of 121.36m² of landscaped area. Landscaping plans and the design report demonstrates appropriate soil profiles have been provided for the combination of deep soil plantings, street tree plantings and planter boxes proposed over the site.</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 coastal 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>Mass planting beds are proposed along the northern boundary (along Bennett Lane) over several floors, with communal garden areas proposed on level 1.</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 Housing Guidelines silver level universal design features. 	<p>There are eighteen (18) residential units, with four (4) units required to be capable of achieving silver level livable housing requirements per the Livable Housing Design Guidelines – Fourth Edition. The adaptable units – Unit 203 and Unit 303 – achieve the requirements for Silver Level Livable housing. In addition, Unit 204 and Unit 304 have a floor plan arrangement that meets the universal housing requirements.</p> <p>The building does not satisfy the ADG's 20% benchmark, however this variation is supported based on all units general capacity to comply with Silver Level Livable housing design features.</p>	<p>Non-compliance supported.</p>

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<p><i>4Q-2 Universal Design</i></p> <p>A variety of apartments with adaptable design are provided.</p>	<p>The building provides a variety of apartments with adaptable design solutions as identified in the access report. Furthermore, two larger car parking spaces for accessibility have been provided at basement level for residents, and one disabled visitor parking space has been provided at ground level.</p>	<p>Yes – complies.</p>
<p><i>4Q-3 Universal Design</i></p> <p>Apartment layouts are flexible and accommodate a range of lifestyle needs.</p>	<p>As identified in the access report, Unit 204 and Unit 304 have a floor plan arrangement that meets the universal housing requirements, with Unit 203 and Unit 303 achieving the requirements for Silver Level Livable housing.</p>	<p>Yes – complies.</p>
<p><i>4R-1 Adaptive Reuse</i></p> <p>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</p>	<p>The proposal does not involve adaptive re-use.</p>	<p>N/A.</p>
<p><i>4R-2 Adaptive Reuse</i></p> <p>Adapted buildings provide residential amenity while not precluding future adaptive reuse.</p>	<p>The proposal does not involve an adaptive re-use.</p>	<p>N/A.</p>
<p><i>4S-1 Mixed Use</i></p> <p>Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement.</p>	<p>The building is identified as mixed use development (shop top housing), with a café located at ground level and residential units located above. The building is appropriately located within a retail strip of Soldiers Point, and has incorporated a suite of design features such as; separate entrances, active street frontage and effective articulation to encourage pedestrian movement.</p>	<p>Yes – complies.</p>
<p><i>4S-2 Mixed Use</i></p> <p>Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.</p>	<p>Residential levels of the building are effectively integrated within the building, as evident through features including; separate entrances to the café and residential lobby (both directly accessible from the street), separate parking areas and a lack of concealment opportunities. Landscaped communal open space</p>	<p>Yes – complies.</p>

	provided at level one, further enhances safety and amenity for residents.	
<p><i>4T-1 Awnings and Signage</i></p> <p>Awnings are well located and complement and integrate with the building design.</p>	The building includes a continuous awning that wraps around the sites two street frontages. This awning is located over both entries to the building and provides protection to residents and pedestrian from the natural elements (sun, wind and rain). The height, depth, material and form of this awning has been carefully selected to ensure continuity with the area.	Yes – complies.
<p><i>4T-2 Awnings and Signage</i></p> <p>Signage responds to the context and desired streetscape character.</p>	The building includes a single wall sign identified as ‘the point’, on the building’s Bennett Lane street frontage. The sign provides a legible means of identifying the residential component of the building, and is proportionate to the scale of the building.	Yes – complies.
<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>	Yes – complies.
<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>	The proposed building layout and orientation provides for good cross ventilation and solar access. A valid BASIX certificate has been submitted.	Yes – Complies.
<p><i>4U-3 Energy Efficiency</i></p> <p>Adequate natural ventilation minimises the need for mechanical ventilation.</p>	Adequate window openings are provided with the opportunity for cross ventilation available.	Yes – Complies.
<p><i>4V-1 Water Management and Conservation</i></p> <p>Potable water use is minimised.</p>	A valid BASIX certificate has been provided. A condition of consent is recommended requiring compliance with the BASIX requirements has been recommended.	Yes – complies subject to conditions of consent.

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<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>
<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 ground level garbage room which measures 17.4m². 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 subject site is zoned B1 Neighbourhood Centre in accordance with the PSLEP 2013. The proposed development is defined as 'shop top housing' given a commercial premise is proposed to be located on the ground floor and dwellings located above. Shop top housing is permissible with consent in the B1 Neighbourhood Centre zone.

It is noted that a cafe is considered to be a 'retail premises' which is proposed to be located on the ground floor of the development. Retail premises falls within the broader definition of a 'commercial

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premise' and are therefore permissible with consent in the B1 Neighbourhood Centre zone. The proposal is considered to be consistent with the objective of this zone, in that it will contribute to providing a small scale retail use (cafe) that will service the needs of the people who live or work in the Soldiers Point area.

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 double storey brick dwelling and ancillary metal shed. 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. This clause does not apply to land zoned B1 Neighbourhood Centre.

Clause 4.3 – Height of Buildings

Clause 4.3 aims to ensure that the height of buildings is appropriate for the context and character of the area, and to ensure that building heights reflect the hierarchy of centres and land use structure. To achieve these aims, clause 4.3(2) specifies that the height of a building on any land is not to exceed the maximum height shown for the land on the 'height of buildings map' (HBM). The HBM identifies a 15m height limit applies to the subject development.

The proposed development has a maximum height of 17.4m above existing ground level, which is above the maximum permissible building height of 15m metres specified on the height of buildings map. The applicant submitted a Clause 4.6 exception to development standard request in support of the variation.

The proposed height of the development is consistent with the modern high density infill developments located north of the site. It is noted two comparable mixed-use residential flat buildings located north of the site at 12-14 Soldiers Point Road (17.15m) and 6-8 Soldiers Point Road (18.8m) exceed the 15m height controls prescribed for the B1 Neighbourhood Centre Zone.

The Land and Environment Court decision in *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020], established that adjacent buildings, which also exceeded the height controls should be considered when determining desired future character. The proposed development demonstrates consistency with the surrounding context and character of the area, and reflects the hierarchy of centres and land use structure.

Clause 4.6 – Exceptions to development standards

As discussed against Clause 4.3 above, the application includes a variation to the maximum height limit. The development standard is 15m and the proposed height is 17.4m, representing a 16% variation. A request to vary the building height development standard has been submitted by the

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applicant in accordance with Clause 4.6 of the PSLEP. The request has been reviewed and the following is noted:

- The proposed height is considered to be appropriate for the context and character of the area as surrounding development along the commercial strip is characterised by 4 and 5 storey developments in the form of 'shop top housing' similar to the proposal.
- The existing and approved development along the Soldiers Point Road commercial strip demonstrates a higher density transition in the context and character of the locality, in which the proposal is consistent with. Moreover, the existing residential development in its current form is out of context with the character of the area having regard to the existing and approved shop top housing developments to the north.
- Despite the proposed height variation, the proposal results in negligible off site impacts including visual and amenity impacts, overshadowing and view loss as demonstrated by shadow diagrams prepared by the applicant.
- The proposal is generally compliant with the Apartment Design Guidelines and the Port Stephens Council Development Control Plan (DCP) controls.
- The objectives of Clause 4.3 are achieved despite the non-compliance with the numerical standard.

It is considered that the applicant's written Clause 4.6 variation request adequately demonstrates that there are sufficient environmental planning grounds to justify contravening the maximum building height standard and compliance with the standard is unnecessary in the circumstances of this application.

On this basis, the height variation is supported. A detailed assessment against clause 4.6 can be found at Attachment 1 of this report.

Clause 5.10 – Heritage conservation

The site has not been identified as heritage listed item nor is it within a heritage listed area or within proximity to an item of heritage significance. The site is subject to significant prior ground disturbing works, which indicate a low likelihood of uncovering undiscovered Aboriginal artefacts. Notwithstanding, an advisory note has been included in the recommended conditions regarding stop work procedures to be adopted in the event an Aboriginal object is uncovered.

Clause 5.21 – Flood Planning

The subject site is not flood prone land.

Clause 7.1 – Acid Sulfate Soils

The subject land is mapped as containing potential Class 4 acid sulfate soils. The proposal seeks to undertake bulk excavations to depths in the order of 2.5m to 3.5m to support the basement carpark. A geotechnical investigation report with acid sulfate soil recommendations, was prepared by 5QS Consulting Group. Borehole testing was undertaken at depths of up to 3.4m, with laboratory testing confirming soils with the potential to generate ASS conditions on site may be present at depths greater than 3m below the existing ground surface levels. A condition of consent is recommended requiring an acid sulfate soil management plan to be prepared prior to commencement of works.

Clause 7.2 – Earthworks

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The development incorporates earthworks (cut) to a depth of approximately 3.5m below ground level to construct the basement car park. The earthworks are not anticipated to result in any negative impacts on the subject or adjoining land, or any public place, noting that all boundaries will be suitably stabilised by structurally designed walls with adequate drainage during and at completion of the works.

Clause 7.6 – Essential Services

The subject site is serviced by reticulated water, electricity and sewer. In addition, the application has demonstrated that stormwater drainage resulting from roof and hard stand areas can be catered for in accordance with Councils requirements. The subject land also maintains direct access to Soldiers Point Road 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 planPort 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 removal of 2 x existing trees located over the site. The removal is supported as the trees have low ecological value and replacement landscaping is proposed consistent with Council's landscape technical specifications. One (1) koala feed tree *Lophostemon confertus* located on the adjoining site 20A Soldiers Point Road, was identified as a tree potentially impacted through earthworks associated with the proposal. An arborist report was prepared to assess the impact of the proposal on this tree, which confirmed the tree is retainable subject to tree protection measures during works listed in the arborist report and Tree Protection Plan.

Chapter B2 – Natural Resources

There are no koala feed trees that are proposed for clearing as part of the proposal, with the proposal not expected to impact upon koala habitat or the koala population. 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 within the Soldiers Point neighbourhood 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 ManagementAcid 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

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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

Residential balconies and outdoor dining areas are oriented to the street rather than toward adjoining properties, which would prevent direct and unimpeded noise travel between residences. 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 in clause 7.2 above, the proposed development involves earthworks (cut) to a depth of approximately 3.5m below ground level to construct the basement car park. 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

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 included in the consent 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 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

The potential impacts from the proposed development to the local road network have been assessed as being satisfactory. The applicant submitted a Traffic Impact Assessment (TIA) report in support of the proposal, prepared by Intersect Traffic (dated January 2022) to assess the proposal with respect to access, parking, traffic generation and infrastructure capacity.

With regard to traffic generation, the TIA report calculated the additional traffic generated by the development will be up to 15 vehicle trips per hour (vtp) in the AM and 12 vtp in the PM peak periods. The local and state road network has sufficient spare capacity to cater for the additional development traffic without adversely impacting on the mid-block traffic flow levels of service (LoS) experienced by motorists on the road network. The minimal amount of traffic generated by the development will not adversely impact on intersections on the local and state road network. The

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new access onto Soldiers Point Road will operate with uninterrupted flow conditions. The TIA has been reviewed by Council's Traffic Engineer who endorsed the conclusions. 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.

Figure BU identifies the on-site parking requirements for the development as follows:

Table 3: Car parking calculations for proposed development

Development type	DCP requirement	Parking requirement	Proposed
Shop top housing	<ul style="list-style-type: none"> 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. 	<ul style="list-style-type: none"> 4 x (2-bedroom units) - 4 spaces required. 11 x (3-bedroom units) – 22 spaces required. 3 x (4-bedroom units) – 6 spaces required. (18 units / 3) – 6 spaces required. 	<ul style="list-style-type: none"> 4 spaces for 2-bedroom units. 28 spaces for 3 and 4 bedroom units. 6 visitor spaces.
Commercial premises (café)	<ul style="list-style-type: none"> 1 car space per 25m² floor area. 1 car space per 3 seats outside of commercial premises. 1 bike space per 200m². 1 accessible parking space per 30 parking spaces. 	<ul style="list-style-type: none"> 103.42m² (floor area) / 25 = 4.25 spaces required. 12 (external café seats) / 3 = 4. 103.42 / 200 = 0.51 spaces required. 47 / 30 = 1.5 accessible parking spaces required. 	<ul style="list-style-type: none"> 9 spaces provided for commercial (including 2 accessible spaces). 2 bike spaces provided.
Total		<ul style="list-style-type: none"> 38 – Shop top housing 8.25 (including accessible space) – Commercial Premises 0.51 (bike spaces) – Commercial premises 	<ul style="list-style-type: none"> 38 - Shop top housing 9 - (including 2 accessible spaces) – Commercial Premises 2 - (bike spaces) – Commercial Premises

Car parking provided for the development includes: 38 spaces for the shop top housing; 9 spaces for the commercial premises and 2 bike spaces for the commercial premises. As demonstrated in Table 3 above, the parking provision complies with the Port Stephens DCP 2014 Section B8 – Road Network and Parking. Furthermore, the proposed on-site car park layout and dimensions comply with the Australian Standard AS2890.1-2004 *Parking facilities – Off-street car parking*. Council's Development Engineers have reviewed and endorsed car parking layout plans, subject to conditions of consent.

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Chapter C – Development Types

The proposed development is defined as shop top housing. Chapter C does not provide specific controls for shop top housing. The proposed development was therefore assessed against SEPP 65 and the Apartment Design Guidelines (ADG). Notwithstanding, the proposal has also been assessed against Chapter C2 of the DCP given the proposed commercial premises on the ground floor and the site location being within a B1 Neighbourhood Centre zone.

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 height has been discussed under Clause 4.3 of this report.</p> <p>The proposal is not considered to exacerbate privacy loss and over-shadowing given the generally compliant ADG setbacks to neighbouring residential developments, and the presence of Bennett Lane along the sites northern boundary, which provides an appropriate separation to the neighbouring three-storey brick apartment complex.</p> <p>Floor to ceiling heights for the residential levels are compliant with the DCP providing a minimum of 2.7m floor to ceiling heights.</p> <p>The commercial premise on the ground floor has a floor to ceiling height of 3.8m, compliant with the 3.5m requirement.</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 DCP provides setbacks for commercial buildings, generally requiring zero street setback for the first 2 levels with a 3.5m setback above. The café component of the building is slightly setback along the north and east elevations (2.2m and 1.2m respectively), creating a passive corner element at ground level whilst creating sufficient area to accommodate alfresco seating. The arrangement is acceptable given there is no continuous street wall along the streetscape and other developments to the north are not built to the boundary.</p>
Objective C2.C	Building Form and Massing	The proposed built form and massing is not considered to result in unreasonable

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Requirement C2.15-C2.16	<ul style="list-style-type: none"> To ensure development reinforces, compliments and enhances the visual character of the street 	loss of amenity to adjacent properties or the public domain as discussed throughout this report. The commercial premise is consistent with other premises along Soldiers Point Road and is complementary to the character of the area.
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 	As assessed under the ADG section, the proposed development has incorporated appropriate building materials, colours and architectural elements to assist in reducing the perceived bulk of the development whilst also providing visual interest. The ground floor commercial premise will provide an active street frontage and vibrant façade above.
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 	The building includes a continuous awning that wraps around the sites two street frontages. This awning is located over both entries to the building and provides protection to residents and pedestrian from the natural elements (sun, wind and rain). The height, depth, material and form of this awning has been carefully selected to ensure continuity with the area.
Objective C2.F Requirement C2.23-C2.24	Building Entries <ul style="list-style-type: none"> To provide clear direction to access points 	The development includes clearly defined pedestrian entries for both the commercial and residential component of the development. Pedestrian access to the café is proposed from Soldiers Point Road, and pedestrian access to the apartments is proposed from Bennett Lane.
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 	Building facilities are not visible from the public domain.
Objective C2.H	Public Art	N/A – whilst the proposed development does have a cost of work exceeding \$2

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Requirement C2.27	<ul style="list-style-type: none"> To ensure that features of the public domain contribute to identity, character, safety, amenity and accessibility 	million, the proposal also involves residential development rather than wholly commercial development. It is therefore not considered necessary to provide public art for this development given the commercial use is only a minor component.
Objective C2.I Requirement C2.28-C2.30	Shipping Container Stacks <ul style="list-style-type: none"> To ensure development that proposes the use of shipping containers does not impact upon the amenity of the area 	N /A – shipping containers are not proposed.
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 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 	The proposed landscaping scheme is considered appropriate for the proposed development and has been assessed against the provisions of the ADG.
Objective C2.K Requirement C2.36	Bulky good premises <ul style="list-style-type: none"> Establish requirements for bulky goods premises Ensure the design of bulky goods contributes positively to the streetscape and public domain through quality architecture, materials and finishes 	N/A – the proposed development is not a bulky good premise but rather a business premise.
Objective C2.L	<ul style="list-style-type: none"> To ensure signage is complimentary to its surroundings 	The building includes a single wall sign identified as 'the point', on the building's Bennett Lane frontage. The sign provides a legible means of identifying the residential component of the

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		building, and is proportionate to the scale of the building.
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Section 4.15(1)(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

There are no matters within the regulations that are relevant to the determination of the application.

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 localitySocial and Economic Impacts

The proposed development represents a modern mixed use development that will provide additional infill housing opportunities in the area as well as the provision of a new commercial premises, which will provide employment opportunities and contribute to the commercial viability of Soldiers Point.

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 is considered to result in a positive impact to the built environment by providing a modern architecturally designed building within the Soldiers Point commercial centre. The proposal is considered to be compatible and appropriate for the context and character of the area as existing development along Soldiers Point Road is characterised by 4 and 5 storey developments in the form of 'shop top housing' similar to the proposal.

Impacts on the Natural Environment

The proposed development is not considered to impact upon the natural environment as it does not contain any significant vegetation, koala habitat or threatened species habitat. The stormwater management has been appropriately designed to reduce potential impacts on the natural environment.

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

The site is able to gain access to all relevant services and the proposed development makes good use of the available land. The proposal satisfies all provisions required under the relevant planning instruments and policies. Site specific studies prepared by the proponent have been provided to identify a suitable development footprint that accords with sustainable design principles, in addition to the relevant statutory instruments. The proposed development is compatible with other development along the Soldiers Point Road commercial strip. The site in its current form is underutilised and out of character with the existing and approved built context, accordingly the site is suitable for the proposed development.

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

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Public Submissions

The application was notified and advertised from 10 May 2022 to 24 May 2022, in accordance with the Port Stephens Council Community Participation Plan. Nine (9) submissions were received during this period, comprised of eight (8) submissions in objection of the development, with one (1) submission in support.

On receipt of amended plans reducing the building height, the application was renotified from 11 November 2022 – 24 November 2022, with notification extended for a further 14 days. During this notification period, two (2) submissions in support of the amended design and two (2) submissions opposing the amended design was received by Council.

The matters of objection raised during the exhibition period have been detailed in the table below.

Table 4: Public submissions received for proposed development

Comment	Council response
<p>Height of Building</p> <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. - The proposal has not demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. - Council should consider the precedent set by undermining the building height control. - The objectives of the standard will not be thwarted if Council enforces the current height limit. 	<ul style="list-style-type: none"> - In response to community concerns regarding the overall height of the development, revised architectural plans were received by Council on 24 October 2022. The revised architectural plans included a 2.2m overall building height reduction, attributed to removal of rooftop communal area and associated lift and stair access. The proposed development has a maximum height of 17.4m above existing ground level, which is above the maximum permissible building height of 15m specified on the Height of Buildings Map. An amended clause 4.6 'variation to development standards' report was prepared in support of the amended plans. - The proposal has been found to be consistent with the building height objectives of Clause 4.3 for the following reasons: <ul style="list-style-type: none"> • The proposed height of the development is consistent with the modern high density infill developments located north of the site. It is noted two comparable mixed-use residential flat buildings located north of the site at 12-14 Soldiers Point Road (17.15m) and 6-8 Soldiers Point Road (18.8m) exceed the 15m height controls prescribed for the B1 Neighbourhood Centre Zone. The Land and Environment Court decision in <i>SJD DB2 Pty Ltd v Woollahra Municipal Council</i> [2020], established that adjacent buildings which also exceeded the height controls should be considered when determining desired future character. The proposed development demonstrates consistency with the surrounding context and

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	<p>character of the area, and reflects the hierarchy of centres and land use structure.</p> <ul style="list-style-type: none"> • The existing and approved development along the Soldiers Point Road commercial strip demonstrates a higher density transition in the context and character of the locality, in which the proposal is consistent with. Moreover, the existing residential dwelling on the site in its current form is out of context with the character of the area having regard to the existing and approved shop top housing developments to the north. • The proposal results in acceptable off site impacts including visual and amenity impacts, overshadowing and view loss as demonstrated by shadow diagrams prepared by the applicant. • The proposal is generally compliant with the Apartment Design Guidelines and the Port Stephens Council Development Control Plan (DCP) controls. <p>- The additional reasons relevant to the application are as follows:</p> <ul style="list-style-type: none"> • The exceedance of the height limit primarily results from the roof feature which enables the lift overrun and plant located on the rooftop to be concealed. • Amenity impacts relating to overshadowing, privacy, and streetscape setting are adequately addressed, demonstrating no additional benefit would be derived from a reduced building height.
<p>Parking and Access</p> <ul style="list-style-type: none"> - Potential for development to be re-designed to enable a two-way access onto Bennett Lane. - Development would increase traffic and parking issues within area. - The proposal has the potential to create adverse impacts on adjoining properties from construction traffic, with the majority of construction vehicles expected to utilise the lane for parking and access, potentially causing road blocks and traffic hazards. 	<ul style="list-style-type: none"> - No vehicular access is proposed via Bennett Lane. Any future application to create a secondary access via Bennett Lane would be assessed on merit and subject to supporting information. It is noted the existing development approval on the site includes vehicular access from Bennett Lane. - Current traffic volumes on the local and state road network are below the technical capacities of the road network, as relevant, and as such there is spare capacity within the road network to cater for development in the area. - A condition is recommended requiring that a traffic management plan be prepared prior to the issue of a construction certificate. Construction traffic is a short term inconvenience for the surrounding neighbours as is any construction

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<ul style="list-style-type: none"> - The majority of café patrons are likely to see the lane as a safer and more convenient parking location instead of utilising the on-site spaces provided. - As no on-site loading zones are provided, it is anticipated that servicing of the café is likely to occur in the lane. - The potential for waste collection via Bennett Lane, creating access issues for residents of this Lane. 	<p>related traffic. Parking is not permitted on either side of Bennett Lane and unauthorised parking within the laneway will be governed by Council.</p> <ul style="list-style-type: none"> - The proposed café has been afforded 9 onsite parking spaces and complies with requirements prescribed under Figure BU of the DCP. - As stated in the TIA, servicing of the site will occur outside the commercial operation peak times, utilising the existing car spaces onsite or Soldiers Point Road. Any commercial servicing on the site must adhere to local road requirements, governed by Council. - The proposal does not seek to collect waste via Bennett Lane. Waste collection for the development has been assessed based off the TIA and Waste Management Plan provided. Waste servicing arrangements have been assessed and endorsed by Council engineers.
<p>Acoustics</p> <ul style="list-style-type: none"> - The design and future use of the development has the potential to create adverse acoustic assessments on nearby residences. Potential noise sources include use of the café and outdoor dining areas, the potential use of the laneway for vehicular access and parking, use of the roof top terrace, noise from car parking ventilation and air-conditioning plant, as well as noise from vehicles navigating the two level car parking (e.g. tyres screeching). 	<ul style="list-style-type: none"> - The building separation distances incorporated into the development will limit any significant acoustic impacts on the adjoining development. - Residential balconies and outdoor dining areas have been oriented to the street rather than toward adjoining properties, which would prevent direct and unimpeded noise travel between residences. - Noise disturbance caused by air conditioning units can be controlled and monitored by the Protection of the Environment Operations Act (POEO Act).
<p>Application of Clause 5.6 of LEP</p> <ul style="list-style-type: none"> - The submitted documentation fails to consider or demonstrate how the proposed rooftop components comply with the requirements of Clause 5.6. 	<ul style="list-style-type: none"> - Clause 5.6 has not been applied. - An amended clause 4.6 'variation to development standards' report was prepared for the amended plans.
<p>Privacy</p> <ul style="list-style-type: none"> - Privacy impacts to residential dwellings south of the site - Privacy impacts to apartment complex to the north (16 Soldiers Point Road, Soldiers Point). 	<ul style="list-style-type: none"> - The proposed setbacks generally comply with the ADG requirements, as outlined elsewhere in this report. Notwithstanding, the privacy objectives are achieved through the use of highlight windows, appropriate window placement and privacy screening where appropriate.

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<p>Overshadowing</p> <ul style="list-style-type: none"> - Overshadowing impacts to neighbouring properties, due to the height of the development. 	<ul style="list-style-type: none"> - 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 buildings (20A and 22 Soldiers Point Road) to the south. Some overshadowing would also occur in the morning to the dwellings at 21, 23 and 25 Sunset Boulevard to the west. - It is noted there will be solar access impact to the POS of neighbouring sites to the south, however the POS of 22 Soldiers Point Road is already constrained by solar access in that it is located on the southern aspect and already impacted by the existing dwelling on the subject site. Notwithstanding, most north facing windows of the affected buildings would receive direct sunlight during mid-winter. The overshadowing is considered acceptable given the orientation of the lot is such that overshadowing of this extent is inevitable from any development that achieves the 15m height limit. - Some overshadowing of the dwellings at 21, 23 and 25 Sunset Boulevard to the west of the site would occur between the hours of 9:00 – 11:00am mid-winter. However, all POS, open space and living areas would maintain a minimum of 2 hours solar access, in accordance with ADG guidelines.
<p>Visual Impact</p> <ul style="list-style-type: none"> - No images are presented from the foreshore or from the water from the east and west. The site is located along a slight ridge line, resulting in the buildings within this B1 zoned area being visible from long distances, even from Lemon Tree Passage. 	<ul style="list-style-type: none"> - The main visibility of the building from pedestrians and in the local context is along Soldiers Point Road and the surrounding residential streets. The building will blend into the scale of built form in those views and will not obstruct identified vistas towards Sunset Beach or Sunrise Beach. The planning controls envisage taller buildings on the B1 zoned land, with other comparable developments to the north. Moreover, the site is located centrally within the Soldiers Point peninsula, consequently when viewing the development from the foreshore areas at a human scale, the proposed building would be screened by existing dwellings and buildings constructed along the foreshore areas.
<p>Fencing</p> <ul style="list-style-type: none"> - Lack of security to neighbouring properties during construction through removal of fencing. 	<ul style="list-style-type: none"> - Conditions of consent have been recommended to ensure the site is secured to the satisfaction of the certifying authority throughout construction.

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<p>Construction</p> <ul style="list-style-type: none"> - Potential damage to foundations of adjoining buildings. - Acid sulfate soil management. 	<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. - A geotechnical investigation report with acid sulfate soil recommendations was prepared by 5QS Consulting Group. Borehole testing was undertaken at depths of up to 3.4m, with laboratory testing confirming soils with the potential to generate ASS conditions on site may be present at depths greater than 3m below the existing ground surface levels. A condition of consent is recommended requiring an acid sulfate soil management plan to be prepared prior to commencement of works.
<p>Vacancies of commercial tenancies within Soldiers Point</p> <ul style="list-style-type: none"> - A number of existing commercial tenancies within the B1 Neighbourhood Centre are not fully utilized and the closed and empty shops do not enhance the character of the area. - Assumption that new commercial tenancy will not be able to be staffed and contribute to the number of vacant or underutilised tenancies within the area. 	<ul style="list-style-type: none"> - The development will contribute to the revitalisation of the area and satisfies the objectives of the B1 zone. The units have been designed as larger units to attract owner occupiers and therefore introduce more residents to the area that may help to support these struggling local businesses. Staffing and retail market characteristics are not a relevant planning consideration.
<p>Building Design</p> <ul style="list-style-type: none"> - Rooms have not been designed with appropriate clearances. 	<ul style="list-style-type: none"> - All internal ceiling heights comply with ADG standards as outlined above.
<p>SEPP Coastal Management 2018</p> <ul style="list-style-type: none"> - Applicant has not addressed SEPP Coastal Management 2018 	<ul style="list-style-type: none"> - The statement of environmental effects provided with the application included an assessment of the development against this SEPP. - The development has been designed with consideration to design guidelines for EPI's including <i>SEPP Resilience and Hazards 2021 – Chapter 2 Coastal Management</i> and SEPP 65 Schedule 1 Design Quality Principles.
<p>Potential isolation and redevelopment potential of 20A Soldiers Point Road</p> <ul style="list-style-type: none"> - Applicant has not sufficiently addressed this issue. 	<ul style="list-style-type: none"> - Concept plans were provided to the UDP and Council demonstrating the potential future development options over 20A Soldiers Point Road, Soldiers Point. The UDP reviewed and endorsed the concept design, confirming the Planning Principle for 'amalgamation of sites and

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	isolation of sites through redevelopment' had been satisfied.
Support of Development	<ul style="list-style-type: none"> - 3 submissions supported the development on the following grounds: <ul style="list-style-type: none"> • Provision of a new commercial premises within the area. • Beneficial to Soldiers Point and the surrounding environment.

Section 4.15(1)(e) the public interest

The proposal is considered to be in the public interest as it will provide additional housing in the area as well as a business premise that will provide job opportunities and contribute to Soldiers Point's commercial viability without adverse impacts to neighbouring properties. The design of the building has been assessed in detail and is considered to be a positive addition to the developing character of Soldiers Point by both Council staff and the UDP. The proposed development is also consistent with the applicable planning instruments and relevant policies as demonstrated in this report.

On these grounds, the proposed development is considered to be in the public's interest.

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

A monetary contribution is to be paid to Council for the provision of 18 additional lots, pursuant to Section 7.11 of the *Environmental Planning & Assessment Act 1979* and the Port Stephens Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:

Facility	Per Lot/Dwelling	Total \$
Civic Administration – Plan Management	\$655	\$11,790
Civic Administration – Works Depot	\$1,266	\$22,788
Town Centre Upgrades	\$3,412	\$61,416
Public Open Space, Parks and Reserves	\$2,085	\$37,530
Sports & Leisure Facilities	\$1,961	\$35,298
Cultural & Community Facilities	\$1,332	\$23,976
Road Works	\$3,570	\$64,260
Shared Paths	\$3,286	\$59,148
Bus Facilities	\$9	\$162
Fire & Emergency Services	\$245	\$4,410
Flood & Drainage	\$1,877	\$33,786
Kings Hill Urban Release Area	\$302	\$5,436
TOTAL	\$20,000	\$360,000

DETERMINATION

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

ISAAC LANCASTER
Senior Development Planner

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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 PSLEP 2013. 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 Clause 4.3 Height of Building is not excluded from the operation of clause 4.6 (Refer to clauses 4.6(2); 4.6(6); and 4.6(8) of PSLEP 2013).

PROPOSED REQUEST

Clause 4.6(3) – Request to vary development standards

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

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

Development Standard	Proposed Variation	Extent of Variation (%)
Clause 4.3 Height of Building of the PSLEP 2013	2.4m	16%

The height of building mapped on site under the PSLEP 2013 is 15m. The proposed development is 17.4m in height. As the proposed variation is greater than 10%, the development application will be determined by the elected Council.

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 by demonstrating that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

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Wehbe v Pittwater Council (2007) LEC 827 (Wehbe), the Land and Environment Court identified five ways in which a 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.

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:

- Strict compliance with the standard is considered unnecessary in that the impact created by the proposed variation will be minor and insignificant to neighbouring development and to the wider locality.
- Strict compliance with the standard would result in an inferior built form and planning outcome for the subject site, exposing the lift overrun and plant equipment creating unsightly visual impacts on the surrounds as is typical with older style forms of high rise and unit blocks.
- The built form is consistent with the buildings surrounding the site and appropriate for the context and character of the area.
- The proposed development does not contravene the objectives of the zone and is considered a good use of the site.
- The proposal provides a contemporary designed mixed-use development, which provides for the housing and commercial needs of the community, whilst also protecting the amenity of residents and recognises the desirable elements of the existing streetscape and built form.
- The height and scale of the proposal provides an appropriate response for the Soldiers Point peninsula, although above the permissible building envelope in terms of height.

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 outlined that there is sufficient environmental planning grounds to contravene the development standard as:

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- The development provides one (1) commercial unit and eighteen (18) residential units within the Soldiers Point town centre, which is identified for this type and scale of development. The development will result in the orderly and economic use of the land through the provision of high-quality residential and commercial development that serves the needs of people who live or work in the surrounding neighbourhood.
- The development addresses Soldiers Point Road and Bennett Lane and provides visual interest throughout these elevations. The building has been designed to address and activate these street frontages, in contrast to existing buildings within the locality.
- The additional height over 15m will have negligible effect on shadows cast by the building on adjoining properties.
- The additional height will not impact on the privacy of adjoining residents.
- The proposed development results in a high quality architectural design that will positively contribute to the locality.
- The proposed development will result in a large capital investment value (CIV) within the local economy, with construction providing employment opportunities in the locality and support to the local building and development industries. In addition to this, will provide direct monetary input to the local economy, the increased number of residents in the locality will provide ongoing economic input through daily living activities via shopping, working, living and recreational activities within the Town Centre and surrounds. The increase in housing within the area will directly influence and enhance business and employment opportunities within the area.

The applicant submits that the potential environmental planning benefits justify the contravention of the development standard.

ASSESSMENT

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

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.

As stated in the preceding section, in *Wehbe* the Land and Environment Court identified five ways in which a request to vary a development standard may be determined to be well founded.

These reasons include:

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

Having regard to the first test set down in *Wehbe*, it is noted that the objectives of Clause 4.3 is to ensure that 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 3 mixed use residential flat buildings to the north ranging from 4-5 storeys in height (see **Figure 1**). Single storey dwellings are located further to the south and west of the site. 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 zoning and existing taller buildings within the locality.

The Land and Environment Court decision in *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020]*, provides guidance and flexibility in terms of how to properly assess the 'desired future character' of an area. As established in this case, adjacent buildings, which also exceed the height controls, should be considered when determining the desired future character of an area. It is noted two comparable mixed-use residential flat buildings located north of the site at 12-14 Soldiers Point Road (17.15m) and 6-8 Soldiers Point Road (18.8m) exceed the 15m height controls prescribed for the B1 Neighbourhood Centre Zone. With consideration of the findings of *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020]*, the proposed development demonstrates consistency with the surrounding context and character of the area, and reflects the hierarchy of centres and land use structure.

Overall, the building design is considered to be well considered and articulated to reduce bulk and integrate into the adjoining neighbouring buildings. The majority of the building is within the 15m height limit as shown in **Figure 2**, with the height variation largely attributed to the roof

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structure that provides an interesting visual element to the building form and screens unsightly lift overruns and plant equipment. The majority of the building bulk is centralised, tapering down to the sides. By incorporating these elements into the design, the proposal is able to fit into the existing context and reflect the building height hierarchy desired in the area without adversely impacting the amenity of adjoining neighbours.

On this basis, the objectives of Clause 4.3 are achieved, notwithstanding the non-compliance with the standard, and therefore compliance with the standard is unnecessary in this instance.

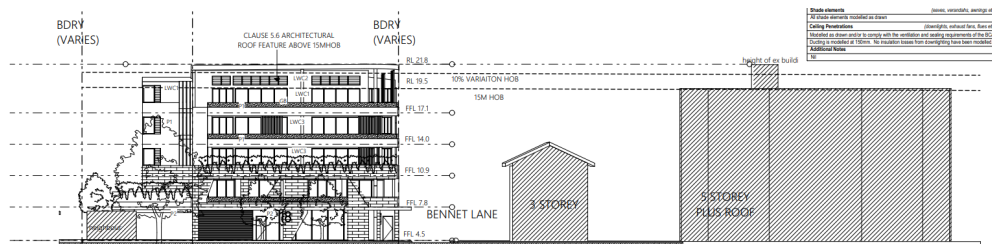


Figure 1: View of building along Soldiers Point Road (eastern elevation), demonstrating height consistency with the 5 storey building located north of the site.



Figure 2: View of building from Bennett Lane (northern elevation), demonstrating the rooflines gradual tapering in height from front to the rear of site.

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

- In regard to the second test, it is not considered that the compliance with the standard is unnecessary. Clause 4.6 provides a mechanism to vary development standards when assessing site specific constraints. In some instances, compliance with the height control

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should be upheld if the outcome is not better than what non-compliance would otherwise achieve. In this instance, the amount of the building above the 15m height limit is not considered to have an adverse impact when assessing the sites constraints, and non-compliance will result in a positive outcome that is to the benefit of all the residents, without taking away from the broader community. It is unreasonable to uphold the development standard, but not unnecessary.

- In regard to the third test, it is considered that the objective or purpose of the development standard would not be defeated or thwarted if compliance was required.
- In regard to the fourth test, it is considered that the development standard has not been abandoned or destroyed as the objectives of the standard are still relevant notwithstanding non-compliance with the numerical standard.
- In regard to the fifth test, the underlying purpose and objective of the maximum building height standard is still relevant to the development.
- The zoning of the subject site is suitable and the proposed development is permissible in the zone.

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 proposed development is considered to be suitable for the character of the area, is permissible with consent in the B1 Neighbourhood Centre zone, and will not result in adverse impacts to neighbouring properties.

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

The proposed development is considered to be consistent with the objectives of Clause 4.6 given it will achieve better outcomes for and from the development in these particular



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circumstances, as the objectives of the development standard are achieved notwithstanding non-compliance and the proposal is considered to be appropriate in the context of the site.