

ATTACHMENTS UNDER SEPARATE
COVER

ORDINARY COUNCIL MEETING
10 JUNE 2025



PORT STEPHENS
C O U N C I L

INDEX

Item No	Attach. No	Attachment Title	Page No
COUNCIL REPORTS			
1	3	PLANNER'S ASSESSMENT REPORT.	3
2	1	CONDITIONS OF CONSENT.	80
2	2	PLANNER'S ASSESSMENT REPORT.	104
3	1	PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.	135
4	1	DRAFT DEVELOPMENT CONTROL PLAN 2025.	165
4	2	COUNCIL MEETING 27 FEBRUARY 2024 MINUTE 014.	328
4	3	DCP-FACT SHEETS.	376
5	1	DRAFT PORT STEPHENS LOCAL INFRASTRUCTURE CONTRIBUTIONS PLAN.	418
10	1	REVISED CODE OF MEETING PRACTICE.	541
11	1	REVISED CODE OF CONDUCT.	589



DEVELOPMENT ASSESSMENT REPORT

APPLICATION REFERENCES

Application Number	16-2024-345-1
Development Description	Demolition of existing structures and construction of a seniors housing development consisting of two multi-storey residential flat buildings comprising seven independent living units and basement car parking
Applicant	PERCEPTION PLANNING PTY LTD
Land owner	Lochinvar Gardens Retirement Village Pty Ltd
Date of Lodgement	30/07/2024
Value of Works	\$5,200,403.00
Submissions	4

PROPERTY DETAILS

Property Address	23 Soldiers Point Road SOLDIERS POINT
Lot and DP	LOT: 177 DP: 27084
88B Restrictions on Title	N/A
Current Use	Dwelling House and ancillary structures
Zoning	R2 LOW DENSITY RESIDENTIAL
Site Constraints	Acid Sulfate Soils – Class 4 Koala Habitat – Preferred, Buffer over Cleared Land, Mainly Cleared Coastal Zone Combined Corridor Map Height of Buildings – 9 metres LEP Wetlands Flood Prone Land
State Environmental Planning Policies	State Environmental Planning Policy (Sustainable Buildings) 2022 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Housing) 2021

PROPOSAL

This application seeks consent for the demolition of the existing dwelling, site preparation works and the construction of a senior's housing development comprising seven independent living units over two residential flat buildings, refer to **Figure 1**.

It is noted that this assessment has been based on amended plans provided to Council dated 06/11/2024. It is noted that the purpose of providing amended plans was to present the amended design to the Port Stephens Urban Design Panel for comment.

The amendments to the proposal focused on internal site configuration. The overall height bulk and scale of the proposal has remained consistent.

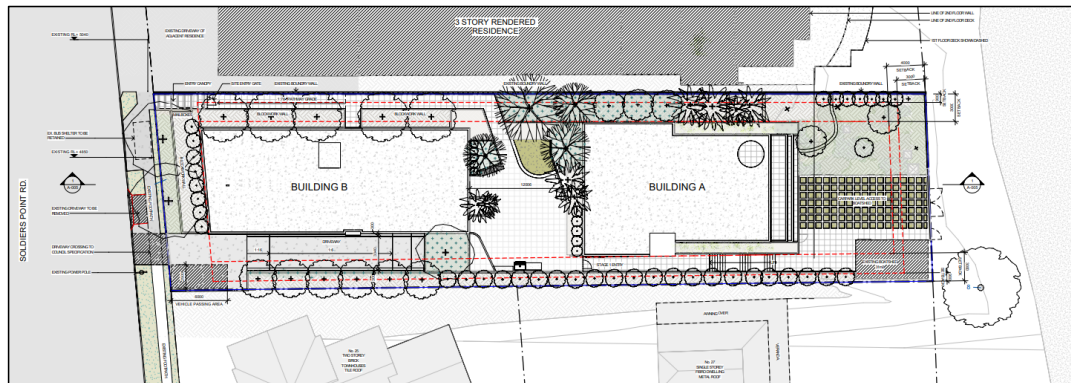


Figure 1. Proposed Site Plan

The proposed development comprises the following components:

Building A

Building A is a three storey residential flat building comprising three independent living units to be utilised for seniors housing. Each unit within Building A has three bedrooms. Building A is located within the east of the site and has direct frontage to the waterfront.

Building B

Building B is a two storey residential flat building comprising four independent living units to be used for seniors housing. Each unit within Building B has two bedrooms. Building B is located in the west of the site and has direct frontage to Soldiers Point Road.

Staging

Each building is proposed to be constructed separately over two stages. The rear building fronting the water (Building A) is to be constructed in the first stage. The building fronting Soldiers Point Road (Building B) is to be constructed in the second stage.

Stage 1 will also include the construction of the carpark and access.

Car parking and access

A basement car park is proposed to be constructed providing a total of 12 car parking spaces including two visitor spaces, refer to **Figure 2**. The basement car park will be accessible by both Building A and Building B through stairs and a lift within each building. The basement also includes additional storage for each unit as well as the waste storage area.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

Vehicular access is proposed to be provided via one crossover off Soldiers Point Road located in the south eastern portion of the site.

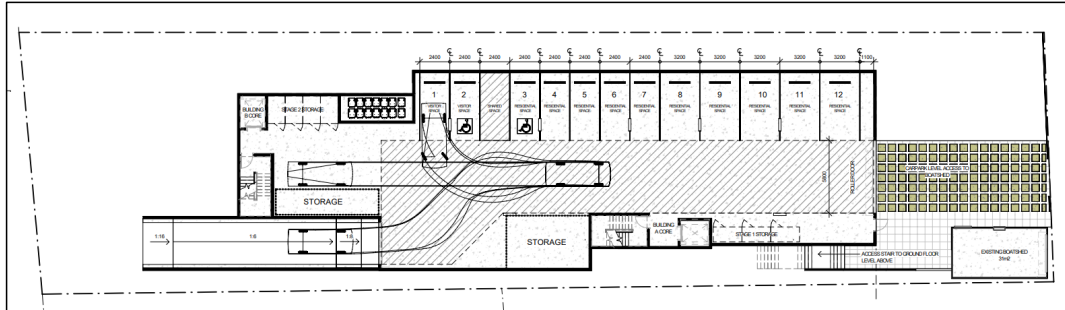


Figure 2. Proposed basement level car park

Communal Open Space

Communal open space is proposed to be provided on the ground floor between the two buildings as well as at the rear of Building A. The area between the two buildings provides outdoor seating, landscaping and a barbeque. The area at the rear of Building A provides access from the basement to the rear, an open landscaped area and a boat shed.

Tree Removal

Tree removal is required to facilitate the proposed development. The provided plans showed the need to refer to 7 trees, refer to **Figure 3**.

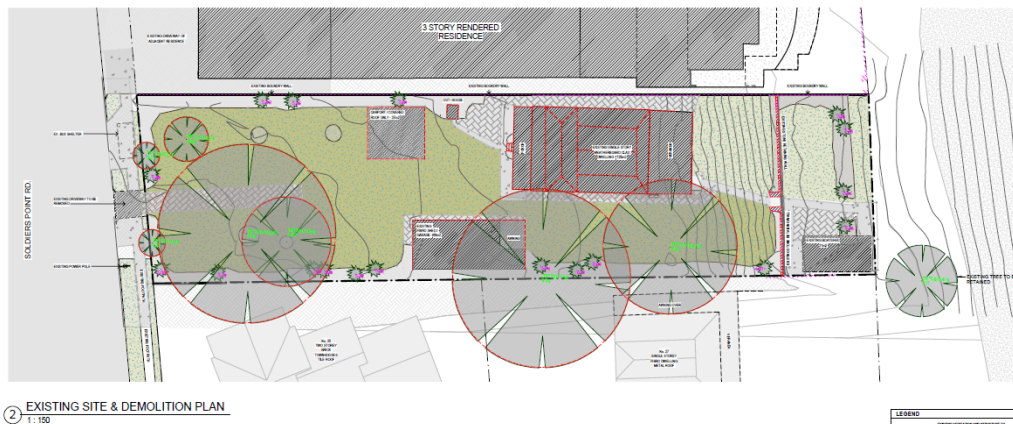


Figure 3. Proposed demolition plan showing trees to be removed

Landscaping

Landscaping is proposed throughout the site, within the front setback, along the side boundaries and within the rear setback, refer to **Figure 3**.

Landscaping comprises a mixture of large trees, shrubs, ferns and ground covers of which there are a mixture of native and non-native species. Some species proposed are consistent with those in Council's Biodiversity Technical Specification including the Old Man Banksia, Coastal Banksia and Blueberry Ash.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

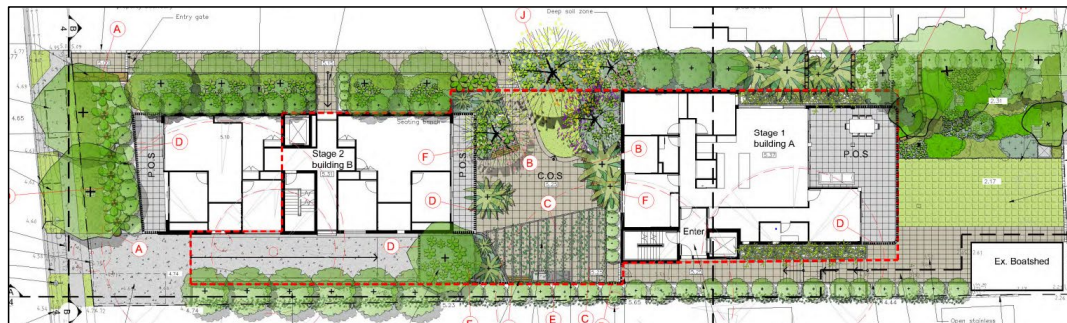


Figure 4. Proposed Landscape Plan

Stormwater

A stormwater management plan has been prepared for the proposal by DRB Consulting Engineers. All stormwater from the roof and patio areas is proposed to be directed to the surcharge pit located in the rain garden in the north eastern corner of the site. The stormwater collected in this rain garden is then proposed to be discharged into an underground infiltration tank.

Boat Shed

The existing boat shed in the south eastern corner of the site is proposed to be retained.

SITE DESCRIPTION

The subject site is known as 23 Soldiers Point Road, Soldiers Point and is legally described as Lot 177 DP 27084. The site currently contains a single storey dwelling house, boat shed and shed with frontage to Soldiers Point Road to the west and Karuah River to the site's east, refer to Figure 4.

The site is surrounded largely by residential development including a mix of multi-dwelling housing developments, residential flat buildings and dwelling houses. Directly adjacent to the site across Soldiers Point Road are shop top housing developments as these lots are zoned E1 Local Centre.

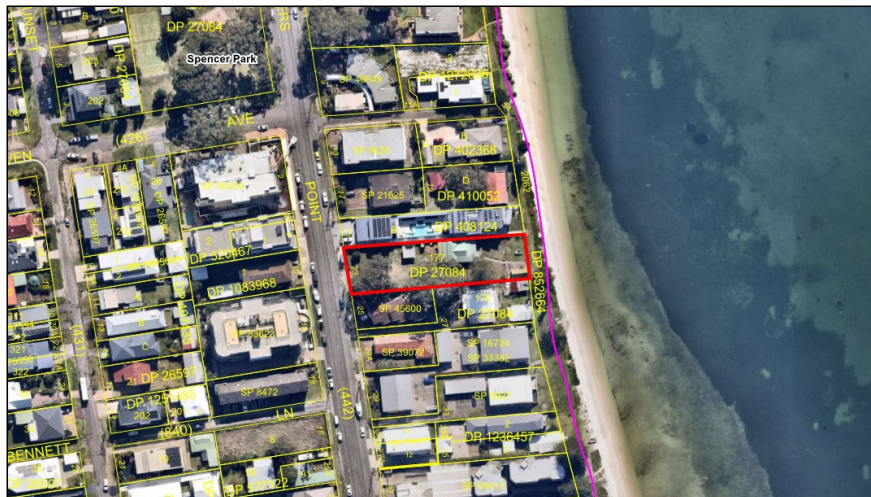


Figure 5. Aerial GIS imagery of the subject site outlined in red

SITE HISTORY

There are two applications on file for the site. One is a combined BA/DA (7-1989-60472-1) for a garage which was approved in April 1989. The other is a DA recently lodged for the subject senior's housing development, however, this application was rejected by Council upon lodgement due to insufficient information being provided.

There are no other applications or compliance matters noted on file for the site.

The subject site does not have records of contamination or historical applications that would impact the proposed development.

SITE INSPECTION DETAILS

A site inspection was carried out on 10 January 2025.

The subject site can be seen in **Photographs 1 to 3** below:



Photograph 1. Site from Soldiers Point Road



Photograph 2. Site from waterfront



Photograph 3. Existing boatshed to be retained

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

REQUEST FOR ADDITIONAL INFORMATION

The preliminary assessment identified that the following additional information is required to continue assessment of the application. An Request for Information was issued in September 2024 outlining the need for this information.

- Design Amendments to address a range of matters including height bulk and scale
- Waste Management Plan
- Aborist Report
- Noise Impact Assessment
- Access and Parking
- Stormwater Drainage Plan
- Acid Sulfate Soils Plan

Amended design were submitted on 06/11/2024 for the Port Stephens Urban Design Panel for comment. All other matters remain outstanding.

REFERRALS

The proposed development was referred to the following internal specialists and external agencies. The comments provided by the special staff and external agencies have been used to carry out the assessment against the S4.15 Matters for Consideration below:

Internal

Development Engineering

Outcome Not supported**Comment**

The application was referred to Council's Development Engineer to assess the proposed access and stormwater design. A request for information was issued which sought further information in regard to the proposed stormwater design as well as additional information to demonstrate that the car parking and driveway designs were compliant with relevant criteria. A response to this additional information request was not provided and therefore Development Engineering were unable to support the proposed development.

Development Contributions

Outcome Supported with conditions**Comment**

The application was referred to Council's Development Contributions officer who determined that s7.11 contributions are applicable to the proposed development, at a discounted rate as per the Port Stephens Local Infrastructure Contributions Plan. A condition was recommended accordingly.

Building Surveyor

Outcome Supported with conditions**Comment**

The application was referred to Council's Building Surveyor to determine the proposal's compliance with the Building Code of Australia. The review found that the proposal is capable of achieving compliance with the BCA through a mixture of deemed to comply and performance solutions, and is unlikely to necessitate significant modifications to the proposal at a later date. Therefore, Council's Building Surveyor raised no objections regarding the proposal subject to the recommended conditions being complied with.

Natural Systems

Outcome Not supported

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

Comment	The application was referred to Council's Natural Systems team for assessment of the proposed tree removal. Council's Environmental Planner noted that the Statement of Environmental Effects stated that 1 tree will require removal as part of the proposed development, however, it was identified based on the site plans, that several additional trees are likely to be impacted and require removal as a result of the development. This potentially included trees located on adjacent properties, which would require owner's consent from those affected properties. Therefore, it was requesting an Arborist Report be provided and the owner's consent as required. An Arborist Report has not been provided nor has the owner's consent. Therefore, Natural Systems were unable to undertake further assessment of the proposal.
Spatial Services	
Outcome	Supported with conditions
Comment	The application was referred to Council's Spatial Services team to provide addressing. Addressing for each unit was provided.
Waste Management	
Outcome	Not supported
Comment	The application was referred to Council's Waste Management Team for assessment. The assessment noted that the proposal did not identify how the development was to be serviced from a waste perspective and noted that there appeared to be insufficient street frontage to accommodate waste bins due to the space taken by driveways, the bus stop/bus zone and the power pole. It was therefore requested that a Waste Management Plan be provided. A Waste Management Plan was not provided and therefore Council's Waste Management team could not undertake a further assessment of the proposal.
External (non-integrated)	
Ausgrid	
Outcome	Supported with conditions
Comment	The application was referred to Ausgrid for assessment. Advice was provided with regard to the supply of electricity and works within proximity to existing network assets. Should the application be supported, the Ausgrid referral will be referenced in a recommended condition of consent.

All external referral officers have supported the application with conditions.

PLANNING ASSESSMENT

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 1.7 – Application of Part 7 of Biodiversity Conservation Act 2016

The development does not trigger entry into the Biodiversity Offset Scheme, as the proposal does not involve native vegetation clearing within a Biodiversity Values Mapped area, exceed the area clearing threshold or propose significant ecological impact.

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

The development does not trigger assessment section 4.14 of the EP&A Act 1979 due to the subject site not being identified as bushfire prone land.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.**Section 4.46 - Integrated development**

The proposed development does not require an integrated referral under s4.46 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) as it does not meet any of the applicable triggers.

Section 4.15 – Matters for consideration

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the EP&A Act. The matters of relevance to the development application include the following:

- The provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations
 - Any environmental planning instrument, and
 - Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - Any development control plan, and
 - Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - The regulations (to the extent that they prescribe matters for the purposes of this paragraph),
- That apply to the land to which the development application relates,
- The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- The suitability of the site for the development,
- Any submissions made in accordance with this Act or the regulations,
- The public interest.

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 (Sustainable Buildings) 2022

State Environmental Planning Policy (Sustainable Buildings) 2022 encourages the design and construction of more sustainable buildings to meet NSW climate change targets and adapt to more extreme weather, including hotter and drier summers.

Chapter 2 – Standards for residential development - BASIX**Section 2.1(1) – Development standards**

Section 2.1(1) requires that BASIX affected residential development be accompanied by a BASIX certificate.

A valid BASIX certificate has been submitted with the development application which demonstrates that the water, thermal performance and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

Section 2.1(5) – Development consent requirements

Section 2.1(5) requires that development consent must not be granted to BASIX affected residential development unless the embodied emissions attributable to the development have been quantified.

The BASIX Certificate includes an Embodied Emissions Materials Assessment which complies with Section 2.1(5).

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.**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 regard 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 on the site, refer to **Figure 3**. An Arborist Report was requested to be provided to enable further assessment of the trees proposed to be removed and to ascertain whether the trees to be removed were located within the property boundary or on adjacent properties, which would require owners consent from these properties. An Arborist Report was not provided, nor was owners consent for tree removal. Therefore, Council officers do not support the proposed tree removal due to insufficient information being provided to enable an appropriate assessment.

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. Chapter 4 applies to all zones other than RU1 (Primary Production), RU2 (Rural Landscape) and RU3 (Forestry) in the Port Stephens Local Government Area.

Section 4.8 – Development assessment process

Section 4.8 requires that the application must be consistent with the approved koala plan of management that applies to the site. In Port Stephens, the relevant plan is the Comprehensive Koala Plan of Management (CKPoM).

The site is mapped as containing preferred koala habitat, buffer over cleared land and mainly cleared land. An Arborist Report was requested to be provided to enable further assessment of the trees proposed to be removed. An Arborist Report was not provided. Therefore, Council officers do not support the proposed tree removal due to insufficient information being provided to enable an appropriate assessment.

State Environmental Planning Policy (Resilience And Hazards) 2021**Chapter 2 – Coastal Management**

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

Section 2.9 – Development on land within the coastal vulnerability area

The site is identified within a Coastal Vulnerability Area under the draft Port Stephens Coastal Management Program. In accordance with Clause 2.9 of the Coastal Vulnerability Area provisions, an assessment has been undertaken against the relevant criteria.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

The proposal has been designed avoid the flood planning area. The ground floor of Building A is set above the flood planning level (FPL) of 4m, being 5.1m AHD. This effectively accounting for projected sea level rise and other climate change factors that may impact flood levels by the year 2100.

The development is not expected to alter coastal processes and will not impact public access to any coastal areas, including beaches, foreshores, or headlands. The elevated floor level for habitable areas provides security against coastal hazards, mitigating risks to life and public safety. Additionally, conditions of consent will ensure that appropriate coastal hazard management measures are in place. Given these factors, the proposal is consistent with the requirements of Clause 2.9.

Section 2.10 – Development within the coastal environment area

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 impact the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna and existing public open space and access to and along the foreshore.

The location of the proposed built form is not considered likely to result in any adverse impacts to the coastal environment area. Notwithstanding, insufficient information has been provided to demonstrate that the stormwater design provides appropriate stormwater quantity and quality features and therefore Council officers cannot be satisfied that the proposal will not impact the integrity of the biophysical and ecological environment, the values and natural coastal processes.

Section 2.11 – Development within the coastal use area

As per Section 2.11 of Chapter 2 of the SEPP, development consent must not be granted for a development unless the consent authority has considered existing and safe access to and along the foreshore, overshadowing and loss of views, visual amenity and scenic qualities and heritage values. The consent authority must also be satisfied that the development is designed and sited to avoid adverse impacts and to ensure the development has taken into account the surrounding built environment in its design.

The proposed development is an appropriate type and design for the coastal location. The proposal is not considered likely to have adverse impacts on the existing access to the waterfront, result in adverse loss of views from public spaces or adversely impact the visual amenity of the coast, Aboriginal cultural or environmental heritage values. The proposal is therefore consistent with this section.

Section 2.12 – Development within the coastal zone generally

Section 2.12 of Chapter 2 of the SEPP requires consideration of 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.

Chapter 4 – Remediation of land**Section 4.6 – Contamination and remediation to be considered**

Section 4.6 of Chapter 4 of the Resilience and Hazards SEPP requires the consent authority to consider whether the land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

It is noted that the NSW list of contaminated sites and list of notified sites published by the EPA does not identify the site as being contaminated, nor has previous record of contamination in

Page 11 of 77

16-2024-345-1

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

Council's system. The land is not within an investigation area and there are no records of potentially contaminating activities occurring on the site, per Table 1 of the Guidelines. Noting this, the proposed development satisfies the requirements of Chapter 4 of this SEPP.

State Environmental Planning Policy (Transport And Infrastructure) 2021

Chapter 2 – Infrastructure

Section 2.48(2) – Determination of development applications – other development

Section 2.48(2) requires consultation with the local power authority – Ausgrid, where a development involves works in proximity to electrical utility infrastructure. The application was referred to Ausgrid, requesting comments about potential safety risks. In response, Ausgrid provided advice with regard to the supply of electricity and works within proximity to existing network assets. Should the application be supported, the Ausgrid referral will be referenced in a recommended condition of consent.

Section 2.138 – Stormwater management systems – Development permitted with consent

The subdivision proposes stormwater infrastructure to service the development. Under Section 2.138 of the TI SEPP, development for the purposes of a stormwater management system may be carried out by any person with consent on any land.

State Environmental Planning Policy (Housing) 2021

Chapter 3 – Diverse Housing

Part 5 – Housing for Seniors and People with a Disability

The propose development is for seniors housing and therefore the provisions of Part 5 apply. The provisions applicable to the proposal are assessed below.

Division 1 Land to which Part applies

Section 79 - Land to which Part applies

The site is located within the R2 Low Density Residential zone pursuant to the Port Stephens Local Environmental Plan 2013, where part 5 of SEPP Housing applies.

Section 81 - Seniors housing permitted with consent

Seniors housing is permitted with consent in accordance with this section, if the site is located within land to which Part 5 of SEPP Housing applies. As outlined above, the site is located within land to which Part 5 of SEPP Housing applies.

Division 3 Development Standards

Section 84 - Development Standards – General

As per s84(1) this section applies to the proposal as it involves the erection of a building for seniors housing.

As per s84(2), development consent must not be granted unless provisions (a) – (c) are complied with. The proposed development is non-compliant with several requirements of this section, as follows:

- (a) The site is zoned R2 Low Density Residential. Residential flat buildings are not permitted and therefore (c)(i)-(iii) are applicable:
 - (i) Building A has a proposed maximum building height of 10.5m, exceeding the 9.5m maximum height requirement under this clause, representing a 10.52% variation. A s4.6 variation request has been submitted to Council.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

- (ii) The roof does not contain servicing equipment and therefore this subsection doesn't apply.
- (iii) Building A exceeds two stories and therefore this subsection applies. This subsection requires that any storey of a building above two storeys be setback within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site. Much of the third storey of building A is setback at a 45 degree angle due to the buildings overall setbacks. However, a portion is not setback at an angle of 45 degrees. This is due to the lift overrun, refer to **Figure 6** below. A s4.6 variation request was not submitted to Council for this variation and therefore, Council staff cannot support this variation.

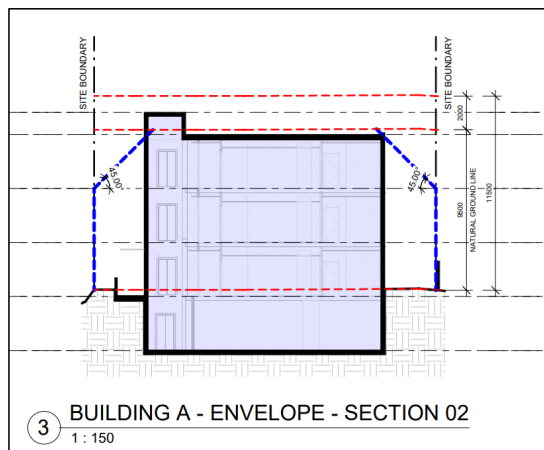


Figure 6. Section showing 45 degree angle setback

Section 85 - Development standards for hostels and independent living units

Section 85 provides that development consent must not be granted for development for the purposes of a hostel or an independent living unit unless the hostel or independent living unit complies with the relevant standards specified in Schedule 4. The proposal includes independent living units and therefore an assessment against Schedule 4 is provided below.

An Access Report prepared by Purple Apple Access, Reference no. PAA_23189, Revision 2 dated 1 July 2024 was submitted with the application and includes an assessment of the proposal against the requirements of Schedule 4. The report confirms compliance with requirements.

Should the application be supported, a condition will be recommended requiring that the requirements of Schedule 4 are complied with.

Table 1. Assessment against Schedule 4

Part 1 Standards applying to hostels and independent living units	
Development Standard	Assessment

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<p>1 Application of standards in this Part</p> <p>The standards set out in this Part apply to any seniors housing that consists of hostels or independent living units.</p>	<p>The proposed development consists of independent living units and therefore the provisions of Schedule 4 apply.</p>
<p>2 Siting Standards</p> <p>(1) Wheelchair access If the whole of the site has a gradient of less than 1:10, 100% of the dwellings must have wheelchair access by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road.</p> <p>(2) If the whole of the site does not have a gradient of less than 1:10—</p> <p>(a) the percentage of dwellings that must have wheelchair access must equal the proportion of the site that has a gradient of less than 1:10, or 50%, whichever is the greater, and</p> <p>(b) the wheelchair access provided must be by a continuous accessible path of travel (within the meaning of AS 1428.1) to an adjoining public road or an internal road or a driveway that is accessible to all residents.</p> <p>(3) Common areas Access must be provided in accordance with AS 1428.1 so that a person using a wheelchair can use common areas and common facilities associated with the development.</p>	<p>An Access Report was prepared for the proposed development by Purple Apple Access, Reference no. PAA_23189, Revision 2 dated 1 July 2024.</p> <p>The access report found that the site has an overall gradient less than 1:10 and therefore Section (1) applies. The report confirms that all of the units are accessible to people with disabilities given the overall gradients shown on the site plan. Each unit has direct access to the street footpath via internal footpaths.</p>
<p>3 Letterboxes</p> <p>(a) must be located on a hard standing area, and</p> <p>(b) must have wheelchair access by a continuous accessible path of travel from the letterbox to the relevant dwelling, and</p> <p>(c) must be lockable by a lock that faces a wheelchair accessible path.</p> <p>(2) If a structure contains multiple letterboxes, the structure must be in a prominent location.</p>	<p>The letter boxes are located within the front setback adjacent to the pedestrian access to the site. The letterboxes are wheelchair accessible via the internal pathways.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<p>(3) At least 20% of the letterboxes on the site must be more than 600mm and less than 1,200mm above ground level (finished).</p>	
<p>4 Car Parking</p> <p>(1) If parking spaces attached to or integrated with a class 1 building under the <i>Building Code of Australia</i> are provided for use by occupants who are seniors or people with a disability, at least 1 parking space must—</p> <p>(a) be at least 3.2m wide, and</p> <p>(b) be at least 2.5m high, and</p> <p>(c) have a level surface with a maximum gradient of 1:40 in any direction, and</p> <p>(d) be capable of being widened to 3.8m without requiring structural modifications to a building.</p> <p>(2) If parking spaces associated with a class 1, 2 or 3 building under the <i>Building Code of Australia</i> are provided in a common area for use by occupants who are seniors or people with a disability, the following applies—</p> <p>(c) for a group of 8 or more parking spaces—</p> <p>(i) at least 15% of the parking spaces must comply with AS/NZS 2890.6, and</p> <p>(ii) at least 50% of the parking spaces must—</p> <p>(A) comply with AS/NZS 2890.6, or</p> <p>(B) be at least 3.2m wide and have a level surface with a maximum gradient of 1:40 in any direction.</p>	<p>Car parking is provided within a common area, being the basement car park and therefore (2) applies. The Access Report confirms that car parking complies with AS2890.6.</p>
<p>5 Accessible entry</p> <p>(1) The main entrance to a dwelling must have—</p> <p>(a) a clear opening that complies with AS 1428.1, and</p>	<p>The Access Report confirmed that entrances to individual units achieve the required circulation areas for an accessible entrance.</p> <p>The door hardware was recommended to be implemented throughout detailed design, which will be incorporated in conditions should the proposal be supported.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<p>(b) a circulation space in front of the door and behind the door that complies with AS 1428.1.</p> <p>(2) This section does not apply to an entry for employees.</p>	
<p>6 Interior: general</p> <p>(1) Internal doorways must have a minimum clear opening that complies with AS 1428.1.</p> <p>(2) Internal corridors must have a minimum unobstructed width of 1,000 millimetres.</p> <p>(3) Circulation space at approaches to internal doorways must comply with AS 1428.1.</p>	<p>All corridors within the dwellings meet the required width of 1000mm minimum.</p>
<p>7 Bedroom</p> <p>At least one bedroom within each dwelling must have—</p> <p>(a) an area sufficient to accommodate a wardrobe and a bed sized as follows—</p> <p style="padding-left: 40px;">(i) in the case of a dwelling in a hostel—a single-size bed, or</p> <p style="padding-left: 40px;">(ii) in the case of an independent living unit—a queen-size bed, and</p> <p>(b) a clear area for the bed of at least—</p> <p style="padding-left: 40px;">(i) 1,200 millimetres wide at the foot of the bed, and</p> <p style="padding-left: 40px;">(ii) 1,000 millimetres wide beside the bed.</p> <p>(c) 2 double general power outlets on the wall where the head of the bed is likely to be.</p> <p>(d) at least one general power outlet on the wall opposite the wall where the head of the bed is likely to be.</p>	<p>The main bedroom within each unit can accommodate a queen size bed and wardrobe as well as adequate circulation areas around the bed.</p> <p>The remainder of the design is achievable and can be included in the detailed design.</p>
<p>8 Bathroom</p> <p>(1) At least one bathroom in a dwelling must be located on—</p> <p>(a) the same floor as the entry to the dwelling, or</p>	<p>The Access Report concluded that the bathroom configuration within each of the units is capable of meeting the requirements of an accessible bathroom. It was noted that the other requirement can be addressed at detail design stage.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<p>(b) a floor serviced by a private passenger lift accessible only from inside the dwelling.</p> <p>(2) The bathroom must have the following—</p> <p>(a) a slip resistant floor surface that achieves a minimum rating of P3 in accordance with AS 4586—2013,</p> <p>(b) a washbasin with tap ware capable of complying with AS 1428.1, including by future adaptation if the washbasin and tap ware continue to use existing hydraulic lines,</p> <p>(c) a shower that—</p> <p>(i) is accessible without a shower-hob or step, and</p> <p>(ii) complies with the requirements of AS 1428.1 for the entry, circulation space, floor gradient to the wastewater outlet and location of the mixer tap, and</p> <p>(iii) is in the corner of a room, and</p> <p>(iv) has a wall capable of accommodating the installation of a grab rail, portable shower head with supporting grab rail and shower seat, in accordance with AS 1428.1,</p> <p>(d) a wall cabinet with shelving illuminated by an illumination level of at least 300 lux,</p> <p>(e) a double general power outlet in an accessible location, in accordance with AS 1428.1.</p> <p>(3) Subsection (2)(c) does not prevent the installation of a shower screen that can easily be removed to enable compliance with that paragraph.</p>	
<p>9 Toilet</p> <p>A dwelling must have at least one toilet on the ground (or main) floor and be a toilet that complies with the requirements for sanitary facilities of AS 1428.1.</p>	<p>The Access Report confirms each unit has one toilet on the main floor and complies with the relevant requirements of AS 1428.1.</p>
<p>10 Surface finishes</p>	<p>Suitable, subject to conditions requiring compliance at detailed design stage.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<p>Balconies and external paved areas must have surfaces that are slip resistant and comply with—</p> <p>(a) the <i>Building Code of Australia</i>, or</p> <p>(b) the Standards Australia Handbook SA HB 198:2014, <i>Guide to the specification and testing of slip resistance of pedestrian surfaces</i>, published on 16 June 2014.</p>	
<p>11 Door hardware</p> <p>(1) Door handles and hardware for all doors, including entry doors and external doors, must comply with AS 1428.1.</p> <p>(2) To avoid doubt, subsection (1) does not apply to cabinetry.</p>	<p>Suitable, subject to conditions requiring compliance at detailed design stage.</p>
<p>12 Switches and power points</p> <p>(1) Switches and power points must—</p> <p>(a) comply with AS 1428.1, or</p> <p>(b) be capable of complying with AS 1428.1 through future adaptation.</p> <p>(2) Subsection (1) does not apply to—</p> <p>(a) remote controls, or</p> <p>(b) power points likely to serve appliances that are not regularly moved or turned off.</p>	<p>Suitable, subject to conditions requiring compliance at detailed design stage.</p>
<p>13 Private passenger lifts</p> <p>(1) This section applies to a private passenger lift that is required by this schedule to be accessible only from inside a particular dwelling.</p> <p>(2) The private passenger lift must—</p> <p>(a) be at least 1,100mm wide and at least 1,400mm long, measured from the lift car floor, and</p> <p>(b) have a clear indoor landing on all floors serviced by the lift, other than the floor on which the main area of private open space is located, at least 1,540mm long and at least 2,070mm wide, and</p> <p>(c) have controls that comply with—</p> <p>(i) AS 1735.12:2020, <i>Lifts, escalators and moving walks, Part 12: Facilities for</i></p>	<p>N/A private passenger lifts are not proposed.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<p><i>persons with disabilities</i>, published on 26 June 2020, or</p> <p>(ii) AS 1735.15:2021, <i>Lifts, escalators and moving walks, Part 15: Safety rules for the construction and installation of lifts — Special lifts for the transport of persons and goods — Vertical lifting platforms intended for use by persons with impaired mobility</i>, published on 23 July 2021.</p> <p>(3) The width of the door opening of the private passenger lift must be at least 900mm.</p> <p>(4) The private passenger lift must not be a stairway platform lift.</p>	
Part 2 Additional standard for independent living units	
<p>14 Application of standards in this Part</p> <p>The standards set out in this Part apply in addition to the standards set out in Part 1 to any seniors housing consisting of independent living units.</p>	<p>This applies given the proposal is for independent living units.</p>
<p>15 Bedroom</p> <p>At least one bedroom in an independent living unit that complies with this schedule, section 7 must be located on—</p> <p>(a) the same floor as the entry to the unit, or</p> <p>(b) a floor serviced by a private passenger lift accessible only from inside the unit.</p>	<p>At least one bedroom in an independent living unit that complies with this schedule is located on the same floor as entry to the unit.</p>
<p>16 Living room and dining room</p> <p>(1) A living room in an independent living unit must be located on—</p> <p>(a) the same floor as the entry to the dwelling, or</p> <p>(b) a floor serviced by a private passenger lift accessible only from inside the dwelling.</p> <p>(2) The living room must have—</p> <p>(a) a circulation space that—</p> <p>(i) is clear of all fixtures, and</p> <p>(ii) has a diameter of at least 2,250mm, and</p>	<p>The proposed living rooms are located on the same floor as entry to the unit.</p> <p>The requirement for telephone outlet, general purpose outlet and lux levels can be implemented during detailed design through conditions.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

(b) a telecommunications or data outlet adjacent to a general power outlet.	
<p>17 Main area of private open space</p> <p>The main area of private open space for an independent living unit must be located on—</p> <p>(a) the same floor as the entry to the dwelling, or</p> <p>(b) a floor serviced by a private passenger lift accessible only from inside the dwelling.</p>	<p>The principle private open space for each unit is located on the same floor as entry to the unit.</p>
<p>18 Kitchen</p> <p>A kitchen in an independent living unit must be located on the same floor as the entry to the dwelling, or a floor serviced by a private passenger lift accessible only from inside the dwelling.</p> <p>Circulations, fittings and cupboards must meet the standards nominated in this clause.</p>	<p>The Access Report confirmed that the kitchens within each of the units have adequate width to accommodate the required circulation requirements of this clause.</p> <p>Subject to conditions, other components are to be addressed at detailed design stage.</p>
<p>19 Laundry</p> <p>A laundry in an independent living unit must be located on the same floor as the entry to the dwelling, or a floor serviced by a private passenger lift accessible only from inside the dwelling. The laundry must have a circulation space that complies with AS 1428.1 and the additional cupboard and finishes standards.</p>	<p>The Access Report confirmed that the laundries within each of the units have adequate width to accommodate the required circulation requirements of this clause.</p> <p>Subject to conditions, other components are to be addressed at detailed design stage.</p>
<p>20 Storage for linen</p> <p>An independent living unit must be provided with a linen storage in accordance with clause 4.11.5 of AS 4299.</p>	<p>Each unit is provided with a compliant linen storage cupboard.</p>
<p>21 Lift access in multi-storey buildings</p> <p>An independent living unit on a storey above the ground storey must be accessible by a lift that complies with the <i>Building Code of Australia</i>, Volume 1, Part E3.</p>	<p>The access report confirms a lift is provided for access between levels of the development and offer compliance with regard to the overall size of the lift shaft.</p> <p>Subject to conditions, other components are to be addressed at detailed design stage.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

22 Garbage and recycling

A garbage storage area and a recycling storage area provided for an independent living unit must be accessible by a continuous accessible path of travel from the dwelling entrance.

A central garbage storage area is provided at the basement of the building.

Section 86 - Development standards for seniors housing—Zones RE2, SP1, SP2 and RU5

N/A as the site is zoned R2 Low Density Residential.

Section 87 - Additional floor space ratios

The proposal is for a residential flat building which is prohibited in the R2 zone under the Port Stephens LEP 2013, therefore section 87 is not applicable.

Section 88 - Restrictions on occupation of seniors housing

A condition of consent can be incorporated requiring that the development can only be occupied by seniors or people who have a disability, within the meaning of the SEPP should the proposal be supported.

Section 89 - Use of ground floor of seniors housing in business zones

The site is not located within a business zone and therefore section 89 is not applicable.

Section 90 - Subdivision

Section 90 provides that development consent may be granted for the subdivision of land on which development has been carried out under this Part. Subdivision is not proposed and therefore section 90 is not applicable.

Section 91 - Fire sprinkler systems in residential care facilities

The proposal is not a residential care facility and therefore section 91 does not apply.

Section 92 - Development on land used for the purposes of an existing registered club

Section 92 provides that consent must not be granted for development under this Part on land used for the purposes of an existing registered club unless the consent authority is satisfied that—

- (a) the development includes appropriate measures to separate the club from residential areas to avoid land use conflicts, and
- (b) an appropriate protocol will manage the relationship between the seniors housing and the gambling facilities on the site of the club to minimise harm associated with the misuse and abuse of gambling activities by residents of the seniors housing.

The site does not contain a registered club and therefore this section does not apply.

Division 4 Site-related requirements

Section 93 - Location and access to facilities and services—-independent living units

This section requires that independent living units have adequate access to facilities and services by a transport service that complies with subsection 93(2) or on-site. Whilst there is commercial premises within 400m of the site, these are not considered adequate to service the development as they consist of business premises, food and drink premises and a retail premise. A bus stop exists on the sites frontage to Soldiers Point Road (stop ID 231723). The Access Report confirms that the footpath accessing the bus stop is at a suitable gradient. The bus stop is serviced by three bus services being the 132, 133 and 134 services. The bus services come to the site daily and stops at

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

at number of commercial centres which contain adequate facilities and services such as the Salamander Bay Shopping Village, Salamander Bay Shopping Centre and the Nelson Bay town centre. Noting this, the proposal is consistent with this clause.

Section 95 - Water and sewer

The site is connected to both reticulated water and sewer.

Section 96 – Bush fire prone land

N/A the site is not bushfire prone land nor is it near bushfire prone land.

Division 5 Design Requirements

Section 97 - Design of Seniors Housing

In determining a development application for development for the purposes of seniors housing, a consent authority must consider the Seniors Housing Design Guide, published by the Department in December 2023 and the design principles set out in Schedule 8 of the SEPP.


An assessment against the Seniors Housing Design Guide and Schedule 8 of this policy are conducted below in Table 2.

Table 2. Assessment against the SHDG and Schedule 8 of the Housing SEPP.

Housing SEPP – Section 97(1) – Seniors Housing Design Guide	
Part 2 Guidance chapters	
Principle	Assessment
Design for Country	<p>A statement has been provided from the architect outlining how Connecting with Country principles have informed the design. These include:</p> <ul style="list-style-type: none"> Through the use of natural finishes such as stone and timber and other colour selections informed by observation of natural geology and geographical features of Worimi Country and seek to visually represent a narrative drawn from the locality. Through the provision of balconies and rear communal open space overlooking sunrise beach providing opportunity for residents to engage with Country.
Care for the Planet	<p>The proposed units have been designed to accommodate passive cooling and heating, including cross ventilation and solar access compliant with the requirements of the Apartment Design Guide.</p> <p>Construction related environmental impacts can be suitably mitigated through standard noise, air quality and sediment and erosion control conditions.</p> <p>Notwithstanding the above, a Waste Management Plan has not been provided for assessment and therefore insufficient information has been provided to demonstrate that appropriate waste minimisation and recycling</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

	procedures for the construction and operational phases of the development are proposed.
Site Analysis – environmental response	Insufficient information has been provided to assess the proposed vegetation removal, noise impacts and stormwater design and therefore it is unclear whether the proposal appropriately responds to the sites environmental constraints.
Site Analysis – urban response	<p>The site is located on the eastern side of Soldiers Point Road with direct water frontage to the east. The site is zoned R2 low density residential. A mixture of residential densities exist along the eastern portion of Soldiers Point Road to the sites north and south which includes single dwellings, dual occupancies, multi-dwelling housing and residential flat buildings. The land to the west of the site is land zoned E1 Local Centre containing a number of shop top housing developments. This area has a larger height limit of 15 metres.</p> <p>Development to the sites south is general of a lower density but still contains multi-dwelling housing and dual occupancy development. Notwithstanding, the SHDG acknowledges that senior's housing developments can introduce a building type into the locality that is of a different scale and street presentation from neighbouring properties.</p> <p>The development proposes a number of non-compliances with controls in the Housing SEPP, indicating that the proposal is a potential overdevelopment of the site and therefore failing to demonstrate a suitable urban response.</p>
Heritage	<p>There are no European heritage values present on the site.</p> <p>An AHIMs search found that the site does not contain any Aboriginal site nor has it been declared an Aboriginal Place. An Aboriginal Place has been identified to the north of the site, refer to Figure 7 (area outlined in orange) below. The proposal is not considered likely to impact upon the heritage significance of this Aboriginal Place.</p>

	 <p>Figure 7. Aboriginal Place to the north of the site (outlined in orange).</p>
Care, wellbeing, and community	<p>The proposal exhibits some quality design features that will enhance the care, wellbeing and sense of community for residents. These features include:</p> <ul style="list-style-type: none"> • Accessible apartment design catering for the needs of seniors and to enable ageing in place. • Good solar access within apartments, including large openable windows and balconies. <p>Notwithstanding the above, whilst communal open space has been provided. The Port Stephens Urban Design Panel (UDP) did not support the current communal open space design. The UDP suggested that further design refinements to both the communal open space between the two buildings and the waterfront communal open space was warranted in order to improve amenity for future residents. Design amendments suggested by the UDP were not provided and therefore, Council staff are not satisfied that the proposal is consistent with this principle.</p>
Design for physical aging and dementia	<p>The proposal includes design measures to cater for physical aging and dementia, including the following:</p> <ul style="list-style-type: none"> • The proposed units are designed to achieve appropriate thermal comfort through ventilation, solar access, window coverings, and construction materials consistent with the provisions of SEPP BASIX. • Accessible unit design, consistent with the requirements of Schedule 4 of the SEPP. • The proposed units are designed with 'familiar domestic character'.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

Part 3 Density and related design principles	
Principle	Assessment
Options for different types and configurations of densities for seniors housing	The proposal incorporates two densities with 4 x two bedroom apartments and 3 x three bedroom independent living units proposed.
Determining density	The SHDG states that density should be determined by the sites zoning and floor space ratio (FSR). The site is zoned low density residential. The SHDG states that low density housing typically has a FSR of 0.5:1. The proposal seeks to vary this control with a FSR of 0.6:1. The applicant has submitted a clause 4.6 variation request. The proposed variation is not supported which is discussed further in the Clause 4.6 variation assessment.
Designing for different densities	<p>The objective of this section is to deliver a range of developments of varying size, scale and typology that will provide choice for ageing communities to move to and to deliver seniors housing developments of significant scale that are becoming more common and sought after in urban areas.</p> <p>The proposal provides a medium density development due to its form as a residential flat building.</p>
Guidance examples for seniors housing configurations with different densities	It is noted that the proposal is consistent with the guidance examples for medium density independent living units.
Design principles for residential care facilities	N/A
Design principles for independent living	<p>An independent living unit development is not just an apartment building or a group of units, or villas but is equally about building a community.</p> <p>Socialising and participation in events in communal areas outside of individual apartments is a significant aspect of life in an independent living senior's community. As noted above, whilst communal open space has been provided, the Port Stephens UDP did not support the current communal open space design as it lacked activation and had the potential to result in adverse amenity impacts to proposed units. The proposal is therefore not considered to satisfy this principle.</p>
Design principles for low density independent living	N/A the proposed development is considered to be characterised as medium density independent living due to being in the form of a residential flat building.
Design principles for medium density independent living	The objective of this section is to provide guidance for two or three storey housing clusters where the scale and massing is articulated and separated to respect the character and pattern of the suburban surroundings. The proposal is considered to be generally compliant with these guidance principles in that:

	<ul style="list-style-type: none"> - Whilst mature trees are not proposed to be retained, meaningful landscaping is proposed throughout the site. - Pedestrian and vehicle entries are clear and identifiable. - Subject to conditions, the development can be well lit. - A BASIX certificate has been provided ensuring the development considers the climate zone. - Solar access, shading and air movement has been considered in the overall design is generally compliant with relevant controls. - A range of outdoor settings has been provided with each unit having an outdoor open space and two separate communal areas. Notwithstanding, based on the UDP advice, these communal areas require further refinement in order to encourage social interactions and improve future residents amenity. - The Access Report provided demonstrates that the site is accessible. <p>Notwithstanding the above, insufficient information has been provided to demonstrate that the stormwater design and waste management procedures are suitable. Nor has a Crime Prevention through Environmental Design (CPTED) assessment been provided to demonstrate that the proposal encourages crime awareness and passive community surveillance to deter crime. The proposal is therefore not considered to be consistent with this section of the SHDG.</p>
Design principles for high density independent living	N/A

Housing SEPP – Section 97(2)	
Schedule 8 Design principles for seniors housing	
Principle	Assessment
<i>1 Neighbourhood amenity and streetscape</i>	<p>This principle states that development for seniors housing should maintain reasonable neighbourhood amenity and appropriate residential character by:</p> <ul style="list-style-type: none"> • providing building setbacks to reduce bulk and overshadowing • using building form and siting that relates to the site's land form, and • adopting building heights at the street frontage that are compatible in scale with adjacent buildings, and

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

	<ul style="list-style-type: none"> considering, where buildings are located on the boundary, the impact of the boundary walls on neighbours, <p>The proposal is considered to be inconsistent with the above in that:</p> <ul style="list-style-type: none"> The proposal has non-compliant setbacks which contribute to the developments overall bulk and results in further overshadowing of neighbouring properties. The proposed building height exceeds the maximum building height limit under the PSLEP and the Housing SEPP and is inconsistent with surrounding similarly zoned development buildings heights.
<i>2 Visual and acoustic privacy</i>	The design in its current form has the potential to compromise the amenity of future residents from both an acoustic and visual privacy perspective. As indicated by the UDP, these concerns could be addressed through further design refinement and a potential reduction in yield. In addition, a Noise Impact Assessment was requested and has not been provided and therefore the suitability of the design from an acoustic perspective has not been determined.
<i>3 Solar access and design of climate</i>	All proposed units private open space areas meeting the solar access requirements. It is unclear whether the internal living areas meet these requirements.
<i>4 Stormwater</i>	A valid BASIX certificate was provided for the proposal.
<i>5 Crime prevention</i>	Insufficient information has been provided to demonstrate that the proposal meets Council's stormwater requirements.
<i>6 Accessibility</i>	A Crime Prevention through Environmental Design report was requested to be provided. This report was not provided to Council for assessment and therefore insufficient detail has been provided to demonstrate that the proposal meets this principle.
<i>7 Waste Management</i>	The proposal includes a pedestrian pathways that connects to the public footpath at the site frontage, allowing connection to existing bus stop located on Soldiers Point Road.
	A Waste Management Plan has not be provided for assessment and therefore insufficient information has been provided to demonstrate that appropriate waste minimisation and recycling procedures for the construction and operational phases of the development are proposed.

Division 7 Non-discretionary development standards

Section 108 - Non-discretionary development standards for independent living units—the Act, s 4.15

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

The objective of this section is to identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

The table 3 below provides an assessment against the non-discretionary development standards in relation to development for the purposes of independent living units.

Table 3. Assessment against the non-discretionary development standards

Non-discretionary development standards for independent living units	
Development Standard	Assessment
No building has a height of more than 9.5m, excluding servicing equipment on the roof of a building.	The development has a maximum height of 10.5m which exceeds the 9.5m development standard, representing a 10.52% variation. A clause 4.6 variation has been submitted by the applicant. The height exceedance is not supported by Council staff as it is considered that the applicant's Clause 4.6 variation request has failed to appropriately demonstrate that the development standard is unreasonable or unnecessary in the circumstances.
(b) servicing equipment on the roof of a building, which results in the building having a height of more than 9.5m— (i) is fully integrated into the design of the roof or contained and suitably screened from view from public places, and (ii) is limited to an area of no more than 20% of the surface area of the roof, and (iii) does not result in the building having a height of more than 11.5m,	As above, the development has a maximum height of 10.5m. Servicing equipment is not the reasons for the height breach.
The density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less.	The proposal has a floor to space ratio (FSR) of 0.6:1 which exceeds the standard. A 4.6 variation request has been lodged by the applicant. Similarly to the height exceedance, the proposed FSR variation, is not supported by Council staff as it is considered that the applicant's Clause 4.6 variation request has failed to appropriately demonstrate that the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention of the development standard.
A minimum landscaped area that is the lesser of—	34% provided.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

(i) 35m ² per dwelling, or (ii) 30% of the site area,	
A deep soil zone on at least 15% of the site area, where each deep soil zone has minimum dimensions of 3m and, if practicable, at least 65% of the deep soil zone is located at the rear of the site,	28% of the site is proposed to be deep soil.
At least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces,	All units receive 2 hours of solar access hours of direct solar access between 9am and 3pm mid-winter in private open spaces. It is unclear whether living rooms receive this level of solar access.
For a dwelling in a single storey building or a dwelling located, wholly or in part, on the ground floor of a multi-storey building— (i) at least 15m ² of private open space per dwelling, and (ii) at least 1 private open space with minimum dimensions of 3m accessible from a living area located on the ground floor	There are a total of 3 units located on the ground floor, 1 in Building A and 2 in Building B. All units have private open space that exceeds 15m ² , which is accessible from the living area and has a minimum dimension of 3m.
For a dwelling in a multi-storey building not located on the ground floor—a balcony accessible from a living area with minimum dimensions of 2m and— (i) an area of at least 10m ² , or (ii) for each dwelling containing 1 bedroom—an area of at least 6m ²	The remainder of the units are not on the ground floor. All have private open space accessible from the living area, with a minimum dimension exceeding 2m and an area exceeding 10m ² .
(j) for a development application made by, or made by a person jointly with, a social housing provider—at least 1 parking space for every 5 dwellings, (k) if paragraph (j) does not apply—at least 0.5 parking spaces for each bedroom.	The development is not made by, or made by a person jointly with, a social housing provider and therefore at least 0.5 parking spaces for each bedroom is required to be provided. A total of 17 bedrooms are provided which requires 8.5 car parking spaces. A total of 10 car parking spaces are provided for residents. Two visitor spaces are also proposed.

Chapter 4 – Design of residential apartment development

Chapter 4 of this policy aims to improve the quality of residential apartment development and provides an assessment framework ('the Apartment Design Guide) to facilitate the assessment of 'good design'.

As per Section 144, this chapter only applies to a RFB that is at least 3 storeys high and contains at least 4 or more dwellings. Building A which is a split design, presenting four storeys to the rear

Page 29 of 77

16-2024-345-1

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

and 3 internally. Across Building A and B a total of 7 dwellings are proposed across the site. It is therefore considered that this chapter applies.

Section 145 requires that before determining an application for a residential flat building, the consent authority must refer the application to the design review panel for the local government area. The proposed development was considered by the Port Stephens Urban Design Panel (UDP) on 14 September 2023 prior to lodgement of the DA. The UDP was unable to support the design at the pre-lodgement meeting due to a number of concerns which included concerns regarding the developments height, bulk, scale and setbacks. It was recommended that the design be revisited to consider these items.

Following lodgement of the DA, the proposed development was re-designed. This included a reduction in yield and as well as a reduction in the height of Building B. During assessment, the application was presented to the UDP on 12 September 2024. The UDP was unable to support the proposal noting that whilst design amendments had been undertaken, many of the UDP's original concerns remained. Following this meeting and a request for information issued by Council, amended plans were provided for consideration by the UDP. It is noted that the purpose of providing amended plans was to present to the amended design to the UDP, rather than to respond to Council's outstanding RFI in its entirety. The amended plans were presented to the UDP for a third time on 12 December 2024. The UDP again were unable to support the proposal for the reasons summarised below:

- Better integration of the retained boatshed and further refinement of the rear communal open space was recommended to be undertaken.
- Concerns with regard to the proposal showing symptoms of overdevelopment. The UDP advised that this is largely evident when reviewing the design of Building B which has the potential it impact on the amenity of future residents both acoustically and visually due to the location of the driveway and windows within units. It was suggested that to address these concerns, a reduction in yield may be required.
- Further consideration was to be given to the circulation pathway for residents.
- Concern was raised with regard to the removal of the large tree within the sites front setback. The UDP considered that its removal would result in a loss to the local streetscape landscape character and suggested replacement plantings be provided should it be removed.
- The proximity of the communal open space located between the buildings may cause noise and privacy impacts to nearby units.
- Provision of additional privacy screening and highlight windows was supported.
- The materials and finishes were supported.

As per section 147(1)(c), the advice from the UDP in December 2024 has been used to inform Council's assessment of the application.

Section 147(1)(a) requires that Council considers the design principles for residential apartment developments set out in Schedule 9 of the policy. Table 3 below assesses the proposal against the design principles.

Table 3. Assessment against design quality principles

Quality Design Principles	
Principle	Assessment
Principle 1: Context and neighbourhood character	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

Quality Design Principles	
	<p>context involves identifying the desirable element of an area's existing or future character.</p> <p>The site is located on the eastern side of Soldiers Point Road with direct water frontage to the east. The site is zoned R2 low density residential. A mixture of residential densities exist along the eastern portion of Soldiers Point Road to the sites north and south which includes single dwellings, dual occupancies, multi-dwelling housing and residential flat buildings. The land to the west of the site is zoned E1 Local Centre and contains a number of shop top housing developments. This area has a larger height limit of 15 metres.</p> <p>The proposed developments scale is generally consistent with existing developments to the sites north and west. Development to the sites south is general of a lower density containing dwellings houses and small scale multi-dwelling housing and dual occupancy developments. When considering the immediate surrounding character of the area, the PSLEP height limit, zoning and non-compliances proposed, it is considered that the proposed development is inconsistent with the context and neighbourhood character of the area which is intended to be for low density residential development as indicated by the zoning of the site.</p>
Principle 2: Built form and scale	<p>Principle 2 identifies that good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>The application proposes a number of non-compliances with relevant policies including the Seniors Housing Design Guideline, the Housing SEPP, the Apartment Design Guideline and the Port Stephens Local Environmental Plan. Given the number and extent of non-compliances proposed and potential amenity impacts resulting from these non-compliances, it is considered that the proposal is an overdevelopment of the site and therefore is not appropriate for the character of the street and surrounding buildings.</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>The design in its current form has the potential to compromise the amenity of future residents from both an acoustic and privacy perspective. As indicated by the UDP, these concerns could be addressed through further design refinement and a potential reduction in yield. In addition, a Noise Impact Assessment was requested and has not been provided and therefore the suitability of the design from an acoustic perspective has not been determined.</p>

Quality Design Principles	
	<p>In addition, the proposal is non-compliant with setback controls stipulated by the ADG as well as the FSR and height controls in the Housing SEPP.</p> <p>Noting the above, it is considered that the proposed density is unsuitable.</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. Each unit achieves sufficient solar access and ventilation to reduce powered heating and cooling demand.</p> <p>Solar panels are proposed on the roof of the development which contributes to the sustainability of the development.</p>
Principle 5: Landscape	<p>Principle 5 specifies that good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity.</p> <p>The proposal incorporates landscaped areas comprising a mixture of native and non-native species.</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>All apartments are provided with:</p> <ul style="list-style-type: none"> • appropriate room dimensions and shapes, • natural ventilation, • indoor and outdoor space, • efficient layouts and service areas, • ease of access for all age groups and degrees of mobility. <p>Notwithstanding the above, it is considered that amenity of residents may be compromised by the current design as:</p> <ul style="list-style-type: none"> • The location of the vehicular access below apartments has the potential to have acoustic impacts to these apartments. Without a Noise Impact Assessment, it is unclear whether acoustic treatment is required or whether the design in its current form is suitable from an acoustic perspective.

Quality Design Principles	
	<ul style="list-style-type: none"> The communal open space is not considered likely to encourage social interaction and meaningful use by future residents which is inconsistent with the objectives of communal open spaces in senior's housing developments as discussed under the assessment of the SHDG. The amenity of the ground floor apartment in Building B (G.02) is compromised by the limited separation between the communal open space and the apartment's private open space. Much of the proposed storage is located in the car parking area which is inconsistent with the ADG.
Principle 7: Safety	<p>Principle 7 identifies that good design optimises safety and security within the development and public domain.</p> <p>A Crime Prevention through Environmental Design report was requested to be provided. This report was not provided to Council for assessment and therefore insufficient detail has been provided to demonstrate that the proposal meets this principle.</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 proposed development includes an appropriate apartment mix which will be suitable to cater for seniors.</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 proposal has been designed with a variety of materials, colours and textures which were supported by the UDP.</p>

Section 147(1)(b) requires that the consent authority consider the Apartment Design Guide (ADG). Table 2 below provides an assessment against the assessment criteria within the ADG.

Table 2. Apartment Design Guide Assessment

Apartment Design Guide Assessment Criteria	
Control / Requirement	Proposed
3A-1 – Site analysis Site analysis illustrates that design decisions have been based on opportunities and constraints of the	Site analysis plan submitted.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

site conditions and their relationship to the surrounding context.	
<p><i>3B-1 Orientation</i></p> <p>Building types and layouts respond to the streetscape and site while optimising solar access within the development.</p>	The building is appropriately located on the site to optimise solar access.
<p><i>3B-2 Orientation</i></p> <p>Overshadowing of neighbouring properties is minimised during mid-winter.</p>	<p>The applicant provided solar diagrams for the proposed shadowing impacts during mid-winter.</p> <p>The neighbouring property to the sites south west maintains 3 hours of solar access (between 9am – 12pm). The neighbouring property to the sites south east, also maintain 3 hours of solar access (between 9am – 12pm).</p>
<p><i>3C-1 Public Domain Interface</i></p> <p>Transition between private and public domain is achieved without compromising safety and security.</p>	<p>The proposed development provides landscaping between the front boundary and the proposed building which provides an appropriate transition between the private and public domain.</p> <p>Each unit fronting Soldiers Point Road has a balcony overlooking the street providing passive surveillance.</p>
<p><i>3C-2 Public Domain Interface</i></p> <p>Amenity of the public domain is retained and enhanced.</p>	<p>The provision of a landscaped transition area between the front entry of the development and Soldiers Point Road will enhance the streetscape.</p> <p>Notwithstanding this, concerns were raised by the UDP with regard to the removal of the large tree within the sites front setback. The UDP considered that its removal would result in a loss to the local streetscape landscape character and suggested replacement plantings be provided should it be removed.</p>
<p><i>3D-1 Communal and Public Open Space</i></p> <p>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.</p> <p>Numerical design criteria:</p>	<p>The communal open space areas receive direct sunlight for a minimum of 2 hours.</p> <p>Approximately 19.7% of the site is proposed to be for communal open space which is non-compliant with this control. The UDP has raised concern with the regard to the design of the communal open space noting that the communal open space between the two buildings is not desirable due to its scale and proximity to bedrooms. The UDP suggested that further refinement of the rear communal open space due to it being located below apartment living areas, having better solar access and</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<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>an attractive outlook. Amendments to the plans to address concerns raised by the UDP have not been provided. Noting this, it is considered that the proposed communal open space is not suitable in its current form.</p>
<p><i>3D-2 Communal and Public Open Space</i></p> <p>Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting</p>	<p>The communal open space provides outdoor seating and a barbeque area. Access to the waterfront is also provided at the rear. Notwithstanding, the UDP was not satisfied with the proposed communal open space design as previously discussed.</p>
<p><i>3D-3 Communal and Public Open Space</i></p> <p>Communal open space is designed to maximise safety.</p>	<p>Passive surveillance is provided to the communal space within units in both buildings have balconies/habitable rooms orientated toward the area.</p>
<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>N/A – no public open space is provided.</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 between 650m² – 1,500m² – minimum 3m 	<p>Site area is 1,662m², deep soil area is 474m² = 28% = compliant with ADG requirements.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<p>dimension and 7% of site area.</p> <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>3F-1 Visual Privacy</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): • Habitable rooms and balconies - 6m. • Non habitable rooms – 3m. • Building height up to 25 metres (5-8 storeys): • Habitable rooms and balconies - 9m. • Non habitable rooms – 4.5m. • Building height over 25m (9+ storeys): • 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 	<p>The purpose of the separation controls in the ADG are to provide separation between buildings to:</p> <ul style="list-style-type: none"> • Ensure new developments are scaled to support the desired future character with appropriate massing and spaces between buildings • Assist in providing residential amenity including visual and acoustic privacy, natural ventilation, sunlight and daylight access and outlook. • Provide suitable areas for communal open spaces, deep soil zones and landscaping. <p>The proposed development provides the following minimum setbacks to habitable rooms / balconies:</p> <p><u>Basement/Lower Ground Floor</u></p> <p>Northern (side)</p> <ul style="list-style-type: none"> - 2.98m <p>Southern (side)</p> <ul style="list-style-type: none"> - 1.3m <p>Eastern (rear)</p> <ul style="list-style-type: none"> - 13.4m <p>There are no minimum setback requirements for basement levels or blank walls noted within the ADG.</p> <p><u>Building A</u></p> <p>Northern (side):</p> <ul style="list-style-type: none"> - Ground Level – 3.03m - Level 1 – 3.03m - Level 2 – 3.03m <p>Southern (side):</p> <ul style="list-style-type: none"> - Ground Level – 4.3m - Level 1 – 4.2m - Level 2 – 4.3m

development to provide a transition in scale and increased landscaping.

Eastern (rear):

- Ground Level – 13.4m
- Level 1 – 14.01m
- Level 2 – 14.65m

Building B

Northern (side):

- Ground Level – 3m
- Level 1 – 3m

Southern (side):

- Ground Level – 7.6m
- Level 1 – 7.4m

Eastern (separation between buildings):

- Ground Level – 12.11m
- Level 1 – 12.11m

The proposed rear setbacks are compliant with the ADG.

The separation between Building A and B is compliant with the ADG. The southern side setback of Building B is also compliant.

The remaining side setbacks are non-compliant with the ADG requirement of 6m for habitable rooms with a minimum of 3.03m being provided. The impacts of the reduction in setbacks have been minimised by limiting the number of windows provided along both elevations and the provision of a solid wall for much of the balconies northern side elevation. Notwithstanding, the reduced setbacks still have the potential to result in adverse impacts on neighbouring properties and future residents of the development as:

- Despite the provision of some privacy screening, highlight windows and solid walls, the reduced setbacks still present the opportunity for overlooking from proposed habitable rooms and balconies.
- The reduced setbacks contribute to the developments overall perceived bulk and scale which is considered to be inconsistent with the surrounding character of the area.
- It is unclear whether the reduced setbacks present potential adverse impacts on neighbouring properties from an acoustic perspective given a Noise Impact Assessment was not provided with the application.
- It is unclear whether the design including highlight windows, solid walls and privacy

	<p>screens affect the internal amenity of each unit in terms of outlook and solar access.</p> <p>Noting the above, it is considered that insufficient information has been provided to demonstrate that the proposed reduced side setbacks are suitable.</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 includes design elements to increase privacy however, it is unclear whether these elements compromise access to light and outlook.</p>
<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 proposes a pedestrian entry from Soldier Point Road which provides access to the lobby of each building.</p> <p>Landscaping is provided within the front setback provides a transition between the public domain and the subject site.</p>
<p><i>3G-2 Pedestrian Access and Entries</i></p> <p>Access, entries and pathways are accessible and easy to identify.</p>	<p>The pedestrian access is clearly defined.</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>Pedestrian access to the street is provided from the footpath to the entry lobby.</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 proposed vehicle access point and pedestrian access via the entry footpath and lobby are separated appropriately.</p>
<p><i>3J-1 Bicycle and Car Parking</i></p> <p>Car parking is provided based on proximity to public transport in</p>	<p>Car parking is compliant with the car parking provisions under Chapter 3, Part 5 Housing for seniors and people with a disability of SEPP Housing.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<p>metropolitan Sydney and centres in regional areas.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • on sites that are within 800m of a railway station or light rail stop in the Sydney Metropolitan Area; or • on land zoned, and sites within 400m of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever less.</p> <p>The car parking need for a development must be provided off-street.</p>	
<p><i>3J-2 Bicycle and Car Parking</i></p> <p>Parking and facilities are provided for other modes of transport.</p> <p><i>3J-3 Bicycle and Car Parking</i></p> <p>Car park design and access is safe and secure</p>	<p>Bicycle racks are not provided. Storage is provided for each unit in the basement.</p> <p>The access is proposed to have a security garage door providing safe and secure parking.</p>
<p><i>3J-4 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of underground car parking are minimised.</p>	<p>The visual and environmental impacts of the proposed basement car park have been minimised. Ground level access to the carpark is screened by security roller doors, with landscaping adjacent the entry/exit.</p>

<p><i>3J-5 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of on-grade car parking are minimised.</p>	N/A
<p><i>3J-6 Bicycle and Car Parking</i></p> <p>Visual and environmental impacts of above ground enclosed car parking area minimised.</p>	N/A
<p><i>4A-1 Solar and Daylight Access</i></p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • In all other areas (i.e. areas outside Sydney metropolitan area, Newcastle and Wollongong local government areas), living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter • A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter. 	<p>The solar diagrams provided indicate that all apartments private open spaces receive 3 hours of direct sunlight in mid-winter. Insufficient information has been provided to demonstrate whether living rooms receive appropriate solar access.</p>
<p><i>4A-2 Solar and Daylight Access</i></p> <p>Daylight access is maximised where sunlight is limited.</p>	<p>Daylight has been maximised for the rear communal open space and the private open space for each unit. It is unclear whether appropriate solar access is provided to living areas internal to each apartment.</p>

<p><i>4A-3 Solar and Daylight Access</i></p> <p>Design incorporates shading and glare control, particularly for warmer months.</p>	<p>Adequate shading and glare control are incorporated throughout the development,</p>
<p><i>4B-1 Natural Ventilation</i></p> <p>All habitable rooms are naturally ventilated.</p>	<p>All habitable rooms can be naturally ventilated.</p>
<p><i>4B-2 Natural Ventilation</i></p> <p>The layout and design of single aspect apartments maximises natural ventilation.</p>	<p>No single aspect apartments are proposed.</p>
<p><i>4B-3 Natural Ventilation</i></p> <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • 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>Over 60% of all units are naturally cross ventilated.</p>
<p><i>4C-1 Ceiling Heights</i></p> <p>Ceiling height achieves sufficient natural ventilation and daylight access.</p> <p>Numerical design criteria: Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p>	<p>Habitable rooms on each floor have a ceiling height of 2.9m.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<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><i>4C-2 Ceiling Heights</i></p> <p>Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.</p>	<p>Ceiling heights of 2.9m meet the minimum requirement and effectively create a sense of space in apartments.</p>
<p><i>4C-3 Ceiling Heights</i></p> <p>Ceiling heights contribute to the flexibility of building use over the life of the building.</p>	<p>The building is not in a commercial area and therefore flexible use is not considered necessary.</p>
<p><i>4D-1 Apartment Size and Layout</i></p> <p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</p> <p>Numerical design criteria: Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> • Studio – 35 m² • One bedroom – 50 m² • Two bedroom – 70m² • Three bedroom – 	<p>The smallest apartment proposed for the two bedroom units 84m² and the smallest proposed for a 3 bedroom is 182m². These are compliant.</p> <p>All habitable rooms include a window on an external wall.</p>

<p>90m²</p> <ul style="list-style-type: none"> • An additional 5m² is required for apartments with more than one bathroom. • An additional 12m² is required for a fourth, and further additional bedrooms. • Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms. 	
<p><i>4D-2 Apartment Size and Layout</i></p> <p>Environmental performance of the apartment is maximised.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Habitable room depths are limited to a maximum of 2.5 x the ceiling height. • In open plan layout (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window. 	<p>All apartments have been designed with an open plan layout.</p>
<p><i>4D-3 Apartment Size and Layout</i></p> <p>Apartment layouts are designed to accommodate a variety of household activities and needs.</p> <p>Numerical design criteria:</p> <ul style="list-style-type: none"> • Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). • Bedrooms have a minimum dimension of 3m (excluding wardrobe space). 	<p>Proposed master bedrooms have a minimum area of 10m² and all other bedrooms have been provided with a minimum area of 9m².</p> <p>All bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>All living rooms have a minimum width of 4 metres.</p>

<ul style="list-style-type: none"> Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> One bedroom apartments - 3.6m. Two or three bedroom apartments – 4m. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts. 	
<p><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>The units are provided with balconies that exceed the minimum requirements with the minimum area provided being 18m². A minimum depth of 2m is provided to two bedroom apartments and 2.4m to three bedroom apartments.</p> <p>The units are therefore compliant in this regard.</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>All primary balconies are located adjacent to open plan living/dining spaces.</p>
<p><i>4E-3 Private Open Space and Balconies</i></p> <p>Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.</p>	<p>The balconies have been designed to be incorporated in the overall of design of the building.</p>
<p><i>4E-4 Private Open Space and Balconies</i></p> <p>Private open space and balcony design maximises safety.</p>	<p>The proposed balcony design achieves an adequate level of safety.</p>
<p><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 maximum number of apartments off a single circulation core is four.</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>Common circulation areas are of a size that will provide for social intersection and promote safety.</p>

<p><i>4G-1 Common Circulation and Spaces</i></p> <p>Adequate, well designed storage is provided in each apartment.</p> <p>Numerical design criteria –in addition to storage in kitchens, bathrooms and bedrooms the following storage is provided:</p> <ul style="list-style-type: none"> • Studio apartments – 4m³. • One bedroom apartments – 6m³. • Two bedroom apartments – 8m³. • Three + bedroom apartments – 10m³. • At least 50% of the required storage is to be located within the apartment. 	<p>All apartments proposed have storage areas that exceed this control. However, the original plans showed that more than 50% of storage was provided within the car park and was therefore non-compliant. Given the size of apartments, this was not considered suitable. Council issued a request for information requesting that additional storage be provided within each apartment to be compliant with this control. The updated plans do not provided a breakdown of the storage volume and therefore if it is unclear whether the proposal meets this requirement.</p>
<p><i>4G-2 Common Circulation and Spaces</i></p> <p>Additional storage is conveniently located, accessible and nominated for individual apartments.</p>	<p>Additional storage is located within the car park and will be nominated for individual apartments and easily accessible.</p>
<p><i>4H-1 Acoustic Privacy</i></p> <p>Noise transfer is minimised through the siting of buildings and building layout.</p>	<p>A Noise Impact Assessment was not provided. Therefore, insufficient information has been provided to demonstrate that internal noise transfer is suitable.</p>
<p><i>4H-2 Acoustic Privacy</i></p> <p>Noise impacts are mitigated within apartments through layouts and acoustic treatments.</p>	<p>A Noise Impact Assessment was not provided. Therefore, insufficient information has been provided to determine whether acoustic treatment is necessary.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<p><i>4J-1 Noise and Pollution</i></p> <p>In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.</p>	<p>The proposed development is not located in a noisy or pollutant environment, such as near a major road, rail line or beneath a flight path.</p>
<p><i>4J-2 Noise and Pollution</i></p> <p>Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission.</p>	<p>The proposed development is not located in a noisy or hostile environment, such as near a major road, rail line or beneath a flight path. Notwithstanding, A Noise Impact Assessment was not provided. Therefore, insufficient information has been provided to demonstrate that noise impacts from the driveway and basement are suitable for nearby units on site.</p>
<p><i>4K-1 Apartment Mix</i></p> <p>A range of apartment types and sizes is provided to cater for different household types now and into the future.</p>	<p>The development provides the following apartment mix:</p> <ul style="list-style-type: none"> • 3 x 3 bedrooms • 4 x 2 bedrooms <p>This apartment mix is considered suitable.</p>
<p><i>4K-2 Apartment Mix</i></p> <p>The apartment mix is distributed to suitable locations within the building.</p>	<p>The apartments are appropriately distributed throughout the site.</p>
<p><i>4L-1 Ground Floor Apartments</i></p> <p>Street frontage is maximised where ground floor apartments are located.</p>	<p>The ground floor of the proposed development is raised from the natural ground level and therefore direct street access is not proposed given the nature of the proposal and accessibility requirement. Notwithstanding, the private open spaces for the ground floor apartment fronting Soldiers Point Road, is directed toward the street frontage providing passive surveillance and activation.</p>
<p><i>4L-2 Ground Floor Apartments</i></p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	<p>As noted above, the ground floor apartment fronting Soldiers Point Road is raised from the natural ground level with planter boxes also provided, affording the unit with privacy without obstructing casual surveillance.</p> <p>The UDP raised concern with amenity and privacy for the ground floor unit orientated east towards the communal open space. The UDP suggested that a</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

	further landscape buffer should be provided between the unit and communal open space. These amendments have not been undertaken.
<p><i>4M-1 Facades</i></p> <p>Building facades provide visual interest along the street while respecting the character of the local area.</p>	<p>The building façade provides interest, with the UDP supporting the proposed materials and finishes. Notwithstanding, as discussed throughout the report, it is considered that the proposed development bulk and scale is inconsistent with the character of the local area.</p>
<p><i>4M-2 Facades</i></p> <p>Building functions are expressed by the façade.</p>	<p>Building entries are clearly defined.</p>
<p><i>4N-1 Roof Design</i></p> <p>Roof treatments are integrated into the building designed and positive respond to the streets.</p>	<p>The development proposes a flat roof. All plant and services are located within the basement level car parking and therefore are not visible on the roof. The lift over run is not screened however setback from street view.</p>
<p><i>4N-2 Roof Design</i></p> <p>Opportunities to use roof space for residential accommodation and open space are maximised.</p>	<p>A roof space has not been proposed.</p>
<p><i>4N-3 Roof Design</i></p> <p><i>Roof design incorporates sustainability features.</i></p>	<p>The roof has been designed to cater for PV solar panels.</p>
<p><i>4O-1 Landscape Design</i></p> <p>Landscape design is viable and sustainable.</p>	<p>Landscaping comprises a mixture of large trees, shrubs, ferns and ground covers which are a mixture of native and non-native species. Some species proposed are consistent with those in Council's Biodiversity Technical Specification including the Old Man Banksia, Coastal Banksia and Blueberry Ash.</p>

<p><i>4O-2 Landscape Design</i></p> <p>Landscape design contributes to the streetscape and amenity.</p>	<p>The landscaping proposed contributes to the streetscape and amenity. Given the presence of the bus stop, a street tree cannot be provided. Notwithstanding, the landscaping provided within the front setback contributes to the streetscape and amenity.</p>
<p><i>4P-1 Planting on Structures</i></p> <p>Appropriate soil profiles are provided.</p>	<p>The proposed landscaping plan indicates appropriate soil profiles are provided.</p>
<p><i>4P-2 Planting on Structures</i></p> <p>Plant growth is optimized with appropriate selection and maintenance.</p>	<p>Native plant species have been provided.</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>The proposed landscape design is considered appropriate.</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>An Access Report was prepared for the proposal by Purple Apple Access. The report found that the proposal meets the requirements for seniors housing in terms of accessibility.</p>
<p><i>4Q-2 Universal Design</i></p> <p>A variety of apartments with adaptable designs are provided.</p>	<p>The apartments have been designed to cater for seniors.</p>

<p><i>4Q-3 Universal Design</i></p> <p>Apartment layouts are flexible and accommodate a range of lifestyle needs.</p>	The apartments have been designed to cater for seniors.
<p><i>4R-1 Adaptive Reuse</i></p> <p>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.</p>	The proposed development does not involve any additions to existing buildings.
<p><i>4R-2 Adaptive Reuse</i></p> <p>Adapted buildings provide residential amenity while not precluding future adaptive reuse.</p>	The proposed development does not involve any additions to existing buildings.
<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>	N/A - the proposal is not a mixed use development.
<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>	N/A - the proposal is not a mixed use development.
<p><i>4T-1 Awnings and Signage</i></p> <p>Awnings are well located and complement and integrate with the building design.</p>	Awnings are provided over entries and integrated into the building design.

<p><i>4T-2 Awnings and Signage</i></p> <p>Signage responds to the context and desired streetscape character.</p>	<p>N/A no signage is proposed.</p>
<p><i>4U-1 Energy Efficiency</i></p> <p>Development incorporates passive environmental design.</p>	<p>A valid BASIX certificate has been submitted. Adequate natural light will be provided to habitable rooms.</p>
<p><i>4U-2 Energy Efficiency</i></p> <p>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.</p>	<p>A valid BASIX certificate has been provided.</p>
<p><i>4U-3 Energy Efficiency</i></p> <p>Adequate natural ventilation minimises the need for mechanical ventilation.</p>	<p>The proposed development is compliant with the ADG's design criteria for 4B-3 Natural Ventilation.</p>
<p><i>4V-1 Water Management and Conservation</i></p> <p>Potable water use is minimised.</p>	<p>A valid BASIX certificate has been provided. A condition of consent requiring compliance with the BASIX will be recommended should the application be supported.</p>
<p><i>4V-2 Water Management and Conservation</i></p> <p>Urban stormwater is treated on site before being discharged to receiving waters.</p>	<p>Insufficient information has been provided to demonstrate that the proposal meets Council's stormwater requirements.</p>
<p><i>4V-3 Water Management and Conservation</i></p> <p>Flood management systems are integrated into the site design.</p>	<p>Insufficient information has been provided to demonstrate that the proposal meets Council's stormwater requirements.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

<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>A waste storage area has been provided within the basement level. The waste room is appropriately screened from the street.</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><i>4X-1 Building Maintenance</i></p> <p>Building design detail provides protection from weathering.</p>	<p>A Waste Management Plan has not be provided for assessment and therefore insufficient information has been provided to demonstrate that appropriate waste minimisation and recycling procedures for the construction and operational phases of the development are proposed.</p> <p>The proposal includes the use of concrete cladding, sandstone, timber lining for ceiling and metal cladding to ensure longevity and minimise weathering.</p>
<p><i>4X-2 Building Maintenance</i></p> <p>Systems and access enable ease of maintenance.</p>	<p>Accessible services areas have been proposed.</p>
<p><i>4X-3 Building Maintenance</i></p> <p>Material selection reduces ongoing maintenance costs.</p>	<p>Robust materials that will weather well have been proposed.</p>

Port Stephens Local Environmental Plan 2013 (PSLEP2013)

Clause 2.3 – Zone objectives and land use table

Clause 2.3 identifies that each land use zone in the land use table specifies the following:

- The objectives for development, and
- Development that may be carried out without development consent, and
- Development that may be carried out only with development consent, and
- Development that is prohibited.

This Clause outlines that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone. Seniors housing is permitted within the R2 zoned, however, residential flat buildings are not. Notwithstanding, RFB's are permitted under the Housing SEPP.

The objective of the R2 Low Density Residential zone area:

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

- To provide for the housing needs of the community within a low density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To protect and enhance the existing residential amenity and character of the area.
- To ensure that development is carried out in a way that is compatible with the flood risk of the area.

The proposed development provides for the housing needs of the community and is therefore consistent with this objective. However, the proposal in its current form does not protect or enhance the existing residential amenity and character of the area as demonstrated through the exceedance of a number of development controls and the potential adverse impacts of the non-compliant design on the amenity of neighboring properties and future residents of the development. s

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 dwelling and ancillary structures (with the exception of the boat shed). Should the proposal be supported, conditions of consent will be recommended in order to mitigate potential impacts to adjoining properties and the locality during demolition works.

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

The objective of this clause is to achieve planned residential density in certain zones. Clause 4.1B specifies the minimum lot size required to facilitate development for the purposes of dual occupancies, multi dwelling housing and residential flat buildings in order to achieve planned residential density in certain zones.

The subject site has a total area of approximately 1662m² which provides sufficient area to facilitate the proposed development, in accordance with the numerical requirements of this clause.

Clause 4.3 – Height of buildings

The objectives of this clause are to ensure the height of buildings is appropriate for the context and character of the area and to ensure building heights reflect the hierarchy of centres and land use structure. Clause 4.3(2) provides 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.

The maximum permissible building height on the site under the PSLEP is 9m. The Housing SEPP provides an additional 0.5m for senior's housing developments and therefore the proposal is subject to a 9.5m maximum building height.

Building A has a proposed maximum building height of 10.5m, exceeding the 9.5m maximum height requirement under the Housing SEPP, representing a 10.52% variation. A s4.6 variation request has been submitted to Council.

Clause 4.4 – Floor space ratio

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

The objectives of this clause are to ensure that buildings are compatible with the bulk and scale of the desired future character of the locality, to provide a suitable balance between landscaping and built form, and to minimise the effects of bulk and scale of buildings.

Clause 4.4(2) provides that the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The site does not have a maximum FSR indicated on the FSR map. Notwithstanding, the Housing SEPP has a maximum FSR of 0.5:1 for the proposed development. The proposal seeks to vary this control with a FSR of 0.6:1, representing a 20% variation. A s4.6 variation request has been submitted to Council.

Clause 4.6 – Exceptions to development standards

The objectives of this 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.

The proposal seeks to vary three development standards as follows:

1. The proposal exceeds the maximum allowable building height for the site prescribed under Clause 4.3 of the LEP and Clause 84 of the Housing SEPP. The DA has a maximum building height of 10.5m, which exceeds the 9.5m height limit under the Housing SEPP and represents a 10.52% variation to the development standard.
2. The proposal exceeds the maximum allowable floor space ratio prescribed under Clause 108 of the Housing SEPP. The DA has an FSR of 0.6:1 exceeding the 0.5:1 FSR limit under the Housing SEPP and represents a 20% variation to the development standard.
3. Section 84 of the Housing SEPP requires that any storey of a building above two storeys is to be setback within planes that project at an angle of 45 degrees inwards from all side and rear boundaries of the site. Much of the third storey of building A is setback at a 45 degree angle due to the buildings overall setbacks. However, a portion is not setback at an angle of 45 degrees. This is due to the lift overrun and therefore a variation to this control is proposed.

A request to vary the building height and floor space ratio development standards have been submitted by the applicant in accordance with Clause 4.6 of the PSLEP.

A s4.6 variation request was not submitted to Council for setback variation and therefore, Council staff cannot support this variation.

The requests to vary the building height and FSR standards have been reviewed. Council staff do not supported the proposed variations as it is considered that the applicant's Clause 4.6 variation request has failed to appropriately demonstrate that the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

On this basis, the building height and floor space ratio variations are not supported. A detailed assessment against Section 4.6 is contained within Attachment A and Attachment B of this report.

Clause 5.10 – Heritage conservation

The objectives of this clause are to conserve the environmental heritage of Port Stephens, to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, to conserve archaeological sites, and to conserve Aboriginal objects and Aboriginal places of heritage significance.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

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.

There are no European heritage values present on the site. An AHIMs search found that the site does not contain any Aboriginal site nor has it been declared an Aboriginal Place. An Aboriginal Place has been identified to the north of the site. The proposal is not considered likely to impact upon the heritage significance of this Aboriginal Place.

As such, no adverse impact to Aboriginal heritage is expected, and a condition of consent relating to unexpected finds will be recommended, should the application be supported, to ensure that appropriate steps are taken should any be identified during works.

Clause 5.21 – Flood planning

The objectives of this clause are to minimise the flood risk to life and property associated with the use of land, to allow development on land that is compatible with the flood function and behaviour on the land, taking into account projected changes as a result of climate change, to avoid adverse or cumulative impacts on flood behaviour and the environment, and to enable the safe occupation and efficient evacuation of people in the event of a flood.

Clause 5.21(2) provides that the 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:

- Is compatible with the flood function and behaviour on the land.
- Will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties.
- 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.
- Incorporates appropriate measures to manage risk to life in the event of a flood.
- 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:

- The impact of the development on projected changes to flood behaviour as a result of climate change.
- The intended design and scale of buildings resulting from the development.
- Whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood.
- The potential to modify, relocate or remove buildings resulting from development if the surrounding area is impacted by flooding or coastal erosion.

The rear of the site is flood prone, specifically high and low hazard flood fringe. The proposed building is located outside of the areas impacted by flooding and therefore the proposal is compatible with the flood function and behaviour on the land. The proposed buildings will not adversely affect flood behaviour and will not adversely affect the safe occupation and efficient evacuation of people. Notwithstanding, should the proposal be supported, a condition will be recommended requiring that a flood emergency response plan is prepared due to the developments proximity to flood prone land.

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.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

The subject land is mapped as containing potential Class 4 acid sulfate soils. The proposal requires earthworks extending 2m below the natural ground surface and therefore consent is required under this clause. As per sub-section 7.1(3), development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority. An acid sulfate soils management plan has not been provided to Council for assessment and therefore, consent cannot be provided for the carrying out of works under this clause.

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:

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

Earthworks are required to facilitate the proposed development, particularly for the construction of the basement level. The proposal is consistent with this clause in that:

- The application proposes earthworks to facilitate future use of the land.
- Should the application be supported, a condition will be recommended that requires all imported and exported fill to be VENM or a material identified as being subject to a resource recovery exemption by the NSW EPA.
- The scale of cut and fill proposed would have a negligible visual impact when viewed from neighbouring properties. The impacts of the development during construction could be limited through conditions of consent which limit construction work hours.
- The proposal does will result in impacts to Aboriginal items as assessed in. Conditions requiring an unexpected finds protocol to be implemented during works will be recommended.
- Conditions requiring a Construction Management Plan to be prepared and sediment and erosion controls to be implemented during works will be recommended to reduce potential impacts of the development should the application be supported.

Notwithstanding, the above, insufficient information has been provided to determine whether the proposed development will cause any detrimental effect on drainage patterns.

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:

Page 56 of 77

16-2024-345-1

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

- The supply of water.
- The supply of electricity.
- The disposal and management of sewage.
- Stormwater drainage or on-site conservation.
- Suitable vehicular access.

The subject site is serviced by reticulated water, electricity and sewer. Access to the site is maintained from Soldiers Point Road.

However, insufficient information has been provided to demonstrate that the proposed stormwater drainage is suitable.

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:

- Whether or not the development is likely to have any significant adverse impact on the following:
 - The condition and significance of the existing native fauna and flora on the land,
 - The provision and quality of habitats on the land for indigenous and migratory species,
 - The surface and groundwater characteristics of the land, including water quality, natural water flows and salinity, and
 - 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—

- The development is designed, sited and will be managed to avoid any significant adverse environmental impact, or
- If that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or
- If that impact cannot be minimised—the development will be managed to mitigate that impact.

The rear of the site identified as a wetland. Insufficient information has been provided to demonstrate that the proposed stormwater quality devices are suitable to meet Council's requirements. It is therefore unclear whether the proposal will impact the nearby mapped wetlands.

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

The Port Stephens Coastal Management Program (CMP) outlines 67 management actions aimed at mitigating the impacts of coastal inundation, tidal inundation, coastal erosion and dune transgression over the next 10 years. The CMP is a plan of action for Council, public authorities and land managers responsible for management of the Port Stephens coastal zone to:

- Address coastal hazard risks;
- Preserve habitats and cultural uses and values;
- Encourage sustainable agricultural, economic and built development in the coastal zone;
- Maintain or improve recreational amenity and resilience; and
- Adapt to emerging issues such as population growth and climate change.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

The development is located within the draft coastal risk area mapping and therefore is impacted by the draft planning instrument. Council has considered this draft EPI and considers the proposed development is consistent with the aims and objectives of the document.

Section 4.15(a)(iii) – Any development control plan**Port Stephens Development Control Plan 2014 (PSDCP 2014)**

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

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

This chapter 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 objectives of this chapter are:

- To give effect to State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021 by listing those trees or other vegetation that require approval;
- To ensure adequate consideration is provided to the relevant matters for the removal or pruning of trees or other vegetation; and
- To ensure adequate information is provided to determine the application for the removal of trees or vegetation.

The development application seeks consent for the removal of existing trees on the site. An Arborist Report was requested to be provided to enable further assessment of the trees proposed to be removed and to ascertain whether the trees to be removed were located within the property boundary or on adjacent properties, which would require owners consent from these properties. The assessment noted that the development would require trees to be removed from 25 and 27 Soldiers Point Road. An Arborist Report was not provided, nor was owners consent for tree removal. Therefore, Council officers do not support the proposed tree removal due to insufficient information being provided to enable an appropriate assessment.

B2 – Natural Resources

This chapter applies to development that has the potential to impact native flora and fauna, contains a biosecurity risk, and contains land mapped as koala habitat. The development seeks to remove native vegetation which has the potential to impact native flora and fauna and therefore this chapter applies.

As noted above, insufficient information regarding the proposed tree removal has been provided to enable an appropriate assessment under this Chapter of the DCP.

B3 – Environmental Management

This chapter applies to development that has the potential to produce air pollution, has the potential to produce adverse offensive noise, or involves earthworks.

The objectives of this chapter are:

- To ensure air quality is not negatively impacted on by dust and odour in recognition of the associated human health impacts;
- To identify potentially offensive noise to ensure it is managed within the relevant legislative requirements; and

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

- To facilitate earthworks so as to minimise potential environmental impacts, such as erosion or the release of sulfuric acids as identified by the Local Environmental Plan.

Noise

To determine whether the proposed development was suitable from an acoustic perspective, a Noise Impact Assessment was requested. However, has not been provided. Therefore, insufficient information has been provided to determine whether the proposal is suitable from a noise perspective.

Air Quality

Dust generated during construction is expected to be minimal, subject to conditions of consent requiring erosion and sediment control be carried out in accordance with the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) and the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust). The seniors housing development would not cause any ongoing air quality impacts during the operational phase of the development.

Earthworks

As discussed at clause 7.2 above the proposed development involves earthworks for the construction of the basement level. The impacts of the proposed earthworks can be mitigated through conditions of consent.

B4 – Drainage and Water Quality

This section applies to development that increases impervious surfaces, drains to the public drainage system, or involves a controlled activity within 40m of waterfront land.

The objectives of this chapter are:

- To ensure a stormwater drainage plan is submitted when development either increases impervious surfaces or drains to the public drainage system;
- To ensure the stormwater drainage plan details a legal and physical point of discharge to minimise impacts on water balance, surface water and groundwater flow and volume regimes and flooding;
- To implement sustainable mitigation systems that can be maintained using resources available to the maintainer;
- To regulate the impacts on the capacity of the public drainage system, to ensure development does not detrimentally impact on water quality through the use of water quality modelling, such as small scale stormwater water quality model (SSSQM) or model for urban stormwater improvement conceptualisation (MUSIC), and subsequent water sensitive urban design (WSUD) measures;
- To safeguard the environment by improving the quality of stormwater run-off, to ensure water quality is protected and maintained during the construction phase through the conditioning of appropriate measures; and
- To provide further guidance to clauses in the local environmental plan relating to water quality for development in drinking water catchments, and to protect and retain riparian corridors as localities of environmental importance.

A stormwater management plan was submitted with the application. However, a request for information was issued by Council which sought further information in regard to the proposed stormwater design to demonstrate that it was compliant with relevant criteria. A response to this additional information request was not provided and therefore the development in its current form is non-compliant with this chapter.

B5 – Flooding

This section applies to all development on flood prone land.

The objectives of the chapter are:

- To ensure development satisfies the provisions of the LEP;
- To provide detailed controls for the assessment of development proposed on flood prone land in accordance with the Environmental Planning and Assessment Act 1979;
- To ensure flood risk is considered as early as possible in the planning and development process, based on the best available flood information, to reduce the impact of flooding and flood liability on individual owners and occupiers of flood prone land;
- To treat floodplains as an asset, specialising in uses that are productive and minimise risk to life during major weather events;
- To ensure that the use and development of flood prone land includes risk consequences that are manageable, to implement the principles of the NSW Government 'Flood Risk Management Manual' (as updated from time to time), Construction of Buildings in Flood Hazard Areas (Australian Building Codes Board) and Council's Floodplain Risk Management Policy and flood hazard maps as identified within Figure BF;
- To ensure that appropriate controls are applied to development on land where more than a minimal risk is present;
- To ensure development on land identified as floodway is restricted to low risk development; and
- To ensure the capacity of the floodway to convey and contain floodwaters is not diminished.

The rear of the site is flood prone, specifically high and low hazard flood fringe. The proposed building is located outside of the areas impacted by flooding and therefore the proposal is compatible with the flood function and behaviour on the land. The proposed buildings will not adversely affect flood behaviour and will not adversely affect the safe occupation and efficient evacuation of people. Notwithstanding, should the proposal be supported, a condition will be recommended requiring that a flood emergency response plan is prepared due to the developments proximity to flood prone land.

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.

The objectives of this chapter are:

- To ensure that the impacts of traffic generating development are considered and that the existing level of service of the road network is maintained;
- To ensure development provides adequate on-site parking, loading and servicing spaces;
- To ensure that vehicle access is in a safe location and has minimal impacts on existing transit movements;
- To ensure driveways have adequate sight distances for traffic and pedestrians on footpaths;
- To ensure that vehicle access is located in a safe location, where it least impacts on existing transit movements;
- To ensure driveway exits maximise intersection sight distances for traffic and pedestrians on footpaths;
- To ensure visitor parking is conveniently located and easily identifiable;
- To ensure loading facilities do not adversely impact on the road network and are visually concealed;
- To encourage more active lifestyles and ecologically sustainable development by providing convenient and accessible public transport options;

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

- To recognise the increasing use and demand for electric vehicles and ensure new development is designed to reflect this; and
- To ensure development includes adequate infrastructure to provide for the charging of electric vehicles.

Traffic impacts

The proposal will result in an additional 6 dwellings on the site. The proposal is not considered likely to have adverse impacts on the surrounding road network.

On-site parking provisions

Car parking is compliant with the car parking provisions under Chapter 3, Part 5 Housing for seniors and people with a disability of SEPP Housing.

On-site parking access

Access is proposed via one crossover from Soldiers Point Road located in the south west corner of the site. Council requested that swept paths and cross sections of the proposed driveway be provided to demonstrate that it was compliant with the DCP. This information was not provided and therefore it is unclear whether the proposed access is suitable.

Chapter C – Development Types

The proposed development includes seniors housing. Given Chapter 4 Design of residential apartment development of the Housing SEPP applies, Chapter C5 chapter does not.

C8 – Ancillary Structures**C8.A – Ancillary Structures****Objectives**

- To provide further guidance for ancillary structures to ensure consistent and desired amenity is attained
- To ensure ancillary structures do not adversely impact upon the amenity of the surrounding area
- To ensure ancillary structures are consistent in terms of height, bulk and scale with the surrounding area

Control C8.16 – Front fences (including forward of the building line)

Maximum height of 1.2m and is not of solid infill construction.

Assessment The proposed front fence is 1.2m high.

Control C8.17 – Front fences (including forward of the building line)

Maximum height of 1.5m along main roads and secondary street frontages.

Assessment N/A

Control C8.18 – Front fences (including forward of the building line)

Compatible with street facilities, such as mailboxes, and allow easy access to public utilities.

Assessment The front fence is compatible with street facilities with mail boxes provided within the front setback.

Control C8.19 – Side and rear fences

Maximum height of 1.8m.

Assessment Side and rear fences are not proposed.

Page 61 of 77

16-2024-345-1

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

C8 – Ancillary Structures	
Control	C8.20 – Side and rear fences Side fences must not encroach on the front setback area of any dwelling.
Assessment	N/A
Control	C8.21 – Side and rear fences Fencing materials should reflect context and character of the area.
Assessment	N/A
Control	C8.22 – Side and rear fences Fences within the root zone of an existing tree must be constructed of light weight suspended panels supported by posts with pier footings.
Assessment	N/A
Control	C8.23 – Retaining walls Maximum height of 1m. Retaining walls are proposed within the side setback areas. The retaining walls range in height from 0.6m to 2.6m. The larger retaining wall is due to the proposed cut for the basement level and is not considered likely to result in adverse visual or amenity impacts with landscaping provided between it and the side boundaries.
Assessment	
Control	C8.24 – Retaining walls Masonry construction within 0.9m of the property boundary when greater than 0.6m in height.
Assessment	All retaining walls will be of masonry construction.
Control	C8.25 – Retaining walls Retaining walls are wholly contained within the site.
Assessment	Retaining walls are located wholly within the sites boundaries.

Chapter D – Specific Areas

The proposed development is not located within a DCP Specific Area.

Section 4.15(1)(a)(iiia) – Any planning agreement or draft planning agreement entered into under section 7.4

There are no planning agreements or draft planning agreements which have been entered into under section 7.4 of the EP&A Act which are relevant to the development.

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

The following sections within the EP&A Regulation 2021 apply to the development, and have been considered through the assessment of this application:

Section 61 – Additional matters that consent authority must consider

In regard to section 61(1) of the EP&A Regulations 2021, Council has considered the Australian Standard AS 2601—2001: The Demolition of Structures in the assessment of this application. Appropriate conditions can be imposed on the consent if the application is approved.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

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

There are positive social and economic benefits associated with the development in that it will provide additional housing in the area and create job opportunities during construction.

Despite the positive social and economic aspects related to housing supply, these are not outweighed by the developments potential to impact the amenity of neighbouring properties and future residents.

Impacts on the Built Environment

The proposed development in its current form is considered to have a potential adverse impact on the built environment due to the number of non-compliances proposed and insufficient information being provided to demonstrate that the proposal is suitable.

Impacts on the Natural Environment

A number of additional studies and/or further information with regard to the provide studies was requested of the proponent to enable the assessment of the potential impacts on the natural environment. These were not provided and as such it is considered that there is Insufficient and inadequate information to determine the developments impacts on the natural environment.

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

Whilst it is considered that the site is capable of supporting a senior's housing development, it is considered that the proposed development, in its current form, is not suitable for the site due to its overall bulk and scale and as demonstrated through the number of non-compliances proposed.

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

The application was exhibited from 7 August 2024 to 21 August 2024, in accordance with the provisions of the Port Stephens Council Community Engagement Strategy. Four submissions were received during this time. The matters raised during the exhibition period have been detailed in the table below.

Matter raised	Response
Height Limit	
A number of submissions raised concern with the development breaching the height limit and the impacts it would cause including overshadowing and view loss.	The proposed variations to the building height have not been supported by Council staff. Refer to Attachment A.
Overshadowing	
Concern was raised that the proposal would significantly overshadow neighbouring properties from both the built form and the landscaping proposed.	A detailed assessment of overshadowing, privacy and amenity impacts have been undertaken. It was found the neighbouring property to the sites south west maintains 3 hours of solar access (between 9am – 12pm). The neighbouring property to the sites south east, also maintains 3 hours of solar access (between 9am – 12pm). This is compliant with relevant controls.
Overdevelopment	

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

A number of submissions noted that the proposal was an over development of the site.	Due to the number of non-compliances proposed, Council staff consider the proposed development is an overdevelopment of the site.
Out of character	
A number of submissions noted that the proposal was out of character, particularly given the sites zoning.	As discussed throughout this report, it is considered that the proposed development is out of character with area which is exacerbated by the number of non-compliances proposed.
Concern with the use of the development	
Two submissions raised concern with the units being used for purposes of than for seniors housing as proposed, such as for short term rental accommodation.	<p>Should the proposal be supported, it would be approved as seniors housing. A condition would be recommended which requires that a restriction be placed on title prior to the issue of an occupation certificate limiting the use of any accommodation on the property to be for seniors housing as defined under the Environmental Planning and Assessment Regulation 2021 and State Environmental Planning Policy (Housing) 2021 (Housing SEPP). An ongoing use condition would also be recommended.</p> <p>In addition, the Housing SEPP does not allow for seniors housing to be used as short-term rental accommodation.</p>
Staging	
A submission noted the limited detail provided for staging. It was noted that it was unclear how car parking would be accessed for stage 1 and what the stage 2 land would be used for when stage 1 is completed.	Clearer staging plans have since been provided.
View loss	
One submission raised concern with regard to the proposal impacting views from their balcony.	<p>Given the proposed developments scale and location, it is considered that the proposal will have visual impacts in terms of view loss to the neighbouring properties those to the north and south.</p> <p>The Land and Environment Court case <i>Tenacity Consulting v Warringah</i> (2004) NSWLEC 140, established a four step assessment process to be used when assessing view loss/sharing from development. An assessment against the principle is provided below:</p> <p>Step One – Assessment of the views to be affected.</p> <p>In <i>Tenacity</i>, it was determined that water views are valued more highly than land</p>

views. In this case, the view is a mixture of unobstructed water views and obstructed water views.

Step Two – Consideration from what part of the property the views are obtained

In regard to this step it was noted in *Tenacity* that the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. It was noted that the expectation to retain side views and sitting views is often unrealistic.

In this case, there are views potentially being impacted from neighbouring properties side, rear and front boundaries.

Step Three – Assessment of the extent of the impact

In *Tenacity*, it was noted that a view loss assessment should be conducted for the whole of the property, not just for the view that is affected. An assessment of the view loss to the neighbours to the direct north and south as well as an assessment of the view loss to property to the west have been undertaken below.

21 and 27 Soldiers Point Road

These properties exist to the north and south of the site and have direct frontage to the waterfront. Both lots contain single dwellings and have unobstructed water views to the east and obstructed water views to the south and north, respectively.

The views looking south and north from the properties are across side boundaries and will be impacted by the proposed development. The lots currently benefit from larger side views due to the development on the subject site being single storey and significantly setback from the waterfront. Notwithstanding, it is considered that view loss for these properties would be minor, as the proposed developments rear setback is compliant with relevant controls and the water views to the direct east which are rear boundary views, remain unobstructed by the proposed development.

	<p><u>25 Soldiers Point Road</u></p> <p>The development to the sites south at 25 Soldiers Point Road contains a double storey multi-dwelling housing development. The site currently obtains views across side boundaries to the north east and east. The current views are benefitted by the single storey nature of the existing development on the subject site and the neighbouring dwelling at 27 Soldiers Point Road. Even if the proposed development had a compliant building height and setbacks, it is considered that the units on this site would lose some of its current views. Noting this, it is considered that the proposed development will result in moderate view impacts to 25 Soldiers Point Road, noting some views will be maintained.</p> <p><u>10 Soldiers Point Road</u></p> <p>The development to the sites west at 10 Soldiers Point Road contains a three storey residential flat building. The site currently obtains an obstructed water view to the east.</p> <p>The view loss for this site is considered minor which is already obstructed as a result of the sites distance from the view, existing development on the site and the flat topography of the land. The views from this property will remain obstructed as a result of the proposed development.</p> <p>It is noted that the most significant view loss impacts from the proposed development are side views, which as per <i>Tenacity</i>, are often unrealistic to retain.</p> <p>Step Four – Assessment of the reasonableness of the proposal that is causing the impact</p> <p>In <i>Tenacity</i>, it was identified that a development that complies with all planning controls would be considered more reasonable than one that breaches them. The development proposes a number of non-compliances. However, even if the development were to be compliant, it is considered that view loss would continue to be moderate for the sites southern neighbour</p>
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ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

	<p>at 25 Soldiers Point Road and minor for the sites remaining neighbours.</p> <p>Having regard to the <i>Tenacity</i> principles, it is considered that there is minimal opportunity for an alternate design to prevent view loss in this instance without a significant reduction in building height, significantly below the maximum limit which even then, would cause some view loss. As a result, it is considered that whilst the view loss is minor-moderate, the impact is reasonable given a compliant building would result in the same or similar impact and that the most affected views are side views.</p>
Impact on trees	
A number of submissions raised concern with regard to the removal and impact on trees both on the site and on neighbouring properties.	Insufficient information has been provided to assess tree removal and whether trees on neighbouring properties will be affected.
Inconsistency with DA information	
One submission noted that the documents and plans provided with the DA lacked information and had inconsistencies including no Arborist report and differences between plans.	Noted.
Permissibility	
<p>One submission acknowledges that seniors housing is permitted under the Housing SEPP but notes that the proposal is characterised as a residential flat building, which is a prohibited land use in the zone under the Port Stephens Local Environmental Plan (PSLEP) 2013. The submissions noted that this needs to be considered when granting consent.</p> <p>The submission noted that the development should not be approved in stages due to permissibility concerns.</p>	<p>The proposed land use is for seniors housing, which as acknowledged in the submission, is a permitted land use under the Housing SEPP. Neither the Housing SEPP nor the definition for Seniors Housing under the PSLEP, restricts the built form to which the housing for seniors is to be provided. The proposed built form is a residential flat building to be used for seniors housing (the land use), therefore both Chapter 4 (Design of residential apartment development) and Chapter 5 (Housing for seniors and people with a disability) apply.</p> <p>The staging of the development will not impact permissibility, with both stages being proposed as seniors housing.</p>
Departures of Development Standards	
The submission noted that insufficient assessment has been provided in the 4.6 variation request for the proposed departures to development standards (being the height, floor space ratio and 45 degree setback), particularly with regard to impacts to the objectors property.	The departures from development standards have each been assessed under Clause 4.6 and have not been supported. Refer to Attachments A and B.

<p>It was noted that the departures proposed results in significant detrimental impacts to the objector's property and public places.</p>	
<p align="center">Housing SEPP and the Seniors Housing Design Guide</p>	
<p>One submission discussed the number of non-compliances with the Housing SEPP and the Seniors Housing Design guide (SHDG) proposed, these are summarised below.</p> <p><u>Setbacks</u> It noted that the Statement of Environmental Effects had not appropriately addressed the control in the Housing SEPP which requires that any storey above the second storey of a senior's housing development is to be setback at 45 degree angle. The submissions noted that strict compliance with this control would require the deletion of the third storey.</p> <p>In regard to the height, the submission noted non-compliance with the height control and argued that this has contributed to the overall bulk and the proposal being overdevelopment.</p> <p><u>Height</u> The submissions notes that the 4.6 variation has inconsistencies with the plans. The submission disagreed with the findings of the applicants 4.6 variation requested which argued that the exceedance achieved a better planning outcome. A number of arguments were provided in the submission detailing as to why the proposal did not meet the requirements of s4.6 of the PSLEP, this included:</p> <ul style="list-style-type: none"> • The height results in an unacceptable bulk and scale. • The height exceedance results in adverse impacts to neighbouring properties. • The design is not sympathetic to existing development. • There a no similar developments that exceed the height limit. • The height results in overlooking. <p><u>Density</u> The submissions notes that the non-compliance with the floor space ratio (FSR) control demonstrate that the proposal is overdevelopment.</p> <p><u>Built form</u></p>	<p>The proposal has been assessed against the SHDG and the Housing SEPP in detail in this report including the proposed variations.</p>

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

The submissions notes that the proposal is inconsistent with the objectives of the SHDG for low density development for a number of reasons.	
Landscaping	
One submission noted that the location of deep soil planting coincided with the location of the stormwater infrastructure.	This was raised in Council's Request for Information which has not yet been responded to in full.
Finished floor level	
One submission noted that the finished floor level is located below the flood planning level and that any change to the finished floor level would impact the building height.	The built form (with the exception of the retained boatshed) is outside of the flood planning area.

Section 4.15(1)(e) The public interest

There would be positive social and economic impacts as a result of the development. The proposal includes 7 new dwellings for seniors housing, meeting the housing needs of the locality.

However, it is considered that the proposal is not in the public interest due to the number of non-compliances proposed and insufficient information provided to demonstrate that the proposal is suitable as proposed.

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

S7.11 development contributions apply to the development for the creation of 6 dwellings.

Section 7.12 – Fixed Development Consent Levies

Not applicable.

CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application cannot be supported.

ATTACHMENT A – CLAUSE 4.6 ASSESSMENT - HEIGHT**CLAUSE OBJECTIVES AND EXCLUSIONS****Clause 4.6 – Exceptions to Development Standards****Clause 4.6(1) – Clause Objectives**

Clause 4.6 provides a mechanism to vary development standards.

The objectives of the clause are as follows:

- a) To provide an appropriate degree of flexibility applying certain development standards to particular development.*
- b) 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

Development consent may be granted even though the development would contravene a development standard imposed by the PSLEP or SEPP, unless the development standard is expressly excluded under Clause 4.6(8). Section 84 and 108 of the Housing SEPP is not excluded from the operation of Clause 4.6, and therefore the proposed variation has been considered below.

PROPOSED VARIATION REQUEST

The development application includes a written request to vary a development standard(s) in the PSLEP 2013 and the Housing SEPP. The written request is made in accordance with Section 35B of the Environmental Planning and Assessment regulation 2021.

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

Development Standard	Proposed Variation	Extent of Variation (%)
Section 84 and Section 108 of the Housing SEPP – 9.5m	1m	10.52%

ASSESSMENT**Clause 4.6(3) – Request to vary development standards****Clause 4.6(3)(a) – Compliance is unreasonable or unnecessary**

Clause 4.6(3)(a) provides that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances.

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

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

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

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.*

The applicant's Clause 4.6 Variation request asserts that compliance with Section 108 of the Housing SEPP is unreasonable or unnecessary as the objectives of the standard are achieved notwithstanding non-compliance with the standard. The Clause 4.6 Variation Request refers to the objectives of Section 108 of the Housing SEPP. The objective of this Section is to *identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

A summary of the applicant's demonstration of compliance with this objective is provided below.

- The underlying intent of Section 108 is to control the built form and scale of development within the area and to adjoining development. In this case, the PSLEP sets out a height of building limit of 9m, however the height of building limit set out by the SEPP Housing is 9.5m. The area of exceedance relates to the proposed Level 2 balcony roof of Building A with the bulk of the building complying with the height limit.
- The development has been designed in accordance with the relevant standards set out in the Housing SEPP, the PSLEP and the PSDCP.
- Strict compliance with the Height of Building limit set out by the Housing SEPP alone does not determine suitability of the development within the context of the site and adjoining development.
- The proposed development has demonstrated consistency with the relevant objectives of the R2 Low Density Residential land use zone.
- Notwithstanding the numerical non-compliance, the proposal also satisfies Section 3 – Principles of this Policy of the Housing SEPP.

Section 84 of the Housing SEPP does not have a specified objective. As per the Department of Planning and Environment's 'Guide to Varying Development Standards', if a development standard does not have an objective, the written request must establish, through research and an understanding of the background to the standard, the environmental planning outcome the standard is seeking to achieve. The Clause 4.6 variation request fails to assess the proposed height breach against s84 of the Housing SEPP.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.Council Assessment

It is considered that the applicant's Clause 4.6 variation request has failed to appropriately demonstrate that the development standard is unreasonable or unnecessary in the circumstances. The developments design in its current form proposes a number of non-compliances with relevant policies including the Housing SEPP, the PSLEP, and the Apartment Design Guide, the Seniors Housing Design Guide and the PSDCP and therefore this statement is not considered to be well founded.

The proposal is consistent with some of the objectives of the R2 zone however, has failed to demonstrate that the proposal will protect and enhance the existing residential amenity and character of the area due to the number of non-compliances proposed and insufficient information being provided to demonstrate otherwise.

The Clause 4.6 variation request did not assess the proposed variation in the context of Section 84 of the SEPP. This clause specifically applies to seniors housing in the form a residential flat building, where residential flat buildings are prohibited under a LEP and therefore is important context in determining whether the development standard is unreasonable or unnecessary.

Based on the above, it is considered that the proposal does not clause satisfy 4.6(3)(a).

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

Clause 4.6(3)(b) provides that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard.

The applicant's Clause 4.6 request notes that there is sufficient environmental planning grounds to contravene the development standard as:

- The proposed development has been designed to respond to the topography of the site.
- The proposed development provides substantial setbacks from the foreshore such that the height of building exceedance will not be visually dominant to users of the foreshore area. The building in context does not detract from or impact on the existing area due to the built form established.
- The proposed development achieves compliant architectural design regarding setbacks, overshadowing privacy and view loss. A compliant building height would not improve the buildings appropriateness in the context and character of the area.
- The development is in the public interest as it is consistent with the objectives of the R2 Low Density Residential zone.
- The height of building variation proposed does not compromise the natural environment in which the site is located and is appropriate in the context of surrounding built form and neighbourhood character

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

Council Assessment

It is considered that the applicant's assessment of the height breach demonstrates that there are sufficient environmental planning grounds to contribute to the justification of a contravention of the development standard. Notwithstanding, whilst the height breach alone does not wholly contribute to the building being inconsistent with the streetscape character, it is a contributing factor to an overall overdevelopment of the site which is compounded by a number non-compliances. The

applicants Clause 4.6 variation request fails to consider the other variations proposed and the potential cumulative impacts of these variations whilst not necessarily required to satisfy Clause 4.6, it is considered to be a key factor.

CONCLUSION

The proposed development is considered to be inconsistent with the objectives of Clause 4.6 as the applicant Clause 4.6 variation request has failed to appropriately demonstrate that the development standard is unreasonable or unnecessary in the circumstances.

ATTACHMENT B – CLAUSE 4.6 ASSESSMENT – FLOOR SPACE RATIO**CLAUSE OBJECTIVES AND EXCLUSIONS****Clause 4.6 – Exceptions to Development Standards****Clause 4.6(1) – Clause Objectives**

Clause 4.6 provides a mechanism to vary development standards.

The objectives of the clause are as follows:

- c) To provide an appropriate degree of flexibility applying certain development standards to particular development.*
- d) 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

Development consent may be granted even though the development would contravene a development standard imposed by the PSLEP or SEPP, unless the development standard is expressly excluded under Clause 4.6(8). Section 108 of the Housing SEPP is not excluded from the operation of Clause 4.6, and therefore the proposed variation has been considered below.

PROPOSED VARIATION REQUEST

The development application includes a written request to vary a development standard(s) in the PSLEP 2013 and the Housing SEPP. The written request is made in accordance with Section 35B of the Environmental Planning and Assessment regulation 2021.

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

Development Standard	Proposed Variation	Extent of Variation (%)
Section 108 of the Housing SEPP – 0.5:1 or less	0.1:1	20%

ASSESSMENT**Clause 4.6(3) – Request to vary development standards****Clause 4.6(3)(a) – Compliance is unreasonable or unnecessary**

Clause 4.6(3)(a) provides that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances.

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

- 6. The objectives of the development standard are achieved notwithstanding non-compliance with the standard,*

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.

7. *The underlying objective or purpose of the development standard is not relevant to the development,*
8. *The objective or purpose of the development standard would be defeated or thwarted if compliance was required,*
9. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard, and*
10. *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.*

The applicant's Clause 4.6 Variation request asserts that compliance with Section 108 of the Housing SEPP is unreasonable or unnecessary as the objectives of the standard are achieved notwithstanding non-compliance with the standard. The Clause 4.6 Variation Request refers to the objectives of Section 108 of the Housing SEPP. The objective of this Section is to *identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.*

A summary of the applicant's demonstration of compliance with this objective is provided below.

- The underlying intent of Section 108 is to control the built form and scale of development within the area and to adjoining development. In this case, the PSLEP sets out a height of building limit of 9m but does not prescribe a site based FSR.
- The development has been designed in accordance with the relevant standards set out in the Housing SEPP, the PSLEP and the PSDCP as relevant.
- Strict compliance with the FSR set out by the SEPP Housing alone does not determine suitability of the development within the context of the site and adjoining development.
- The proposed development has demonstrated consistency with the relevant objectives of the R2 Low Density Residential land use zone.
- Notwithstanding the numerical non-compliance, the proposal also satisfies Section 3 – Principles of this Policy of the Housing SEPP.
- The proposal meets the underlying intent of Section 108 as:
 - o The proposal is consistent with the existing and desired density of development within the locality as evidenced by the absence of a FSR applied to the site by the PSLEP, the FSR variation does
 - o The development has been designed in accordance with the design principles of the Housing SEPP and the ADG.
 - o The FSR variation does not result in an exceedance to the height limit nor result in adverse amenity impacts.
 - o The FSR variation does not result in non-compliances with the setbacks controls.

ITEM 1 - ATTACHMENT 3 PLANNER'S ASSESSMENT REPORT.Council Assessment

It is considered that the applicant's Clause 4.6 variation request has failed to appropriately demonstrate that the development standard is unreasonable or unnecessary in the circumstances. The developments design in its current form proposes a number of non-compliances with relevant policies including the Housing SEPP, the PSLEP, and the Apartment Design Guide (ADG), the Seniors Housing Design Guide (SHDG) and the PSDCP and therefore this statement is not considered to be well founded.

The proposal is consistent with some of the objectives of the R2 zone however, has failed to demonstrate that the proposal will protect and enhance the existing residential amenity and character of the area due to the number of non-compliances proposed and insufficient information being provided to demonstrate otherwise.

The applicants 4.6 variation request asserts that the bulk and scale of the development is consistent with the desired density of the development within the locality based on there being no FSR limit for the site under the PSLEP. Bulk and scale is not only measured by the FSR of a development but rather can be measured with other controls including height limits and setback controls in which the proposed development is non-compliant with. It is therefore considered that the absence of a FSR limit for the site does not indicate that the proposed development is consistent with the desired density of the area.

Based on the above, it is considered that the proposal does not satisfy clause 4.6(3)(a).

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

Clause 4.6(3)(b) provides that development consent must not be granted to development that contravenes a development standard unless the consent authority is satisfied the applicant has demonstrated that there are sufficient environmental planning grounds to justify the contravention of the development standard.

The applicant's Clause 4.6 request notes that there is sufficient environmental planning grounds to contravene the development standard as:

- The proposed development achieves compliant architectural design regarding setbacks, overshadowing privacy and view loss. A compliant FSR would not improve the buildings appropriateness in the context and character of the area.
- The development is in the public interest as it is consistent with the objectives of the R2 Low Density Residential zone.
- The FSR variation proposed does not compromise the natural environment in which the site is located and is appropriate in the context of surrounding built form and neighbourhood character. It is crucial to note that despite the proposed FSR variation, the development adheres to the broader principles of ecologically sustainable development by integrating economic, environmental, and social considerations into the planning process.

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

Council Assessment

It is considered that the applicant's assessment of the FSR variation does not satisfactorily demonstrate that there are sufficient environmental planning grounds to justify the contravention of the development standard. Insufficient information has been provided to demonstrate the proposed variation does not result in additional environmental impacts compared to that of a

compliant design eg. Whether a compliant design could result in the retention of additional trees, increased setbacks, a compliant stormwater design, reduced shadowing etc.

As noted in the Clause 4.6 variation assessment for the height variation, the applicant's variation request for the FSR also fails to consider the other variations proposed and the potential cumulative impacts of these variations. Whilst not necessarily required to satisfy Clause 4.6, it is considered to be a key factor in determining whether there are sufficient environmental planning grounds to justify the contravention.

CONCLUSION

The proposed development is considered to be inconsistent with the objectives of Clause 4.6 as the applicant Clause 4.6 variation request has failed to appropriately demonstrate that the development standard is unreasonable or unnecessary in the circumstances and that there are sufficient environmental planning grounds to justify the contravention of the development standard.

Recommended Conditions of Consent

General Conditions

1	Approved plans and supporting documentation				
	Development must be carried out in accordance with the following approved plans and documents, except where the conditions of this consent expressly require otherwise.				
	Approved plans				
	Plan number	Revision number	Plan title	Drawn by	Date of plan
	A-A0.070	B	Demolition and Bulk Excavation	djrd	22/10/2024
	A-A1.011	M	Site Plan	djrd	22/10/2024
	A-A1.100	I	Lower Ground 2 Plan	djrd	22/10/2024
	A-A1.101	I	Lower Ground Plan	djrd	22/10/2024
	A-A1.102	H	Ground Plan	djrd	22/10/2024
	A-A1.103	I	Level 1 Plan	djrd	22/10/2024
	A-A1.104	H	Roof Plan	djrd	22/10/2024
	A-A2.060	H	Elevations Sheet 1	djrd	22/10/2024
	A-A2.062	H	Elevations Sheet 2	djrd	22/10/2024
	CIV-011	B	Civil Works Plan - Lower Lower Ground Floor	DRB	1/11/2024
	CIV-012	B	Civil Works Plan - Lower Ground	DRB	1/11/2024
	CIV-013	B	Civil Works Plan – Ground Floor	DRB	1/11/2024
	CIV-014	B	Civil Works Plan – First Floor	DRB	1/11/2024

CIV-031	B	Erosion and Sediment Control Plan	DRB	1/11/2024
CIV-032	B	Erosion and Sediment Control Details	DRB	1/11/2024
CIV-033	B	Erosion and Sediment Control Notes	DRB	1/11/2024
SP 01	0	Site Plan – Overall Landscape Coverage	Edwina Stuart	5/02/2025
LP 01	0	Landscape Plan – Lower Ground	Edwina Stuart	5/02/2025
LP 02	0	Landscape Plan - Ground	Edwina Stuart	5/02/2025
LP 03	0	Landscape Plan – Level 1	Edwina Stuart	5/02/2025
TP 01	0	Tree Replacement Plan	Edwina Stuart	5/02/2025
PS 01	0	Planting Schedule	Edwina Stuart	5/02/2025

Approved Documents			
Document title	Version No.	Prepared by	Dated
Acoustic Report	1	Reef Acoustic Consulting	1 November 2024
Arborist Report	-	Abacus Tree Services	4 February 2025
Report on Geotechnical Investigation	-	Stantec	4 November 2024
Plan of Management	-	Armana Resort	October 2024
Demolition & Construction Waste Management Plan	-	Waste Audit	November 2024
Operational Waste Management Plan	-	Waste Audit	November 2024

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Condition reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

2	Approved Report Recommendations
	<p>Construction of the development must comply with the recommendations of the following reports:</p> <ul style="list-style-type: none"> a) Arborist Report prepared by Abacus Tree Services, dated 4 February 2025; b) Acoustic Report prepared by Reef Acoustic Consulting, dated 1 November 2024, reference: 2022.053_AmarnaResortNelsonBay; c) Report on Geotechnical Investigation prepared by Stantec, dated 4 November 2024; d) Demolition & Construction Waste Management Plan prepared by Waste Audit, dated November 2024. <p>Details must be provided to the certifier demonstrating compliance.</p>
	Condition reason: To ensure that development is carried out in accordance with the recommendations of the report.
3	Protection of existing vegetation and natural landscape features
	<p>The trees identified for retention on the 'Site Plan' (SP 01) prepared by Edwina Stuart Landscape Design, dated 5 February 2025 must be retained.</p> <p>No vegetation or natural landscape features other than that authorised for removal under DA 7-1994-117 (as modified), must be disturbed, damaged or removed. No additional works or access/parking routes transecting the protected vegetation must be undertaken without Council Approval.</p>
	Condition reason: To ensure that vegetation is protected during works.
4	Building Code of Australia
	<p>All building work must be carried out in accordance with the BCA. In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.</p>
	Condition reason: To ensure that all building works are completed in accordance with the Building Code of Australia.
5	Sign on Building
	<p>Except in the case of work only carried out to the interior of a building or Crown building work, a sign must be erected in a prominent position on the site showing the name, address and telephone number of the Principal Certifying Authority for the work, the name of any principal contractor and their after-hours contact number, and must contain a statement that unauthorised entry to the site is prohibited.</p> <p>The sign must be maintained while the work is being carried out and is to be removed when the work is completed.</p>
	Condition reason: To require signage that details the relevant contacts of a development during construction

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

6	Separate Approval for signs
	A separate development application for any proposed signs additional to those signs approved as part of this development consent, must be provided to, and approved by, the Consent Authority or under the provisions of the <i>State Environmental Planning Policy (Exempt and Complying Codes) 2008</i> if applicable prior to the erection or display of any such signs.
	Condition reason: To ensure that the development is restricted to the approved signage within the development consent or that signage is permitted in accordance with <i>State Environmental Planning Policy (Exempt and Complying Codes) 2008</i> .
7	Outdoor lighting
	All lighting must comply with AS 1158 'Lighting for Roads and Public Spaces', AS 4282 'Control of Obtrusive Effects of Outdoor Lighting'.
	Condition reason: To ensure lighting complies with relevant standards and conditions.
8	Roof mounted equipment
	All roof mounted equipment such as air conditioning units, service pipes and vents etc., required to be installed must be concealed within the external walls of the development or adequately screened so as not to be visible from a public place.
	Condition reason: To ensure roof mounted equipment is appropriately concealed/screened.
9	Relationship with existing development consents
	The development must not contravene any condition imposed under existing development consent 7-1994-117 (as modified).
	Condition reason: To ensure the development does not contravene existing conditions of consent that apply to the site.
10	Skin Penetration Premises
	Should the premises include skin penetration procedures; the design, construction, and fit-out, of the premises must comply with all applicable Acts, Regulations, codes and standards including: a) the <i>Public Health Act 2010</i> . b) the <i>Public Health Regulation 2012</i> . c) the <i>Local Government (General) Regulation 2005</i> .
	Condition reason: To ensure the building complies with all applicable legislation should skin penetration occur.

Building Work**Before issue of a construction certificate**

16-2024-581-1

4

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

11	<p>Erosion and sediment controls plan</p> <p>Before the issue of a Construction Certificate, an erosion and sediment control plan must be prepared by a suitably qualified person in accordance with the following documents and provided to the certifier:</p> <ol style="list-style-type: none">the guidelines set out in 'Managing Urban Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time), andThe 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust) (as amended from time to time). <p>Condition reason: To ensure no substance other than rainwater enters the stormwater system and waterways.</p>																																										
12	<p>Section 7.11 development contributions</p> <p>A monetary contribution is to be paid to Council for the provision of 4 additional units, pursuant to Section 7.11 of the <i>Environmental Planning & Assessment Act 1979</i> and the Port Stephens Local Infrastructure Contributions Plan 2020 towards the provision of the following public facilities:</p> <table><tr><th>Facility</th><th>Per Lot/Dwelling</th><th>Total \$</th></tr><tr><td>Civic Administration – Plan Management</td><td>\$327</td><td>\$1,308</td></tr><tr><td>Civic Administration – Works Depot</td><td>\$633</td><td>\$2,532</td></tr><tr><td>Town Centre Upgrades</td><td>\$1,706</td><td>\$6,824</td></tr><tr><td>Public Open Space, Parks & Reserves</td><td>\$1,043</td><td>\$4,172</td></tr><tr><td>Sports & Leisure Facilities</td><td>\$981</td><td>\$3,924</td></tr><tr><td>Cultural & Community Facilities</td><td>\$667</td><td>\$2,668</td></tr><tr><td>Road Works</td><td>\$1,785</td><td>\$7,140</td></tr><tr><td>Shared Paths</td><td>\$1,644</td><td>\$6,576</td></tr><tr><td>Bus Facilities</td><td>\$5</td><td>\$20</td></tr><tr><td>Fire & Emergency Services</td><td>\$121</td><td>\$484</td></tr><tr><td>Flood & Drainage</td><td>\$938</td><td>\$3,752</td></tr><tr><td>Kings Hill Urban Release Area</td><td>\$151</td><td>\$604</td></tr><tr><td>Total</td><td>\$10,001</td><td>\$40,004</td></tr></table> <p>Payment of the above amount must apply to Development Applications as follows:</p> <p>a) Building work only - prior to issue of the Construction Certificate.</p> <p>Note: The amount of contribution payable under this condition has been calculated at the date of consent. In accordance with the provisions of the Contributions Plan, this amount must be indexed at the time of actual payment in accordance with the applicable Index.</p> <p>Condition reason: To ensure that a monetary contribution as specified is paid to Council in accordance with Section 7.11 of the EP&A Act 1979, and the Port Stephens Council Local Infrastructure Contributions Plan 2020.</p>	Facility	Per Lot/Dwelling	Total \$	Civic Administration – Plan Management	\$327	\$1,308	Civic Administration – Works Depot	\$633	\$2,532	Town Centre Upgrades	\$1,706	\$6,824	Public Open Space, Parks & Reserves	\$1,043	\$4,172	Sports & Leisure Facilities	\$981	\$3,924	Cultural & Community Facilities	\$667	\$2,668	Road Works	\$1,785	\$7,140	Shared Paths	\$1,644	\$6,576	Bus Facilities	\$5	\$20	Fire & Emergency Services	\$121	\$484	Flood & Drainage	\$938	\$3,752	Kings Hill Urban Release Area	\$151	\$604	Total	\$10,001	\$40,004
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ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

13	<p>Housing and Productivity Contribution</p> <p>A housing and productivity contribution is to be made, subject to:</p> <ul style="list-style-type: none"> a) Any exclusion of the application of Subdivision 4 of Division 7.1 of the Act to the development by a planning agreement; and b) Any exemption or reduction provided by the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023 (the Order). <p>In this respect -</p> <ul style="list-style-type: none"> a) The total amount of the housing and productivity contribution, as at the date that this development consent is granted, is \$14,246.00. b) The time by which the housing and productivity contribution must be made is before the issue of a Construction Certificate. c) The payment of the contributions must be made using the NSW Planning Portal. d) If an agreement is entered into as referred to in Clause 19 of the Order, the housing and productivity contribution may be made wholly or partly as a non-monetary contribution. <p>The contribution amount, as specified above, is to be adjusted at the time of payment by multiplying it by the following fraction</p> $\frac{\text{highest PPI number}}{\text{consent PPI number}}$ <p>Where –</p> <p>highest PPI number is the highest PPI number for a quarter following the June quarter 2023 and up to and including the 2nd last quarter before the quarter in which the payment is made; and</p> <p>Consent PPI is the PPI number last used to adjust the base component amount, SBC amount or TPC amount when consent was granted.</p> <p>June quarter 2023 is the quarter commencing on and including 1 April 2023 and ending on and including 30 June 2023; and</p> <p>PPI is the Producer Price Index (Road and Bridge Construction (NSW)) published by the Australian Bureau of Statistics).</p> <p>If the amount adjusted in accordance with this condition is less than the amount at the time consent is granted, the higher amount must be paid instead.</p> <p>Condition reason: To achieve compliance with the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023, as made by the NSW Minister for Planning and Public Spaces.</p>
14	<p>Long Service Levy</p>

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>Before the issue of a Construction Certificate, the long service levy must be paid to the Long Service Corporation under the <i>Building and Construction industry Long Service Payments Act 1986</i>, section 34, and evidence of the payment is to be provided to the principal certifier</p> <p>Condition reason: To ensure the Long Service Levy is paid.</p>
15	<p>Civil engineering plans</p> <p>Before the issue of a Construction Certificate, civil engineering plans prepared by a qualified Engineer, indicating drainage, roads, accessways, earthworks, pavement design, street lighting, details of line-marking, traffic management, water quality and quantity facilities including stormwater detention and disposal, must be prepared in accordance with the approved plans and Council's Infrastructure Specifications.</p> <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p>Note: Under the <i>Roads Act 1993</i>, only the Roads Authority can approve commencement of works within an existing road reserve.</p> <p>Condition reason: To ensure that civil engineering plans have been prepared by a qualified engineers prior to the issue of the Construction Certificate.</p>
16	<p>Stormwater/Drainage Plans</p> <p>Before the issue of a Construction Certificate, detailed stormwater drainage plans must be prepared by a qualified Engineer in accordance with the approved plans, Council's Infrastructure Specifications and the current Australian Rainfall and Runoff guidelines using the Hydrologic Soil Mapping data for Port Stephens (available from Council).</p> <p>The stormwater drainage plans must include detail for the following:</p> <ul style="list-style-type: none"> • A wall structure (or similarly performing solution) to be incorporated along the eastern side of the upper car park driveway, to mitigate the potential for overland flow to spill into the upper car park area. <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p>Condition reason: To ensure that the development is carried out in accordance with the Port Stephens Development Control Plan 2014.</p>
17	<p>Roads Act Approval</p> <p>For construction/reconstruction of Council infrastructure, including vehicular crossings, footpath, kerb and gutter, stormwater drainage, an application must be made for a Roadworks Permit under Section 138 of the Roads Act 1993</p> <p>Condition reason: To ensure that works within the road reserve are approved by a Section 138 Approval of the Roads Act 1993.</p>
18	<p>Construction Site Management Plan</p>

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>Before the issue of a Construction Certificate, a construction site management plan must be prepared, and provided to the principal certifier. The plan must include the following matters:</p> <ul style="list-style-type: none"> a. The location and materials for protective fencing and hoardings on the perimeter of the site; b. Waste management procedures; c. Provisions for public safety; d. Pedestrian and vehicular site access points and construction activity zones; e. Protective measures for tree preservation; f. Details of construction traffic management including: <ul style="list-style-type: none"> i. Proposed truck movements to and from the site; ii. Estimated frequency of truck movements; and iii. Measures to ensure pedestrian safety near the site; g. Details of bulk earthworks to be carried out; h. The location of site storage areas and sheds; i. The equipment used to carry out works; j. The location of a garbage container with a tight-fitting lid; k. Construction Noise Management Plan; l. Dust and vibration control measures; m. The location of temporary toilets; n. The protective measures for the preservation of trees on-site and in adjoining public areas including Christmas Bush Avenue, in accordance with: <ul style="list-style-type: none"> i. AS 4970 – Protection of trees on development sites; ii. An applicable Development Control Plan; <p>A copy of the construction site management plan must be kept on site at all times while work is being carried out.</p> <p>Condition reason: To require details of measures to be undertaken that will protect the public, and the surrounding environment, during site works and construction.</p>
19	<p>Stormwater system Operation and Maintenance Procedure Plan</p> <p>Before the issue of a Construction Certificate, an Operation and Maintenance Plan for the stormwater system must be prepared by a qualified engineer detailing a regular maintenance programme for pollution control devices, covering inspection, cleaning and waste disposal.</p> <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p>Condition reason: To ensure that large stormwater systems have an appropriate operation and maintenance plan prepared by a qualified Engineer.</p>
20	<p>Pre-construction Dilapidation Report</p> <p>A pre-construction dilapidation report including a photographic survey of the following adjoining properties must be provided to the Certifying Authority. The dilapidation report must detail the physical condition of those properties, both internally and externally, including walls, ceilings, roof, structural members and other similar items.</p> <ul style="list-style-type: none"> a) 14A Christmas Bush Avenue, Nelson Bay – Lot 2 DP 1089303 b) 72 Thurlow Avenue, Nelson Bay – Lot 1 DP 1089303

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>c) 70 Thurlow Avenue, Nelson Bay – Lot 4 DP 507368</p> <p>The dilapidation report is to be prepared by a qualified Structural Engineer and the owner of the adjoining property. All costs incurred in achieving compliance with this condition must be borne by the applicant.</p> <p>Where access has not been granted to any adjoining properties to prepare the dilapidation report, the report must be based on a survey of what can be observed externally and demonstrate, in writing, to the satisfaction of the , that all reasonable steps were taken to obtain access to the adjoining properties.</p> <p>No less than 7 days before any site work commences, adjoining building owner(s) must be provided with a copy of the dilapidation report for their property(ies) and a copy of the report(s) must be provided to council (where council is not the principal certifier) at the same time.</p> <p>Condition reason: To establish and document the structural condition of adjoining properties and public land for comparison as site work progresses and is completed and ensure neighbours and council are provided with the dilapidation report.</p>
21	<p>Retaining Walls</p> <p>Before the issue of a Construction Certificate, all retaining walls within 1m of a boundary and exceeding 600mm in height must be designed and certified by a suitably qualified Structural Engineer or a system with a design certificate complying with the relevant Australian Standards.</p> <p>Details demonstrating compliance must be provided to the Certifying Authority.</p> <p>Condition reason: To ensure that retaining walls in proximity to the boundary and over a height are designed and certified by a suitably qualified engineer.</p>
22	<p>Car parking details</p> <p>Before the issue of a construction certificate, a suitably qualified engineer must review the plans which relate to parking facilities and provide written evidence, to the certifier's satisfaction, that it complies with the relevant parts of AS 2890 Parking Facilities- Off- Street Carparking and Council's development control plan.</p> <p>Condition reason: To ensure construction plans for the car park comply with relevant standards.</p>
23	<p>Potential acid sulfate soils</p> <p>Further geotechnical assessment of the site is to be undertaken to determine whether the development works will disturb Potential Acid Sulfate Soils (ASS) prior to release of any Construction Certificate. Should ASS be encountered within the zone of works, an ASS Management Plan is to be prepared by a suitably qualified Geotechnical Engineer and submitted to the Certifying Authority.</p> <p>The recommendations and/or mitigation measures contained within the ASS Management Plan must be complied with during works.</p>

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	Condition reason: To ensure an ASSMP is prepared if required.
24	Flood Design Measures Before the issue of a Construction Certificate, evidence that the following flood related design precautions have been adhered to in the detailed design must be submitted to the Principal Certifying Authority: <ul style="list-style-type: none"> a) In sewerage areas some plumbing fixtures may be located below the Flood Planning Level (FPL). Where this occurs sanitary drainage is to be fitted with a reflux valve to protect against internal sewage surcharge; b) All materials stored at the site and capable of causing harm to the environment must be stored at a level not less than the FPL or suitable bunding must be placed around such materials to a minimum of the FPL; c) All building materials, equipment, ducting, etc., below the FPL must be flood compatible and ducting must be provided with openings for drainage and cleaning; d) All main power supply, heating and air conditioning service installations, including meters must be located above the FPL. All electrical equipment installed below the FPL must be capable of disconnection by a single plug from the power supply; e) All electrical wiring below the FPL must be suitable for continuous submergence in water. All conduits below the FPL must be self-draining. Earth core leakage systems or safety switches are to be installed; f) Wherever possible, the premises must be designed to ensure that plant, equipment, storage tanks or other fixtures or fittings liable to damage by floods are located above the FPL or be moveable to levels above the FPL. Should this not have the ability to occur, they shall be suitable for submergence in water and securely anchored to overcome buoyancy and movement. All storage tanks must be vented to an elevation above the FPL.
	Condition reason: To mitigate the impacts of development within flood prone land and ensure the minimisation of risk to life and property.
25	Mechanical Exhaust System Mechanical exhaust system(s) must comply with AS 1668 'The use and Ventilation and Air Conditioning in Buildings' Parts 1 and 2 (including exhaust air quantities and discharge location points). Details demonstrating compliance must be provided to the Certifying Authority.
	Condition reason: To ensure mechanical exhaust systems are appropriately designed.

Before building work commences

26	Erosion and sediment controls in place Before any site work commences, the certifier must be satisfied the erosion and sediment controls in the erosion and sediment control plan are in place. These controls must remain in place until any bare earth has been re-stabilized in accordance with 'Managing Urban
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ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>Stormwater: Soils and Construction' prepared by Landcom (the Blue Book) (as amended from time to time).</p> <p>Condition reason: To ensure sediment laden runoff and site debris do not impact local stormwater systems and waterways.</p>
27	<p>Tree protection measures</p> <p>Before any site work commences, the principal certifier must be satisfied the measures for tree protection as detailed in the approved Arborist Report, are in place.</p> <p>Condition reason: To protect and retain trees.</p>
28	<p>All Weather Access</p> <p>Before any site work commences, a 3m wide all-weather vehicle access is to be provided from the kerb and gutter to the building under construction for the delivery of materials and use by trades people.</p> <p>No materials, waste or the like are to be stored on the all-weather access at any time.</p> <p>Condition reason: To ensure that adequate vehicular access is provided to and from the site, prior to the commencement of works.</p>
29	<p>Construction Certificate Required</p> <p>In accordance with the provisions of Section 6.7 of the Environmental Planning & Assessment Act 1979 (EP&A Act 1979), construction or subdivision works approved by this consent must not commence until the following has been satisfied:</p> <ul style="list-style-type: none"> a) A Construction Certificate has been issued by a Consent Authority; b) A Principal Certifying Authority (PCA) has been appointed by the person having benefit of the development consent in accordance with Section 6.5 of the EP&A Act 1979; and c) The PCA is notified in writing of the name and contractor license number of the owner/building intending to carry out the approved work. <p>Condition reason: To ensure that a Construction Certificate has been issued for the building works prior to the commencement of work.</p>
30	<p>Notice Commencement of Work</p> <p>Notice must be given to Council and the Principal Certifier, if not the Council, of the person's intention to commence the erection of the building or undertake subdivision work at least two days prior to subdivision and/or building works commencing in accordance with Sections 6.6 (2) and 6.12 (2) (c) of the Environmental Planning and Assessment Act 1979 and Section 59 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:</p> <ul style="list-style-type: none"> a) The name and address of the person; b) A description of the work to be carried out;

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>c) The address of the land on which the work is to be carried out;</p> <p>d) The Registered numbers and date of issue of the development consent and construction certificate;</p> <p>e) A statement signed by or on behalf of the principal certifier that all conditions of the consent that must be satisfied before work commences have been satisfied; and</p> <p>f) The date on which the work is intended to commence.</p> <p>The notice must be lodged on the NSW Planning Portal.</p> <p>Condition reason: To ensure that the Principal Certifier has given notice to the Consent Authority and Council at least two days prior to subdivision and/or building works commencing in accordance with S6.6(2)(a) of the Environmental Planning and Assessment Act 1979 and Section 59 of the Environmental Planning and Assessment (Development Certificate and Fire Safety) Regulation 2021.</p>
31	<p>Notice of Principal Certifying Authority Appointment</p> <p>The Principal Certifier for this development must give notice must be given to the consent authority and Council, where the Council is not the consent authority, at least two days prior to subdivision and/or building works commencing in accordance with Section 6.6 (2) (a) of the Environmental Planning and Assessment Act 1979 and Section 57 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021. The notice must include:</p> <p>a) A description of the work to be carried out;</p> <p>b) The address of the land on which the work is to be carried out;</p> <p>c) The Registered number and date of issue of the relevant development consent;</p> <p>d) The name and address of the Principal Certifier and the person who appointed the principal certifier;</p> <p>e) If the principal certifier is a registered certifier</p> <p>i) The certifier's registration number, and</p> <p>ii) A statement signed by the registered certifier to the effect that the certifier consents to be appointed as principal certifier, and</p> <p>iii) A telephone number on which the certifier may be contacted for business purposes.</p> <p>The notice must be lodged on the NSW Planning Portal.</p> <p>Condition reason: To ensure that the Principal Certifier has given notice that they will be the Principal Certifier to the Consent Authority and Council at least two days prior to subdivision and/or building works commencing in accordance with S6.6(2)(a) of the Environmental Planning and Assessment Act 1979</p>
32	<p>Damage report – Public Infrastructure</p> <p>Before any site work commences, the applicant is required to notify Council in writing of any existing damage to public infrastructure (including landscaping) within the vicinity of the development, the absence of such notification signifies that no damage exists</p>

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	Condition reason: Small-scale development - Where the development is in close proximity to Council infrastructure.
33	Rubbish Generated from the Development Where not already available, a waste containment facility is to be established on site. The facility is to be regularly emptied and maintained for the duration of works. No rubbish must be stockpiled in a manner which facilitates the rubbish to be blown or washed off site. The site must be cleared of all building refuse and spoil immediately upon completion of the development. Condition reason: To ensure that construction waste is appropriately stockpiled and removed from the site.
34	Site is to be secured The site must be secured and fenced to the satisfaction of the Principal Certifying Authority. All hoarding, fencing, or awnings (associated with securing the site during construction is to be removed upon the completion of works. Condition reason: To restrict access to the site by the public and ensure that the site is adequately secured prior to the commencement of works.
35	Public liability insurance The owner or contractor must take out a Public Liability Insurance Policy with a minimum cover of \$20 million in relation to the occupation of, and works within, public property (i.e. kerbs, gutters, footpaths, walkways, reserves, etc.) for the full duration of the proposed works. Evidence of this Policy must be provided to Council and the Certifying Authority. Condition reason: To verify that the owner or contractor has a Public Liability Insurance Policy where there are works over public property.

During work

36	Discovery of relics and Aboriginal objects While site works is being carried out, if a person reasonably suspects a relic or Aboriginal object is discovered: <ul style="list-style-type: none"> a. The work in the area of the discovery must cease immediately; b. The following must be notified – <ul style="list-style-type: none"> i. For a relic – the Heritage Council; or ii. For an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, Section 85.
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ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>Site works may recommence at a time conformed in writing by:</p> <ol style="list-style-type: none"> For a relic – the Heritage Council; or For an Aboriginal object – the person who is the authority for the protection of Aboriginal objects and Aboriginal places in New South Wales under the National Parks and Wildlife Act 1974, section 85 <p>Condition reason: To ensure the protection of objects of potential significance during works.</p>
37	<p>Responsibility for changes to public infrastructure</p> <p>While site work is being carried out, any costs incurred as a result of the approved removal, relocation or reconstruction of infrastructure (including ramps, footpaths, kerb and gutter, light poles, kerb inlet pits, service provider pits, street trees or any other infrastructure in the street footpath area) must be paid as directed by the consent authority.</p> <p>Condition reason: To ensure payment of approved changes to public infrastructure</p>
38	<p>Demolition Work</p> <p>All demolition works are to be carried out in accordance with Australian Standard AS 2601 'The demolition of Structures'. All waste materials are to be either recycled or disposed of at a licensed waste facility.</p> <p>Any asbestos containing material encountered during demolition or works, is to be removed in accordance with the requirements of Safe Work NSW and disposed of to an appropriately licenced waste facility.</p> <p>Evidence is to be provided to the Certifying Authority demonstrating that asbestos waste has been disposed of in accordance with this condition.</p> <p>Condition reason: To ensure a development is carried out in accordance with the Australian Standard AS 2601 'The demolition of Structures', and all waste materials are appropriately removed.</p>
39	<p>Tree protection during work</p> <p>While site work is being carried out, all required tree protection measures must be maintained in good condition in accordance with:</p> <ol style="list-style-type: none"> The construction site management plan approved under this consent, the relevant requirements of AS 4970 Protection of trees on development sites; Section B1 of Council's relevant development control plan (in force as at the date of determination of this consent); and Any arborist's report approved under this consent. <p>This includes maintaining adequate soil grades and ensuring all machinery, builders refuse, spoil and materials remain outside tree protection zones.</p> <p>Condition reason: To protect trees during the carrying out of site work</p>
40	<p>Construction Site Management Plan implementation</p>

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>During building works, all construction site management procedures and systems identified in the approved Construction Site Management Plan must be introduced during construction of the development to ensure safety and to minimise the effect on adjoining pedestrian and traffic systems.</p> <p>Condition reason: To ensure building works is undertaken in accordance with the approved Construction Site Management Plan.</p>
41	<p>Hours of work</p> <p>Site work must only be carried out between the following times –</p> <p>7:00am to 5:00pm on Monday to Saturday</p> <p>Site work is not to be carried out outside of these times except where there is an emergency, or for urgent work directed by a police officer or a public authority.</p> <p>Condition reason: To protect the amenity of the surrounding area</p>
42	<p>Unexpected Finds Contingency (General)</p> <p>Should any suspect materials (identified by unusual staining, odour, discolouration or inclusions such as building rubble, asbestos, ash material, etc.) be encountered during any stage of works (including earthworks, site preparation or construction works, etc.), such works must cease immediately until a qualified environmental specialist has been contacted and conducted a thorough assessment.</p> <p>In the event that contamination is identified as a result of this assessment and if remediation is required, all works must cease in the vicinity of the contamination and Council must be notified immediately.</p> <p>Where remediation work is required, the applicant will be required to obtain consent for the remediation works.</p> <p>Condition reason: To ensure that works relating to a development are to cease if any suspect materials are identified and remediated in accordance with Council requirements</p>
43	<p>Excavations and Backfilling</p> <p>All excavations and backfilling associated with this development consent must be executed safely, and be properly guarded and protected to prevent them from being dangerous to life or property, and in accordance with the design of a suitably qualified Structural Engineer.</p> <p>If an excavation extends below the level of the base of the footings of a building on an adjoining allotment, the person causing the excavation must:</p> <ul style="list-style-type: none"> a) preserve and protect the building from damage; and b) if necessary, underpin and support the building in an approved manner; and c) give at least seven days' notice to the adjoining owners before excavating, or of the intention to excavate.

16-2024-581-1

15

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>The principal contractor, owner builder or any person who needs to excavate and undertake building work, must contact “Dial Before You Dig” prior to works commencing, and allow a reasonable period of time for the utilities to provide locations of their underground assets.</p> <p>This condition does not apply if the person having the benefit of the development consent owns the adjoining land or the owner of the adjoining land has given consent in writing to that condition not applying.</p> <p>Condition reason: To ensure excavation and backfilling is executed safely.</p>
44	<p>Compliance with the Building Code of Australia</p> <p>Building work must be carried out in accordance with the requirements of the Building Code of Australia.</p> <p>Condition reason: To ensure that the development is undertaken in accordance with the Building Code of Australia.</p>
45	<p>Offensive noise, dust, odour, and vibration</p> <p>No work must not give rise to offensive noise, odour, or vibration as defined in the Protection of the Environment Operations Act 1997 when measured at the nearest property boundary.</p> <p>Condition reason: To ensure that developments do not give rise to offensive noise, dust, odour, or vibration.</p>
46	<p>Toilet facilities</p> <p>Temporary toilet(s) must be provided and maintained on site from the time of commencement of building work to completion. The number of toilets provided must be one toilet per 20 persons or part thereof employed on the site at any one time.</p> <p>The temporary toilet is to be either connected to the sewerage system or an approved septic tank or otherwise may be a chemical toilet supplied by a licensed contractor.</p> <p>Condition reason: To ensure adequate amenity facilities are provided to the site during construction.</p>
47	<p>Placement of fill</p> <p>Filling must not be placed in such a manner that natural drainage from adjoining land will be obstructed or in such a manner that surface water will be diverted.</p> <p>Further, any alterations to the natural surface contours must not impede or divert natural surface water runoff so as to cause a nuisance to adjoining property owners.</p> <p>Condition reason: To ensure that fill required for a development is managed in accordance with Council requirements.</p>
48	<p>Location of stockpiles</p>

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>Stockpiles of soil must not be located on / near any drainage lines or easements, natural watercourses or water bodies, footpath or roadway without first providing suitable protective measures adequate to protect these water bodies. All stockpiles of contaminated materials must be suitably covered to prevent dust and odour nuisance.</p> <p>Condition reason: To ensure that stock piles required for a development are managed in accordance with Council requirements.</p>
49	<p>Soil, erosion, sediment and water management</p> <p>All requirements of the Erosion and Sediment Control Plan or Soil and Water Management Plan must be maintained at all times during the works and any measures required by the plan must not be removed until the site has been stabilised.</p> <p>Condition reason: To ensure Erosion and Sediment Control Plan is in place until the site has been stabilised</p>

Before issue of an occupation certificate

50	<p>Occupation Certificate Required</p> <p>An Occupation Certificate must be obtained prior to any use or occupation of the development.</p> <p>The Principal Certifying Authority must be satisfied that the development has been constructed in accordance with approved plans, specifications and conditions of this consent.</p> <p>Condition reason: To ensure that an Occupation Certificate relating to the development is obtained from the Principal Certifying Authority prior to occupation or use</p>
51	<p>Operational Noise Management Plan</p> <p>Before the issue of an Occupation Certificate, an operational noise management plan shall be implemented that documents measures to be undertaken to control any guest noise, including vehicle movements and amplified music in a manner that does not cause disturbance to nearby residential sensitive receivers. The plan should include a compliant management procedure, records of any noise complaint should be kept and made available on request. The plan can be kept as a separate document or incorporated into a wider operational plan and made available to all staff.</p> <p>Condition reason: To ensure an operational noise management plan is prepared and made available to staff, prior to issue of an Occupation Certificate.</p>
52	<p>Business registration</p> <p>Before the issue of an Occupation Certificate, the owner or occupier of the premises must notify Council of the skin penetration premises in accordance with Clause 42 of the <i>Public Health Regulation 2022</i>. Notification is to be made online, via Councils Business Registration Form.</p>

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>Condition reason: To ensure Council is notified, if skin penetration procedures occur at premises.</p>
53	<p>Post-Construction Dilapidation Report</p> <p>A post construction dilapidation report must be prepared by a suitably qualified engineer, to the satisfaction of Principal Certifying Authority, detailing whether:</p> <ul style="list-style-type: none"> a) after comparing the pre-construction dilapidation report to the post-construction dilapidation report required under this condition, there has been any structural damage to any adjoining buildings; b) and where there has been structural damage to any adjoining buildings, that it is a result of the work approved under this development consent, and c) a copy of the post-construction dilapidation report must be provided to council (where council is not the principal certifier or a principal certifier is not required) and to the relevant adjoining property owner(s). <p>Condition reason: To identify any damage to adjoining properties resulting from site work on the development site.</p>
54	<p>Repair of infrastructure</p> <p>Before the issue of an Occupation Certificate:</p> <ul style="list-style-type: none"> 1. any public infrastructure damaged as a result of the carrying out of work approved under this consent (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concreting vehicles) must be fully repaired to the written satisfaction of Council, and at no cost to Council; or 2. if the works in (a) are not carried out to Council's satisfaction, Council may carry out the works required and the costs of any such works must be paid as directed by Council and in the first instance will be paid using the security deposit required to be paid under this consent. <p>Condition reason: To ensure that approved works within the road reserve have been completed to the satisfaction of the Council.</p>
55	<p>Completion of landscape and tree works</p> <p>Before the issue of an occupation certificate, the principal certifier must be satisfied that all landscape and tree-works, including pruning in accordance with AS 4373-2007 Pruning of amenity trees and the removal of all noxious weed species, have been completed in accordance with the approved plans and any relevant conditions of this consent.</p> <p>Condition reason: To ensure that landscape and tree works have been completed in accordance with the approved plans prior to the issue of an Occupation Certificate.</p>
56	<p>Removal of waste upon completion</p> <p>Before the issue of an occupation certificate, the principal certifier must ensure all refuse, spoil and material unsuitable for use on-site is removed from the site and disposed of in</p>

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	<p>accordance with the approved waste management plan. Written evidence of the removal must be supplied to the satisfaction of the principal certifier.</p> <p>Condition reason: To ensure that all waste is appropriately removed from the subject site prior to the issue of an Occupation Certificate.</p>
57	<p>Stormwater/drainage works</p> <p>Before the issue of an occupation certificate, all stormwater and drainage works required to be undertaken in accordance with this consent must be completed.</p> <p>The certification/verification must be provided to the satisfaction of the Principal Certifying Authority.</p> <p>Condition reason: To ensure stormwater and drainage works have been undertaken in accordance with the approved plans.</p>
58	<p>Water authority certification</p> <p>Before the issue of an occupation certificate, a Section 50 Application under the Hunter Water Act 1991 must be lodged with the Hunter Water Corporation (HWC) and details of the Notice of Compliance from HWC must be provided to the Certifying Authority.</p> <p>Condition reason: To ensure compliance with the water supply authority's requirements</p>
59	<p>Car parking requirements</p> <p>Before the issue of an occupation certificate, 41 car parking spaces including 3 accessible spaces are to be provided in accordance with AS2890 and the approved plans.</p> <p>All parking spaces must be permanently marked on the pavement surface.</p> <p>Condition reason: To ensure that the specified number of parking spaces is provided in accordance with the approved plans and compliant with Council's requirements.</p>
60	<p>Survey Certificate</p> <p>Before the issue of an occupation certificate, a Registered Surveyor must prepare a Survey Certificate to certify that the location of the building in relation to the allotment boundaries complies with the approved plans or as specified by this consent. The Survey Certificate must be provided to the satisfaction of the Principal Certifying Authority.</p> <p>Condition reason: To ensure that the building is located in accordance with the approved plans and evidence from a Registered Surveyor is provided to the Principal Certifying Authority.</p>
61	<p>Completion of Roads Act Approval Works</p> <p>Before the issue of an occupation certificate, all approved road, footpath and/or drainage works, including vehicle crossings, have been completed in the road reserve in accordance</p>

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	with the Roads Act Approval for the relevant stage, to the satisfaction of the Council as the Roads Authority.
	Condition reason: To ensure that all works within the road reserve are approved in accordance with the Roads Act Approval.
62	Services
	Before the issue of an occupation certificate, evidence is to be provided to the Certifying Authority demonstrating that the following reticulated services are available to each lot: <ul style="list-style-type: none"> a) Electricity; b) Water; c) Sewer; and d) Gas (where available). Should any of the above reticulated services not be available to the development site, a detailed statement is to be provided explaining why connection of the relevant service is not possible or practical.
	Condition reason: To ensure that evidence of connection of services is provided to the PCA.
63	Bicycle Requirements
	Before the issue of an occupation certificate, 5 bicycle spaces must be installed in accordance with the approved plans.
	Condition reason: To ensure bicycle racks are provided as per the approved plans.
64	Loading/Unloading facilities
	Before the issue of an occupation certificate, loading /unloading facilities must be constructed in accordance with the approved plans. The extent of the loading bay must be permanently marked on the pavement surface.
	Condition reason: To ensure that all loading and unloading facilities are constructed in accordance with the approved plans and are compliant with Council requirements.

Occupation and ongoing use

65	Driveways to be maintained
	All access crossings and driveways must be maintained in good order for the life of the development

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

	Condition reason: To ensure that access and driveways are maintained for the life of the development.
66	Hours of Operation
	The property must only operate within the hours prescribed within the approved Plan of Management and existing development consent 7-1994-117 (as modified).
	Other internal operations such as cleaning, preparation, and office administration may be undertaken outside of the above hours provided no disturbance to the amenity of the neighbourhood occurs.
	Condition reason: To ensure operational hours are appropriate to reduce potential amenity impacts.
67	Operational Plan of Management
	The operation of the development shall be in accordance with the Plan of Management endorsed under this consent.
	Condition reason: To ensure the development is managed in accordance with Plan of Management.
68	Impact to adjoining properties
	The development must not undertake activities which may restrict, obstruct or inconvenience the use of the land by other users, outside of the approved development location.
	Condition reason: To ensure that the development does not undertake activities which may restrict, obstruct or inconvenience the use of the land by other users, outside of the approved development location.
69	Private waste collection
	All deliveries, refuse and recycling collection (not including Council Collection) to occur only within the hours 7am-10pm Monday to Saturday, 8am-10pm Sunday and Public Holidays.
	Condition reason: To ensure private waste collection arrangements do not occur outside of prescribed hours.
70	Loading to occur on site
	All loading and unloading operations are to be carried out wholly within the building/site and in accordance with the approved plans.
	The loading dock (if provided) must be used for loading and unloading operations in connection with the approved use.
	Condition reason: To ensure that all loading and unloading operations are carried out wholly within the building or site in accordance with the approved plans

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

71	Maintenance of Landscaping
	Landscaping must be maintained in accordance with the approved landscape plan and conditions of this development consent. All landscape areas must be kept free of parked vehicles, stored goods, garbage or waste material at all times.
	If any of the vegetation dies or is removed, it is to be replaced with vegetation of the same species and similar maturity as the vegetation which has died or was removed.
	Condition reason: To ensure that landscaping is maintained in accordance with the approved landscape plan and the relevant development consent.
72	Manoeuvring of Vehicles
	All vehicles must enter and exit the site in a forward direction.
	Condition reason: To ensure that vehicles enter and leave the site in a forward direction.
73	Noise generated from mechanical ventilation systems
	During occupation and ongoing use of the building, the applicant must ensure all subsequently installed noise generating mechanical ventilation system(s) or other plant and equipment that generates noise are in an appropriate location on the site (including a soundproofed area where necessary) to ensure the noise generated does not exceed 5dBa at the boundary adjacent to any habitable room of an adjoining residential premises.
	Condition reason: To control noise generated from mechanical ventilation systems.
74	Offensive Noise
	The use and occupation of the premises including all plant and equipment must not give rise to any offensive noise within the meaning of the <i>Protection of the Environment Operation Act 1997</i> and must comply with the <i>NSW Noise Policy for Industry 2017</i> (as amended).
	Condition reason: To control noise in order to ensure it is not offensive.
75	Parking areas to be kept clear
	At all times, the loading, car parking spaces, driveways and footpaths must be kept clear of goods and must not be used for storage purposes.
	Condition reason: To ensure that all associated areas with vehicle storage/parking are kept clear and solely for their intended purpose.
76	Parking – Signage (loading docks)
	Proposed parking areas, service bays, truck docks, driveways and turning areas must be maintained clear of obstructions and be used exclusively for purposes of car parking, loading/unloading, and vehicle access respectively for the life of the development. Under no circumstances are such areas to be used for the storage of goods or waste materials.
	Condition reason: To ensure that all associated areas with vehicle storage/parking are kept clear and solely for their intended purpose.

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

77	Storage of goods
	The storage of goods and materials must be confined within the building. At no time must goods, materials or advertising signs be displayed or placed within the designated car parking spaces, landscaped areas or road reserve.
	Condition reason: To ensure that the storage of goods and materials is confined within the building so as to not be a hazard or nuisance
78	Maintenance of wastewater and stormwater treatment device/s
	During occupation and ongoing use of the development, the applicant must ensure all wastewater and stormwater treatment devices (including drainage systems, sumps and traps, and on-site detention) are regularly maintained to remain effective and in accordance with any positive covenant (if applicable).
	Condition reason: to ensure wastewater and stormwater systems are maintained.
79	Removal of graffiti
	The owner/manager of the site is responsible for the removal of all graffiti from the building and fences within 48 hours of its application.
	Condition reason: To ensure that graffiti is removed from the building and fences within 48 hours.
80	Approved signage maintenance
	The approved signs must be maintained in a presentable and satisfactory state of repair.
	Condition reason: To ensure approved signage is maintained.

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes: https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf](https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf). The consent should be read together with the *Conditions of development consent: advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

ITEM 2 - ATTACHMENT 1 CONDITIONS OF CONSENT.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

Council advisory notes

1. **'Dial Before you Dig Australia'** – Before any excavation work starts, contractors and others should phone the “Dial Before You Dig Australia” service to access plans/information for underground pipes and cables.
2. **Responsibility for damage for tree removal/pruning** – The applicant is responsible for any damage caused to existing public utilities, footpaths or public roads during the cutting down, grinding, removal and disposal of the timber and roots. Care must also be taken by the applicant and the applicant’s agents to prevent any damage to adjoining properties. The applicant or applicant’s agent may be liable to pay compensation to any adjoining owner if, due to tree works, damage is caused to such adjoining property.
3. **Approved Plans to be on-site** – A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification shall be kept on the Site at all times and shall be readily available for perusal by any officer of Council or the Principal Certifying Authority.
4. **Council as PCA, PCA sign** – It is the responsibility of the applicant to erect a PCA sign. Where Council is the PCA, the sign is available free of charge, from Council’s Administration Building at Raymond Terrace or the Tomaree Library at Salamander Bay. The applicant is to ensure the PCA sign remains in position for the duration of works.



DEVELOPMENT ASSESSMENT REPORT

APPLICATION REFERENCES

Application Number	16-2024-581-1
Development Description	Alterations and Additions to Tourist and Visitor Accommodation
Applicant	PERCEPTION PLANNING PTY LTD
Land owner	PROPRIETORS OF STRATA PLAN 82639
Date of Lodgement	12/11/2024
Value of Works	\$4,022,179.00
Submissions	12 (9 objections and 3 of support)

PROPERTY DETAILS

Property Address	16 Christmas Bush Avenue NELSON BAY
Lot and DP	LOT: 0 SP: 82639
88B Restrictions on Title	Easement for parking and access variable width (over the entire lot)
Current Use	Tourist and Visitor Accommodation
Zoning	R2 LOW DENSITY RESIDENTIAL
Site Constraints	Flood planning area; Acid sulfate soils (class 5); CKPoM Koala Habitat Map – Mainly Cleared Land.
State Environmental Planning Policies	State Environmental Planning Policy (Biodiversity and Conservation) 2021; State Environmental Planning Policy (Resilience and Hazards) 2021.

PROPOSAL

The development application seeks consent for alterations and additions to an existing tourist and visitor accommodation development approved under DA 7-1994-117-1 (as modified). Characteristics of the proposed development include:

Lower Ground Floor Plan - Construction of:

- Lobby and corridors connecting to existing carpark and lobbies within Building 5 (as approved under DA 7-1994-117-9);
- Back of house corridors and amenities;
- Day spa measuring 60m², including three treatment rooms, toilet and store / laundry;
- Substation and landscaped areas.

Ground Floor and Level 1 Plan - Construction of six additional tourist suites, including:

- Ground Floor - Suite 16, 17 & 18, which are designed to include one bedroom, bathroom, open plan kitchen, living and dining & balcony;
- Level 1 Plan - Suite 25 & 26, which are designed to include one bedroom, bathroom, open plan kitchen, living and dining & balcony;
- Suite 27 which contains two bedrooms, bathroom, open plan kitchen, living and dining & balcony.

Lobby and landscaped areas are proposed on each level, connecting to existing carpark and lobbies within Building 5 (as approved under existing DA).

The original tourist and visitor approval comprised 23 tourist units, although as part of the most recent modification (DA7-1994-117-9), the approved number of units was reduced to 21. As part of this subject development application, an increase in six tourist units is proposed, resulting in 27 units overall for the site when combined with the parent site approval under DA7-1994-117-9. The proposed development under this application will complete the tourist and visitor accommodation development located on the site, and is consistent with the existing built form (Buildings 1, 2 and 3) and approved built form yet to be constructed (Building 4 & 5) under DA7-1994-117-9.

This proposal will form Stage 3 of the overall tourist development, which is consistent with the parent approval under DA 7-1994-117-1 (as modified). No amendments to other buildings, or suites under the existing approval is proposed as part of this application.

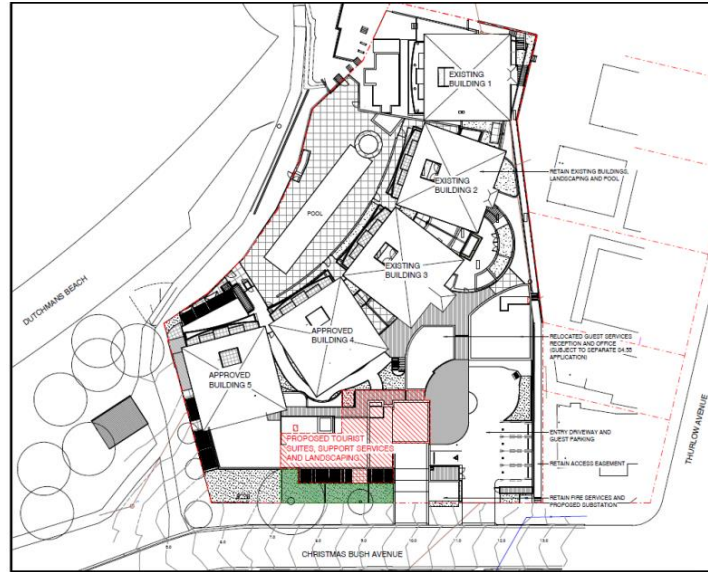


Figure 1: Proposed development area (hatched in red)

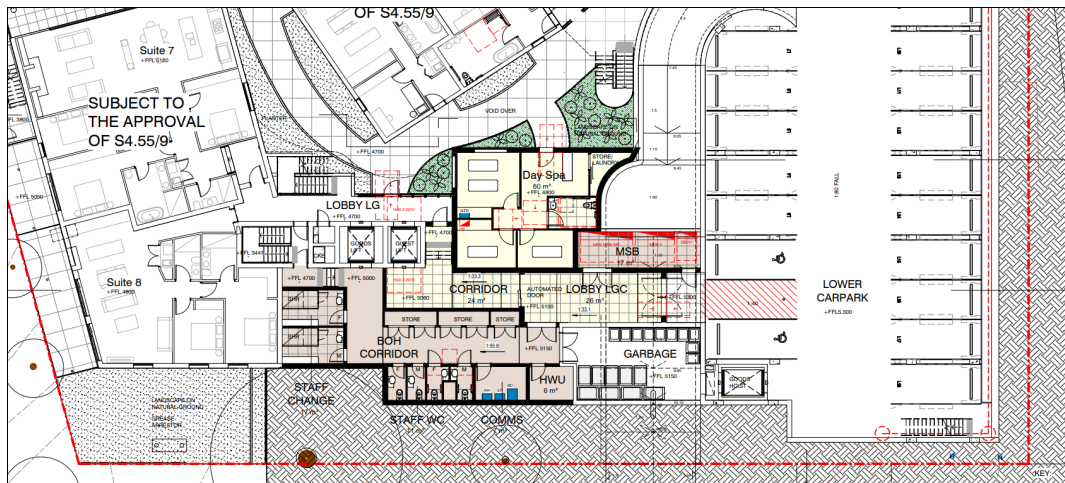


Figure 2: Proposed lower ground plan

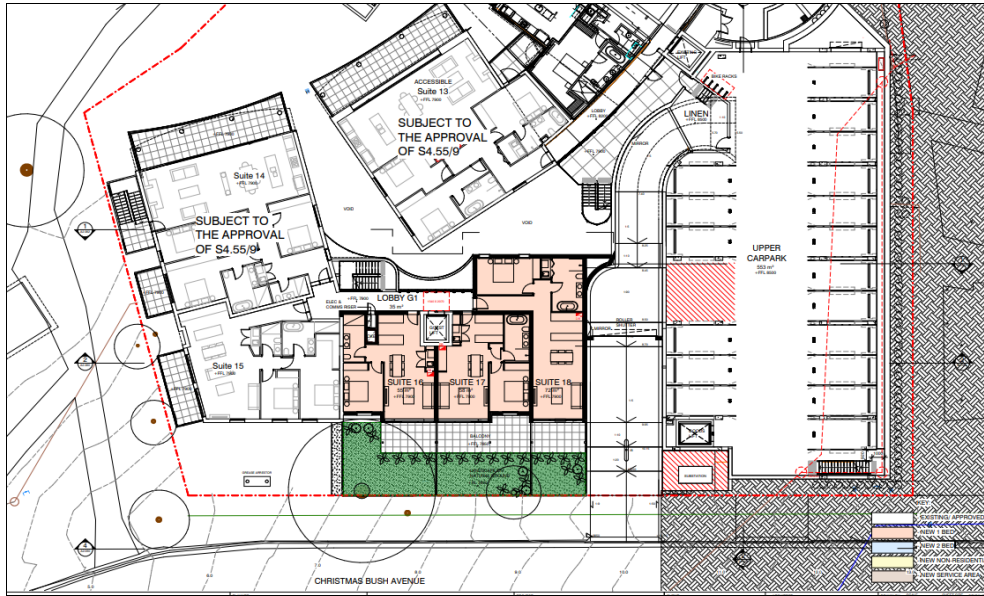


Figure 3: Proposed ground plan

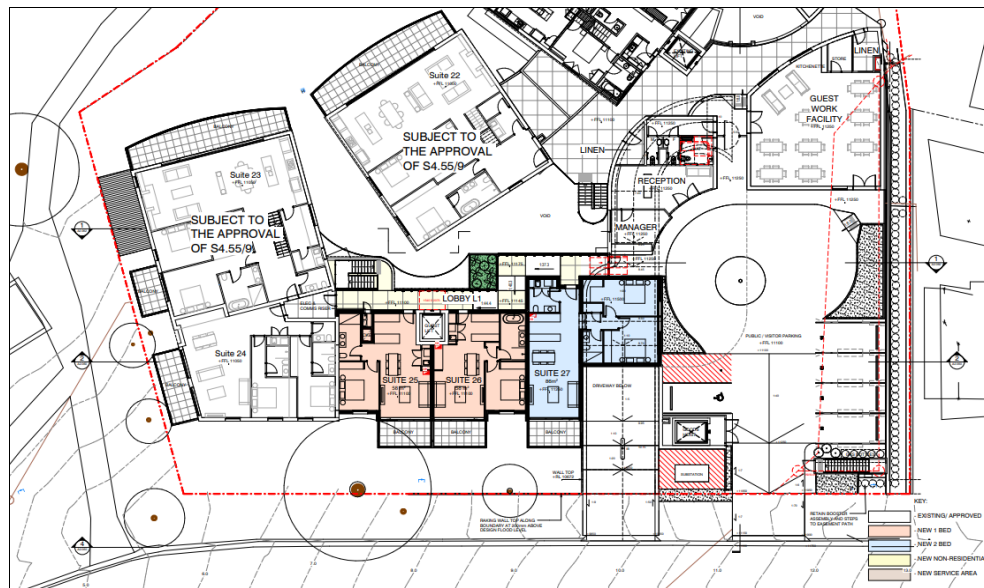


Figure 4: Proposed level 1 floor plan

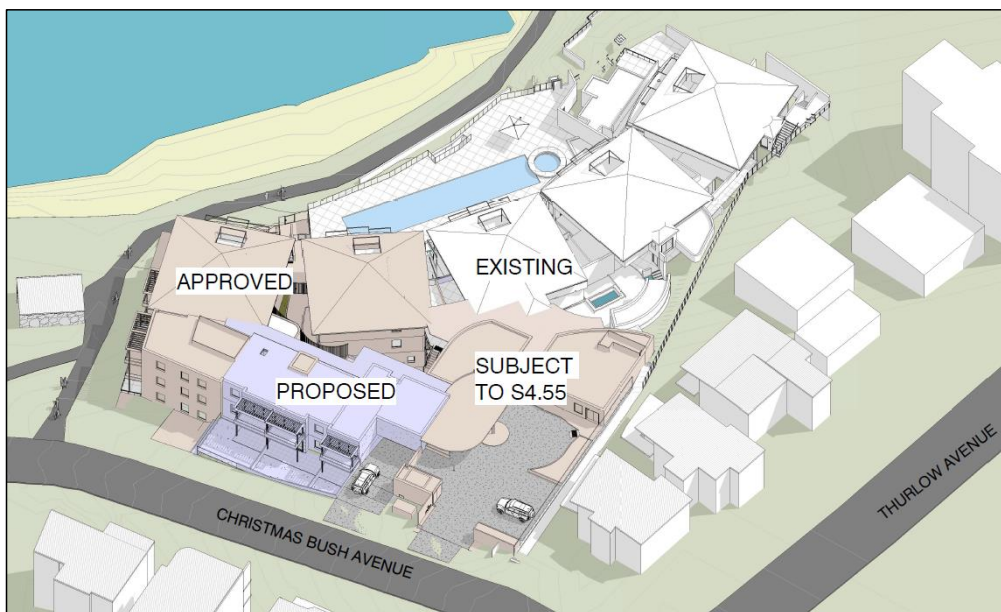


Figure 5: Elevated view of complete development from south

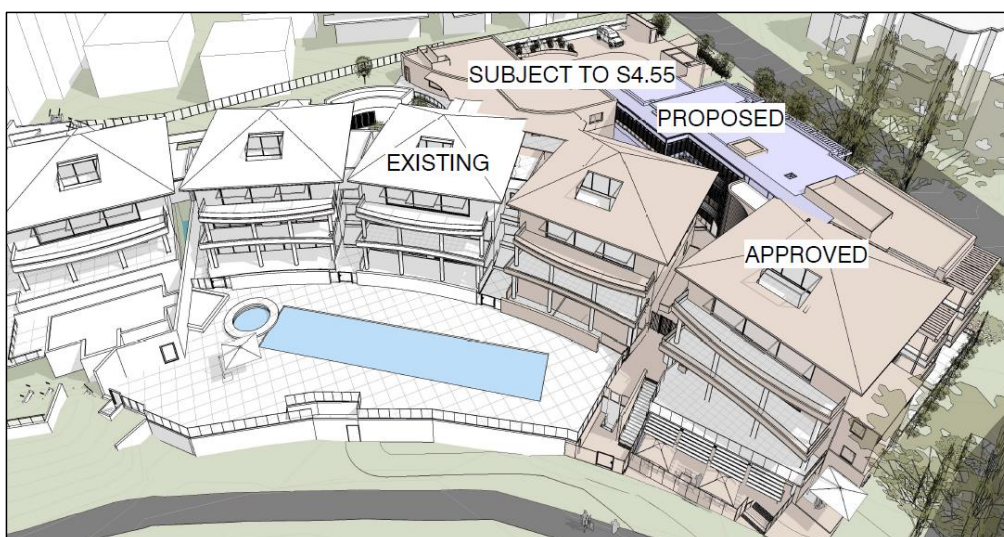


Figure 6: Elevated view of complete development from north



Figure 7: Streetscape render of development from south



Figure 8: Streetscape render of development from south-west

SITE DESCRIPTION

The subject site (herein after referred to as 'the site') is located at 16 Christmas Bush Avenue, Nelson Bay, and formally identified as (Lot: CP SP82639). The site is an irregular shaped allotment 4,233m² in area, which benefits from waterfront views of Dutchman's Beach to the north. The site topography slopes gently in a north-west direction, with grades ranging from 10-15% and elevation ranging 2-12m AHD.

The site is located within the foreshore area of Nelson Bay West and accommodates an existing tourist and visitor accommodation development, including the Armana Resort and Dutchies Motel. Three of the five accommodation buildings approved under DA7-1994-117 have been constructed, along with ancillary outbuildings, a swimming pool and car parking area. There are a variety of trees within the Christmas Bush Avenue road reserve and Dutchmans Beach public recreational area, which provide a vegetated edge to the site.

Land uses adjoining the site include:

- North: Dutchman's Bay and associated coastline zoned W2 Recreational Waterway and C2 Environmental Conservation.
- South, East, West: Low density housing and associated ancillary structures on sites zoned R2 Low Density Residential. The topography of these residential sites is typically higher than the subject site, due to rising topography up from the coastline.

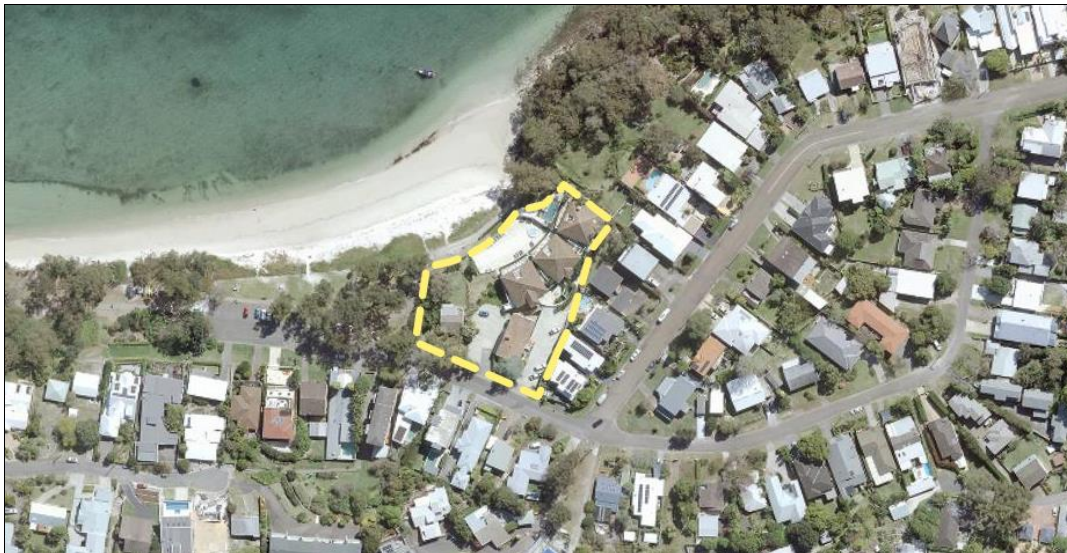


Figure 9: Aerial GIS imagery of the subject site outlined in yellow

SITE HISTORY

The site has historically been used for tourist and visitor accommodation purposes. Multiple applications associated with redevelopment of the motor lodge have been recorded over the site, as summarised in **Table 1**.

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

Table 1: Applications lodged over the site

Application #	Proposal Description	Determination	Date Determined
7-1994-117-1	Redevelopment of existing motor lodged	Approved	19/10/1994
7-1994-117-2	Modification to consent relating to suites 9, 19, the cellar and swimming pool	Approved	6/07/2000
7-1994-117-3	Modification to consent relating to development being carried out in three stages	Approved	6/12/2005
7-1994-117-4	Modification to consent	Approved	11/09/2007
7-1994-117-5	Modification to consent	Approved	27/11/2008
16-2008-976-1	Twelve Lot strata subdivision	Approved	27/02/2009
7-1994-117-6	Modification of consent relating to internal apartment reconfiguration (Buildings 4 and 5), amendments to access and parking areas, removal or amenities	Approved	12/05/2022
7-1994-117-7	Modification of consent relating to internal apartment reconfiguration (Buildings 4 and 5)	Approved	9/08/2022
16-2023-122-1	Alterations and additions to tourist development	Application withdrawn	1/05/2023
7-1994-117-8	Modification of consent relating to amendment to Building 4 layout and access to Buildings 1-3 (stairs and doorways)	Approved	17/02/2023
7-1994-117-9	Modification to buildings 4 & 5, carparking and access layout.	Approved	9/01/2025

The subject site does not have records of contamination or historical applications that would impact the proposed development.

SITE INSPECTION DETAILS

A site inspection was carried out on 4 December 2024. The subject site can be seen in **Photographs 1 to 4** below:



Photograph 1: Site as viewed from Christmas Bush Avenue



Photograph 2: Existing vehicular access



Photograph 3: Site as viewed from pathway to rear of site



Photograph 4: Public entry to approved restaurant (DA 7-1994-117-9)

REFERRALS

Internal

Development Engineering

Outcome	Supported with conditions
Comment	The DA was referred to Council's Development Engineering team to review the proposal from a traffic, access, stormwater and flooding perspective. Council's Development Engineer recommended support for the proposal subject to conditions of consent.

Building Surveyor

Outcome	Supported with conditions
Comment	The DA was referred to Council's Building Surveyor to review the proposed building upgrades against the requirements of the <i>Environmental Planning and Assessment Regulation 2021</i> . Council's Building Surveyor determined the proposal neither triggers Section 62 or Section 64 considerations, as the works subject of this DA do not propose to extend part of any existing building. Additionally, the proposed works are completely new building work, so there will be no change of classification from a previous BCA classification. No objections are raised to this proposal subject to the imposition of standard conditions.

Environmental Health

Outcome	Supported with conditions
Comment	The DA was referred to Council's Environmental Health team to review the proposal from a noise, food safety and skin penetration compliance perspective. Council's Environmental Health officer recommended support for the proposal subject to conditions of consent.

Development Contributions

Outcome	Supported with conditions
Comment	A monetary contribution is to be paid to Council for the provision of 4 additional units, pursuant to Section 7.11 of the <i>Environmental Planning & Assessment Act 1979</i> and

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

the Port Stephens Local Infrastructure Contributions Plan 2020.

External (non-integrated)

No referrals to external agencies were required.

PLANNING ASSESSMENT**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979****Section 1.7 – Application of Part 7 of Biodiversity Conservation Act 2016**

The development does not trigger entry into the Biodiversity Offset Scheme, as the proposal does not involve native vegetation clearing within a Biodiversity Values Mapped area, exceed the area clearing threshold or propose significant ecological impact.

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

The development does not trigger assessment section 4.14 of the EP&A Act 1979 due to the subject site not being identified as bushfire prone land.

Section 4.46 - Integrated development

The proposed development does not require an integrated referral under s4.46 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979) as it does not meet any of the applicable triggers.

Section 4.15 – Matters for consideration

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the EP&A Act. The matters of relevance to the development application include the following:

- The provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations
 - Any environmental planning instrument, and
 - Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and
 - Any development control plan, and
 - Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and
 - The regulations (to the extent that they prescribe matters for the purposes of this paragraph),
- That apply to the land to which the development application relates,
- The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- The suitability of the site for the development,
- Any submissions made in accordance with this Act or the regulations,
- The public interest.

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 development application does not require tree removal, noting the 17 trees to be removed over the site are approved for removal under the parent tourist and visitor accommodation approval (DA 7-1994-117).

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. Chapter 4 applies to all zones other than RU1 (Primary Production), RU2 (Rural Landscape) and RU3 (Forestry) in the Port Stephens Local Government Area.

Section 4.8 – Development assessment process

The proposal does not involve the removal of any koala food trees. Notwithstanding, due to the presence of mature koala food trees within public recreational area adjoining the site, an Arborist Report was provided by the applicant to assess and mitigate any proposed impacts of development works on these trees. Noting all koala food trees adjoining the site can be retained, the proposal is consistent with the CKPoM, which constitutes compliance with Chapter 4 of this SEPP.

State Environmental Planning Policy (Resilience And Hazards) 2021**Chapter 2 – Coastal management**

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

Section 2.9 – Development on land within the coastal vulnerability area

The site is identified within a Coastal Vulnerability Area under the draft Port Stephens Coastal Management Program. In accordance with Clause 2.9 of the Coastal Vulnerability Area provisions, an assessment has been undertaken against the relevant criteria.

The proposal has been designed with all habitable floor levels located 800mm or greater above the sites Flood Planning Level (FPL) of 4.0m AHD, effectively accounting for projected sea level rise and other climate change factors that may impact flood levels by the year 2100. Relevant conditions and design considerations have been included to ensure that the proposal is designed and constructed in accordance with coastal risk management measures. As such, the development is considered capable of withstanding projected coastal hazards in accordance with Clause 2.9(a).

The development is not expected to alter coastal processes and will not impact public access to any coastal areas, including beaches, foreshores, or headlands. The elevated floor level for habitable areas provides security against coastal hazards, mitigating risks to life and public safety. Additionally, conditions of consent will ensure that appropriate coastal hazard management

Page 12 of 31

16-2024-581-1

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

measures are in place. Given these factors, the proposal is consistent with the requirements of Clause 2.9 and is considered suitable for approval.

Section 2.10 – Development within the coastal environment area

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 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. The hydrological environment (surface water) will not be altered, given all stormwater will be managed on-site in accordance with existing development approvals, and the stormwater design endorsed by Council's Development Engineering Team.

Section 2.11 – Development within the coastal use area

As per Section 2.11 of Chapter 2 of the SEPP, development consent must not be granted for a 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 will not impact the existing and safe access along the Dutchmans Beach foreshore. Furthermore, the proposed development has been designed to mitigate its impacts upon the views of adjoining properties towards the foreshore. The proposal has a contemporary design that is compatible with the coastal environment and with a considered built form that responds to the site context, including a flat roof element. Landscaping treatment has been incorporated in the design to soften the built form when viewed from public areas. The proposed materials and finishes selected will complement the scenic qualities of the foreshore. The view impacts of the proposal are considered acceptable with respect to significant vistas.

Section 2.12 – Development within the coastal zone generally

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 positioned within an established residential streetscape with no direct physical works to the coastal shoreline. Therefore, the proposed development is suitably designed and located to not increase risk to coastal hazards.

The proposal satisfies the objectives of Chapter 2 of this SEPP and other matters for consideration stipulated under Sections 2.10, 2.11 and 2.12, and can therefore be supported.

Section 2.13 – Development in coastal zone generally—coastal management programs to be considered

The site is located within the coastal zone and is subject to the Port Stephens Coastal Management Program.

Council has considered the proposal against this program and concludes the development is consistent with the aims and objectives of the document, and does not contravene the Coastal Emergency Actions recommended for Nelson Bay.

The proposal has been designed with all habitable floor levels located 800mm or greater above the sites Flood Planning Level (FPL) of 4.0m AHD, effectively accounting for projected sea level rise

and other climate change factors that may impact flood levels by the year 2100. Relevant conditions and design considerations have been included to ensure that the proposal is designed and constructed in accordance with coastal risk management measures.

Given that the development has been assessed against and is consistent with the Port Stephens Coastal Management Program and designed to mitigate potential coast hazards, the consent authority has taken the relevant provisions into consideration in accordance with Clause 2.13. The proposal is therefore considered acceptable with respect to this control.

Chapter 4 – Remediation of land

Section 4.6 – Contamination and remediation to be considered

Section 4.6 of Chapter 4 of the Resilience and Hazards SEPP requires the consent authority to consider whether land is contaminated, is in a suitable state despite contamination, or requires remediation to be made suitable for the proposed development.

The NSW list of contaminated sites and notified sites published by the EPA does not identify the site as being contaminated. No record of contamination has been identified in Council's system, and the site has historically be utilised for tourist and visitor accommodation purposes which is not a contaminating land use. Given the land is not within an investigation area, there are no records of potentially contaminating activities occurring on the site, and the continued tourist and visitor accommodation land use is not listed as a possible contaminating use, per Table 1 of the Contaminated Land Guidelines, the proposed development satisfies the requirements of Chapter 4 of this SEPP.

Port Stephens Local Environmental Plan 2013 (PSLEP2013)

Clause 2.3 – Zone objectives and land use table

The proposed development is defined as 'tourist and visitor accommodation' which is not permissible in the R2 – Low Density Residential zone. In this regard, the proposed development relies on Division 4.11 (Existing Uses) of the Environmental Planning and Assessment Act, 1979 (the Act). The Act allows for a site to rely on existing uses if the site is already used for a purpose, before the introduction of the relevant Local Environmental Plan, that otherwise would be prohibited under the relevant Local Environmental Plan as outlined below.

Council records confirm approval was granted under DA7-1994-117, for use of the site as tourist and visitor accommodation. The proposed development seeks to undertake alterations and additions to this approved tourist and visitor development, including the extension of Building 5 to include six additional suites and the reconfiguration of access, facilities, amenities and elements of the existing approved development.

Section 4.65 of the EP&A Act defines an 'existing use' as the following:

- (a) the use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
- (b) the use of a building, work or land—*
 - (i) for which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
 - (ii) that has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

The subject site benefits from existing use rights as outlined in the definition above, given consent under DA7-1994-117 was issued for the 'tourist and visitor accommodation' use across the entire subject site and had been in continuous operation before the commencement of the current version of the PSLEP 2013.

Provision is made under Section 4.67 of the Act for the carrying out of development relying on existing land use rights, specifically subsection (1a), that allows "the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use," and Section 4.67(1c), that allows "the enlargement or expansion or intensification of an existing use". Moreover, Section 163 of the Environmental Planning and Assessment Regulation 2021 (EP&A Regs) provides the appropriate framework to support Division 4.11 of the EP&A Act 1979 (Existing Uses Division). Under the EP&A Regs framework, a previously approved tourist use can be intensified or altered, that would otherwise be prohibited under an environmental planning instrument, such as the Port Stephens Local Environmental Plan 2013.

With respect to Section 163 of the EP&A Regs, the proposed alterations and additions are not considered a major departure from the existing approved tourist land use, constituting the extension of Building 5 to include six additional tourist suites, and reconfiguration of the access, facilities and amenities elements of the existing approved development. The proposed development under this application will complete the tourist and visitor accommodation development and operation of the site, and is consistent with the existing built form (Buildings 1, 2 and 3) and approved built form yet to be constructed (Building 4 & 5). Accordingly, the subject application is consistent with the provision.

In accordance with the existing use rights provisions contained in the Act and the Regulation, the application has established that the proposed development forms part of an existing tourist and visitor accommodation premises and benefits from existing use rights. In this regard, Council accepts the existing use rights as lawful.

The proposed development is further considered to meet the objectives of the R2 zone noting:

- The proposed development has been designed to mitigate its impacts upon the residential amenity and character of the area. The bulk and scale of the development has been carefully taken into consideration in terms of the existing topography of the land to reduce massing, bulk, scale and height impact to the adjoining neighbours.
- The development has incorporated flood compatible design measures to address the flood risk of the area.

Clause 4.3 – Height of buildings

The objectives of this clause are to ensure the height of buildings is appropriate for the context and character of the area and to ensure building heights reflect the hierarchy of centres and land use structure. Clause 4.3(2) provides 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.

The proposed development incorporates varying heights due to the varied topography across the site. The development measures 8.9m at its highest point above ground (northern corner), and 5.6m at its lowest point above ground (southern corner), which is below the maximum permissible LEP building height of 9 metres specified on the Height of Buildings Map.

The proposed height of the building has been assessed taking into consideration visual and amenity impacts, compatibility with the character of the area and potential impacts to natural and built environments. The applicant submitted a Visual Impact Assessment (VIA) with the application,

Page 15 of 31

16-2024-581-1

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

which included view study sheets from adjoining locations and photomontages of the building as constructed. As informed through the analysis provided within the VIA, it is considered that the height of the proposal is consistent with the relevant statutory planning framework as follows:

- The building height has been well considered and does not contravene the development standard prescribed under the Port Stephens LEP 2013;
- The proposed development is consistent with and complimentary to the established scale and character of the area with minimal visual impact on the surrounding visual landscape.
- The building height is compliant with the relevant matters for consideration as outlined under Section 4.15(1) of the EP&A Act 1979, in particular environmental impacts on both the natural and built environments and the suitability of the site for the height of the proposal.

Clause 5.10 – Heritage conservation

The objectives of this clause are to conserve the environmental heritage of Port Stephens, to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views, to conserve archaeological sites, and 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.

An AHIMS search dated 31/10/2024 was provided with the application confirming no previously recorded Aboriginal sites or places are recorded on or within 200m of the site. Notwithstanding this, the site is located approximately 10m from an Aboriginal sensitive landscape feature being the Port Stephens – Great Lakes Marine Park. Noting the site has been subject to significant prior ground disturbing activities as part of its historical use as a tourist and visitor accommodation premises, Aboriginal artefacts are not expected to be present. Notwithstanding, a condition of consent is recommended relating to unexpected finds procedures in the event Aboriginal artefacts are uncovered during works.

Subject to this condition, the proposal is consistent with the requirements of this clause.

Clause 5.21 – Flood planning

The proposed development is located on land mapped as Flood Planning Area. The site consists of three flood hazard categories (High Hazard Flood Fringe area, Low Hazard Flood Fringe area and Minimal Risk Flood Prone Land), with higher hazard flood categories located along the sites northern boundary. The development has been designed to respond to this flood risk, as demonstrated though the siting of the building over Minimal Risk Flood Prone Land. The flood hazard is from coastal flooding from Nelson Bay.

Development plans submitted show the finished floor level of all habitable and non-habitable rooms are designed above the flood planning level of 4.0 meters AHD, with flood free access provided above the 1% AEP level to Christmas Bush Avenue. A Flood Impact Assessment was further provided for the development, which demonstrates the design ensures compatibility with the flood function and behaviour on the land.

Noting the above, it is considered that the proposal is consistent with this clause.

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.

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

The subject land is mapped as containing potential Class 5 acid sulfate soils. Bulk excavation in the order of 2m is required over the central section of the site, to accommodate the lower ground floor and ground floor of the building. A Preliminary Geotechnical Investigation (ref: 304001375 prepared by Stantec and dated 4 November 2024) was provided with the application, which analysed soil samples over four locations. The Geotechnical Investigation included four ASS tests using the field screening method and - four detailed ASS (Chromium Reducible Sulfur) tests.

Testing results indicate that concentrations of total actual acidity and chromium reducible sulfur content were either below laboratory testing limits or at low levels. However, there was some presence of elevated sulfur levels in the tested colluvial sample. The geotechnical report therefore recommends additional investigation and confirmatory testing be undertaken to assess the full extent of ASS presence, and to confirm the need for an ASS Management Plan prior to commencement of works onsite.

Subject to implementation of this recommendation via a condition of consent, the proposal is consistent with the requirements of this clause.

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.

The proposal incorporates moderate earthworks, approximately 1000m³ of bench excavation to a depth of 2m, to accommodate the footings of the proposed building. Given the location and topography of the site within an established residential area, a geotechnical report was prepared which assessed the impacts of the earthworks on retaining structures, drainage and groundwater.

It is expected the required earthworks can be accommodated on the site without resulting in unreasonable adverse off-site impacts. Appropriate erosion and sediment controls will be in place during earthworks, in accordance with the Erosion and Sediment Control Plan and Geotechnical Investigation. Furthermore, the Stormwater Management Plans gives due consideration to the proposed earthworks and incorporates appropriate measures to ensure the earthworks will not result in any adverse impacts in relation to drainage patterns.

Subject to conditions of consent, including implementation of the Geotechnical Investigation recommendations, the proposal satisfies the requirements of this clause.

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 additional roof and hard stand areas can be catered for in accordance with Council's requirements. The subject land also maintains direct access to the local road network, 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

The draft Port Stephens Coastal Management Program (CMP) outlines 67 management actions aimed at mitigating the impacts of coastal inundation, tidal inundation, coastal erosion and dune transgression over the next 10 years. The CMP is a plan of action for Council, public authorities and land managers responsible for management of the Port Stephens coastal zone to:

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

- Address coastal hazard risks;
- Preserve habitats and cultural uses and values;
- Encourage sustainable agricultural, economic and built development in the coastal zone;
- Maintain or improve recreational amenity and resilience; and
- Adapt to emerging issues such as population growth and climate change.

The development is located within the draft coastal vulnerability mapping and therefore is impacted by this draft planning instrument. Council has considered this draft EPI and considers the proposed development is consistent with the aims and objectives of the document, and does not contravene the Coastal Emergency Actions recommended for Nelson Bay.

Section 4.15(a)(iii) – Any development control plan**Port Stephens Development Control Plan 2014 (PSDCP 2014)**

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

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

The development application does not require tree removal, noting the 17 trees to be removed over the site are approved for removal under the parent tourist approval (DA 7-1994-117).

B2 – Natural Resources

This chapter 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 is heavily disturbed, with all proposed works to be undertaken on already transformed surfaces. As such, it is not considered likely the development will result in significant ecological impacts, with specialist reports on biodiversity or hydrology impacts not warranted.

The presence of mature koala food trees within public recreational area adjoining the site was considered through the Arborist Report, finding no koala food trees or corridors will be impacted as part of the proposal. Noting all koala food trees adjoining the site can be retained, the proposed development complies with the performance criteria listed in Appendix 4 of the Port Stephens CKPOM.

On this basis, the proposal is consistent with the requirements of this chapter.

B3 – Environmental Management

This chapter applies to development that has the potential to produce air pollution, has the potential to produce adverse offensive noise, or involves earthworks.

The objectives of this chapter are:

- To ensure air quality is not negatively impacted on by dust and odour in recognition of the associated human health impacts;
- To identify potentially offensive noise to ensure it is managed within the relevant legislative requirements; and
- To facilitate earthworks so as to minimise potential environmental impacts, such as erosion or the release of sulfuric acids as identified by the Local Environmental Plan.

Noise

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

Control B3.B identifies that an acoustic report is required for development that has the potential to produce offensive noise. A Noise Impact Assessment (NIA) was submitted to assess the potential noise and vibration impacts which may arise as result of the proposed development including; mechanical plant equipment, construction processes, carpark usage and waste collection. Additionally, the NIA assessed the potential external noise sources impacting the site including; road traffic, recreational spaces and foot traffic from an adjoining footpath.

The nearest sensitive receivers surrounding the project site were identified as the residential properties directly adjacent to the east. The report determined noise trigger levels to establish project specific criteria at nearest sensitive receivers. The results of the assessment confirm compliance with the project specific noise levels can be achieved at all residential receivers, subject to implementation of the design/construction recommendations as outlined in the NIA, and review of the final mechanical equipment by a qualified acoustician at detailed design phase.

Council's Environmental Health Officer has endorsed the findings and recommendations of the NIA, subject to further conditions of consent requiring the preparation of an Operational Noise Management Plan and ongoing compliance with prescribed noise limits.

The proposal is therefore considered to be consistent with this chapter.

Air Quality

Dust generated during construction is expected to be minimal, subject to conditions of consent requiring erosion and sediment control be carried out in accordance with the guidelines set out in the NSW Department of Housing manual 'Managing Urban Stormwater: Soils and Construction Certificate' (the Blue Book) and the 'Do it Right On-Site, Soil and Water Management for the Construction Industry' (Southern Sydney Regional Organisation of Councils and the Natural Heritage Trust).

The proposed tourist and visitor accommodation land use would not cause any ongoing air quality impacts during the operational phase of the development.

Earthworks

As discussed at Clause 7.2 above, the proposed development involves approximately 1000m³ of bench excavation to a depth of 2m, to accommodate the footings of the proposed building. Given the location and topography of the site within an established residential area, a Geotechnical Investigation Report was prepared, which assessed the impacts of the earthworks on retaining structures, drainage and groundwater.

It is expected the required earthworks can be accommodated on the site without resulting in unreasonable adverse off-site impacts. Appropriate erosion and sediment controls will be in place during earthworks, in accordance with the Erosion and Sediment Control Plan and Geotechnical Investigation Report. Furthermore, the Stormwater Management Plans gives due consideration to the proposed earthworks and incorporates appropriate measures to ensure the earthworks will not result in any adverse impacts in relation to drainage patterns.

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.

B4 – Drainage and Water Quality

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

Stormwater runoff from the proposed building will be treated through the existing/proposed site stormwater system, and disposed via the existing stormwater drainage outlet pipe to Dutchmans Beach. Stormwater models prepared by DRB Consulting Engineers, were used to inform the stormwater drainage design and ensure relevant detention and water quality targets were satisfied.

The stormwater management plan details that all roof drainage will be directed through a series of gutters and downpipes to a 30m² Atlan Vault tank. A 3000L pump out tank has further been incorporated within the lower ground level of the basement car park, capturing carpark and driveway impervious area.

The stormwater drainage plan has been assessed as being consistent with Council's Infrastructure Specification and the water quality requirements of this section, by Council's Engineering Officer. A condition of consent has been recommended requiring the provision of detailed engineering plans including incorporation of a wall structure (or similarly performing solution) to be incorporated along the eastern side of the upper car park driveway to address potential overland flows into the upper car park.

Subject to the recommended conditions, the proposal is consistent with the requirements of this chapter.

B5 – Flooding

The proposed development is located on land mapped as Flood Planning Area. The site consists of three flood hazard categories (High Hazard Flood Fringe area, Low Hazard Flood Fringe area and Minimal Risk Flood Prone Land), with higher hazard flood categories located along the site's northern boundary. The development has been designed to respond to this flood risk, as demonstrated through the siting of the building over Minimal Risk Flood Prone Land.

Development plans submitted show the finished floor level of all habitable and non-habitable rooms are designed above the flood planning level of 4.0 meters AHD, with flood free access provided above the 1% AEP level. A Flood Impact Assessment was further provided for the development which demonstrates the design ensures compatibility with the flood function and behaviour on the land.

Noting the above, it is considered that the proposal is consistent with this clause.

B7 – Heritage

An AHIMS search dated 31/10/2024 was provided with the application confirming no previously recorded Aboriginal sites or places are recorded on or within 200m of the site. Notwithstanding this, the site is located approximately 10m from an Aboriginal sensitive landscape feature being the Port Stephens – Great Lakes Marine Park. Noting the site has been subject to significant prior ground disturbing activities as part of its historical use as a Tourist and Visitor Accommodation premises, Aboriginal artefacts are not expected to be present. Notwithstanding, a condition of consent is recommended relating to unexpected finds procedures in the event Aboriginal artefacts are uncovered during works.

Noting the above, it is considered that the proposal is consistent with this clause.

B8 – Road Network and Parking**Traffic impacts**

A Traffic Impact Assessment (TIA) prepared by TTPA dated November 2024, was submitted with the application. The TIA identifies Christmas Bush Avenue as a local access road, which is serviced

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

by a broader network of sub-arterial and collector roads. An indication of the prevailing traffic conditions on the road system serving the site is provided by data published by TfNSW. This data is expressed in terms of Annual Average Daily Traffic (AADT) with the most recently recorded flows in the vicinity of the site amounting to approximately 15,000 vehicles (as recorded from Nelson Bay Road). Some delays are experienced along Nelson Bay Road at times in the peak periods however, the operational performance of the intersection is generally satisfactory and access to/from the "higher order" road system is facilitated by the existing roundabout and traffic signal intersection controls.

The additional traffic generation emanating from the proposal will be relatively minor and largely limited to the movement of guests arriving and departing the accommodation. These movements will be spread throughout the day with some minor peaking on Friday and Sunday. This traffic generation will have no perceptible impact on the normal AM and PM peak traffic conditions on the access road system while any visitation by the public to the restaurant will generally be limited to the weekend lunch time and evening periods, which has already been approved under the parent tourist approval. The findings from the TIA demonstrate the addition of 6 tourist suites to the site would not result in any adverse traffic implications the surrounding road network.

On-site parking provisions

In accordance with Figure BU of the DCP, the following parking provisions are relevant to the proposal:

- **Tourist Accommodation** (hotel or motel accommodation):
 - 1 space per accommodation unit
 - 1 space per 2 employees
 - 1 bicycle space per 20 accommodation units
 - 1 accessible space is required per 20 parking spaces
- **Café / Restaurant:**
 - 12 car spaces per 100m² floor area or 1 car space per 4 seats (whichever is greater)
 - 1 bicycle space per 200m²
 - 1 accessible space is required per 30 parking spaces

Application of this criteria to the proposed development would indicate:

- 27 suites = 27 spaces
- Café & Restaurant = 8 spaces*
- Staff (14) = 7 spaces
- Total = **41 spaces**

The proposed development incorporates 41 spaces (including 3 accessible spaces), a loading bay and EV charging at 4 spaces. Each suite will be provided with a car space (27 in total) and the remainder allocated for the restaurant and staff. Five bicycle spaces are also proposed in the secure carpark to satisfy the DCP. The Plan of Management stipulates that if there are any suite vacancies, staff can allocate spare car spaces to the restaurant as required.

The day spa and other health amenities are for guests only and will not generate additional parking demand beyond the suite parking requirements.

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

The proposed development therefore caters for the parking demand and complies with the relevant DCP parking provisions.

*Noting the principal patrons accommodated at the restaurant component of the development will be accommodation guests, the development is compliant with the DCP provisions in relation to carparking for all uses. Furthermore, control measures implemented within the Plan of Management including a booking system for restaurant customer spaces will ensure satisfactory on-site parking provisions are achieved.

On-site parking access

Vehicle access will be provided by two combined ingress/egress driveways (being a modification / relocation of existing driveways) on Christmas Bush Avenue frontage where adequate sight distances are available. The design of the access driveways accords with the requirements of AS2890.1. Council's Development Engineer supported the parking and access arrangement.

Chapter C – Development Types

The proposed development is not consistent with any development type chapter.

Section 4.15(1)(a)(iia) – Any planning agreement or draft planning agreement entered into under section 7.4

There are no planning agreements or draft planning agreements which have been entered into under section 7.4 of the EP&A Act which are relevant to the development.

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

The following sections within the EP&A Regulation 2021 apply to the development, and have been considered through the assessment of this application:

Section 61 – Additional matters that consent authority must consider

In regard to section 61(1) of the EP&A Regulations 2021, Council has considered the Australian Standard AS 2601—2001: The Demolition of Structures in the assessment of this application with appropriate conditions being imposed on the consent.

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

The proposal will generate overall positive social and economic impacts within the Nelson Bay and broader Port Stephens locality. Council considers the economic impacts of the proposal is acceptable as:

- The proposed development seeks to provide additional tourist and visitor accommodation within the Nelson Bay area and existing tourist facility, which will provide the ability for 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 people in the locality will provide ongoing economic input through daily living activities.
- The proposal is consistent with the Port Stephens Local Strategic Planning Statement (LSPS), specifically Planning Priority 1 and 3, which notes the significance of the Tomaree Peninsula in achieving local employment and economic revenue objectives.

Council considers the social impacts of the proposal is acceptable as:

- The proposal has been supported by a Plan of Management (PoM) for the Armana Resort and a Crime Prevention through Environmental Design Report (CPTED) which has informed the design. These documents specifically address the proposed preventative measures to reduce the likelihood of anti-social behaviour, with recommendations included in the development design or as recommended conditions.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

Impacts on the Built Environment

Council considers the bulk, scale and height of the proposal is acceptable as:

- the overall approach to massing, height and landscaping has been refined to maximize privacy and amenity for adjoining residential properties;
- the proposed building is articulated and visually interesting;
- the proposed building height sits below the height of the established tourist accommodation units, an important benchmark in the design; and
- the proposal would not result in any significant amenity impacts on surrounding properties as there would be acceptable impacts arising from visual privacy, overshadowing or view loss.

As such, Council is satisfied the height, bulk and scale of the proposal is not excessive and it appropriately relates to the existing site context and surrounding features and would not result in any unreasonable visual or amenity impacts.

Further assessment of view loss has been undertaken below:

View Impact

Whilst view loss was not raised as a key concern in public submissions, the impacts of the proposal on views towards Nelson Bay from properties to the east and south were assessed through a Visual Impact Assessment.



Figure 10: View cone from balcony of 45 Christmas Bush Avenue



Figure 11: View cone from balcony of 70 Thurlow Avenue



Figure 12: View cone from balcony of 14a Christmas Bush Avenue

To determine whether the proposed view loss impacts are reasonable, the four-step assessment process, in accordance with the principles established by *Tenacity Consulting Vs Warringah [2004]* NSWLEC 140 has been applied. The steps/principles adopted in the decision are:

- Step 1: Assess what views are affected and the qualitative value of those views;
- Step 2: Consider from what part of the property the views are obtained;
- Step 3: Assess the extent of the impact (from 'negligible' to 'devastating');
- Step 4: Assess the reasonableness of the proposal that is causing the impact.

Steps 1 to 3 – 45 Christmas Bush Avenue

This is a two storey duplex building to the south of the site, with views of Port Stephens Bay obtained from the upper north facing balcony. The current views enjoyed from this balcony are largely attributed to the undeveloped nature of 16 Christmas Bush Avenue, noting the final stage of development consent 7-1994-117 (as modified), is yet to be finalised and will largely screen this view corridor. As evident through **Figure 13**, the magnitude of change resulting from the proposal is minor when considering the future context of 16 Christmas Bush Avenue, as developed under approved DA 7-1994-117. It is evident the proposed suites sit below the roof line of approved Buildings 3 – 5 and will not result in greater view loss beyond the approved building envelope.



Figure 13: View perspective of development from 45 Christmas Bush Avenue

Steps 1 to 3 – 70 Thurlow Avenue and 14a Christmas Bush Avenue

These are two storey dwellings located to the east of the site, with views of Dutchmans Beach and Port Stephens Bay, obtained from upper north facing balconies and windows. Views are captured as a result of the local topography, which falls steeply in a north-west direction. As evident through **Figure 13, 14 and 15**, the design has incorporated a flat roof profile rather than a pitched roof consistent with the existing built form, to reduce potential visual impacts that could otherwise result when viewed from 70 Thurlow Avenue and 14a Christmas Bush Avenue towards these valued views. The visual impact of the listed viewpoints is therefore considered negligible noting the approved built form extends above the proposed suites.

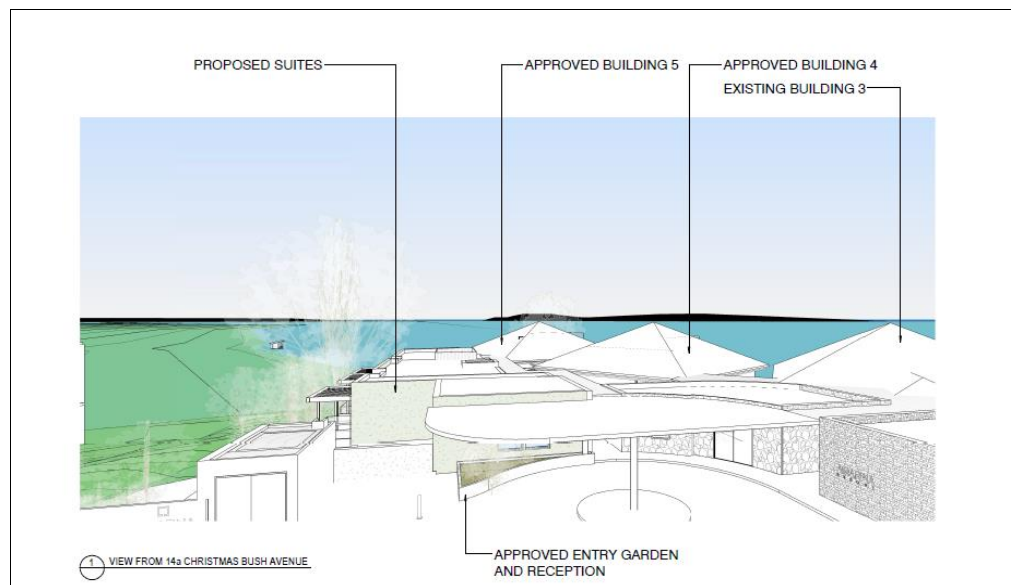


Figure 14: View perspective of development from 14a Christmas Bush Avenue

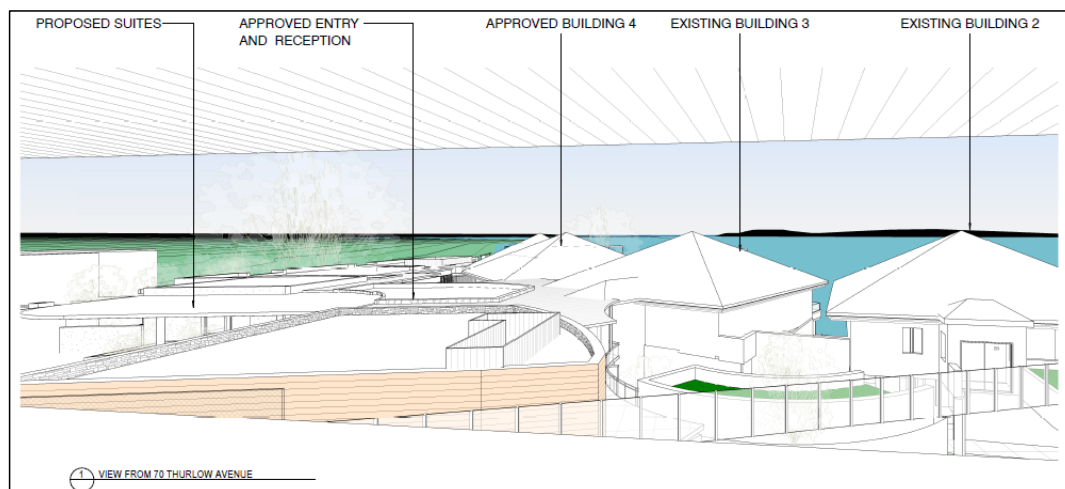


Figure 15: View perspective of development from 70 Thurlow Avenue

Step 4 – The reasonableness of the proposal

Council has reviewed the potential view impacts and considers the view impacts acceptable as:

- views currently enjoyed across the site rely on a borrowed amenity as they are as a result of the site being partially developed. The building form of the proposed development is considered reasonable and a compatible development form for the site.
- the built form retains a view corridor through the site as shown in **Figure 14-15** retaining views of Dutchmans Beach and Port Stephens Bay to the north-west for properties to the east.

Council considers the view impact of the proposal is reasonable with negligible impacts on the views of Port Stephens Bay from the neighbouring properties to the east and south.

Impacts on the Natural Environment

The site has been largely modified, with all proposed works to be undertaken on already transformed surfaces. Council considers the impacts of the proposal on the natural environment are acceptable as:

- the proposal would not have adverse impacts on the environment during construction or post-construction, subject to recommended conditions of consent;
- the proposal incorporates suitable stormwater management and water quality measures that satisfy Council's infrastructure specification;
- Council is satisfied the proposal would not have any significant flora, fauna or biodiversity impacts, given the lack of vegetation on the site and the nature of existing and surrounding development; and
- the proposal includes a number of measures to limit the ongoing cost, resource and energy requirements of the development. These include passive solar design, use of renewable energy to reduce energy consumption, robust materials reducing on-going maintenance costs and native planting to reduce water consumption in landscaped areas.

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

As such, Council is satisfied the proposal will not adversely impact the natural environment.

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

The site is considered to be suitable for the proposed development for the following reasons:

- The proposal is consistent with the Port Stephens Local Strategic Planning Statement, specifically planning objectives for tourism in the Tomaree Peninsula.
- The development has been designed with consideration to impacts from local constraints (flooding, coastal hazards and groundwater table).
- The development is generally compatible with the existing and future character, bulk, scale and massing of development in the immediate area.

Based on the above, the site is suitable to accommodate the proposal.

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

The proposal was notified and advertised for a period of 14 days from 22 November 2024 – 6 December 2024 in accordance with the EP&A Act, EP&A Regulations and the Port Stephens Community Participation Plan. The notification included the following:

- An advertisement in the local newspaper – The Port Stephens Examiner;
- Notification on Council's website; and
- Notification letters sent to adjoining and adjacent properties.

Council received twelve (12) submissions, containing 9 objections and 3 letters of support. The issues raised in this submission are considered in **Table 2**.

Table 2: Community Submissions

Objection	Comments
Increased Traffic and Congestion The impact on local traffic and congestion must also be considered. The proposed development will necessitate increased staffing for the resort, which will contribute to a higher volume of vehicles in the area, including staff cars and delivery vehicles. This additional traffic will significantly worsen current congestion on Christmas Bush Avenue and the surrounding streets, making these roads less safe and less accessible for residents, visitors, and emergency vehicles.	The additional traffic generation emanating from the proposal will be quite minor and largely limited to the movement of guests arriving and departing the accommodation. These movements will be spread throughout the day with some minor peaking on Friday and Sunday. This traffic generation will have no perceptible impact on the normal AM and PM peak traffic conditions on the access road system while any visitation by the public to the restaurant will generally be limited to the weekend lunch time and evening periods. It is apparent that the proposal would not result in any adverse traffic implications. Control measures implemented within the Plan of Management including a booking system for restaurant customer spaces will ensure satisfactory on-site parking provisions are achieved.
Lack of off-street parking The proposed development will exacerbate an already difficult parking situation, (particularly during holiday season) impacting both residents and	The proposed development incorporates 41 spaces including 3 accessible spaces, a loading bay and EV charging at 4 spaces. Five bicycle spaces are also proposed in the secure carpark. Noting the principal patrons accommodated at the restaurant component

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

Objection	Comments
visitors. During the construction phase, the influx of construction vehicles will further restrict available space, making it difficult for residents to park their cars safely and conveniently. Furthermore, there can be no guarantee that most restaurant patrons will be accommodation guests. Significant overspill of parking will occur on surrounding streets, as well as significant traffic congestion around breakfast and lunchtime.	<p>of the development will be accommodation guests, the development is compliant with the DCP provisions in relation to carparking. Furthermore, control measures implemented within the Plan of Management including a booking system for restaurant customer spaces will ensure satisfactory on-site parking provisions are achieved.</p> <p>The parking and access design, enables improved vehicle manoeuvring, site distances and internal circulation to be achieved.</p> <p>A construction management plan / private waste management plan to be implemented for project, which should address movement of contractors to development site.</p>
Staff Car Parking Overflow cars from AMARNA and domestic and grounds staff still take up kerbside parking. Contrary to the current Development application, this end of Christmas Bush Ave is not serviced by public transport and staff may reside in any of the different areas of the general Nelson Bay area	<p>A detailed assessment and consideration has been given to the intended staffing outcome both for normal peak days (Friday – Sunday) and normal days (Monday – Thursday). A schedule of peak staff numbers was provided by the site operator and traffic engineer, which documented the peak number of staff that are expected to be in attendance in terms:</p> <ul style="list-style-type: none"> -staff function by number -concurrent number by hours (AM & PM) -peak days and normal days. <p>It is understood that the resort accommodation will not be 100% occupied at times while often there will only be 1 car space needed for 2 units as a result of a family needs or couples/groups travelling together. Thus, there will be significant scope for resort management to advise staff of the availability of non-utilised guest parking spaces. It is proposed that management will maintain an on-going day to day register of the parking spaces available and their allocation.</p>
Interrelationship of subject application with DA 16-2024-581-1 for 'Alterations and Additions to Tourist and Visitor Accommodation' lodged concurrently over the site: It is very difficult for any interested party, including directly affected neighbours, to assess the intentions of the proponent and the implications, particularly in terms of traffic and parking, and visual impact, without clarification of the relationship between these two DA's; and	<p>Council acknowledges the interrelationship between the multiple applications lodged over the site, and has considered cumulative environmental impacts, conditions of consent and location of approved/proposed works over the site throughout its assessment.</p>

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

Objection	Comments
<p>Existing use rights</p> <p>The tourist accommodation is not a permitted use in the R2 (Low density residential) zone, and the approved DA relies on 'existing use' provisions, which allow for some <i>'enlargement or expansion or intensification of an existing use'</i> under s163 of the EP&A Regulation. The SoEE asserts that <i>'...the proposed alterations and additions are considered minor in nature, constituting the extension of building 5 to include six additional suites ...'</i></p> <p>This assertion is challenged – the 29% increase in the overall number of units from 21 to 27 is much more than a 'minor' change.</p>	<p>With respect to Section 163 of the Regulation, the proposed alterations and additions are considered minor in nature, constituting the extension of Building 5 to include six additional suites, and reconfiguration of the access, facilities and amenities elements of the existing approved development. The proposed development under this application will complete the tourist and visitor accommodation development and operation of the site and is consistent with the existing built form (Buildings 1, 2 and 3) and approved built form yet to be constructed (Building 4 & 5). Accordingly, the subject application is consistent with the provision.</p> <p>In this regard, Council accepts the existing use rights as lawful.</p>
<p>Adverse Effects on the Local Community</p> <p>The negative implications of this development on the local community are significant. Residents will face ongoing difficulties due to reduced access to parking and increased traffic on narrow streets that are already under strain. This situation will diminish the quality of life for local residents and create an environment that is unsafe and inconvenient for the community. The pressures from the resort's operational activities will disrupt the peace and harmony of the neighbourhood, posing challenges for residents in managing their day to - day activities, including commuting and recreational use of local public spaces.</p>	<p>The likely impacts of the development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality, have been assessed and supported per section 4.15(b) this assessment report.</p>
<p>Amenity impacts</p> <p>The local area is low density; however, the proposed development brings the location into a medium density environment and with these problems such as parking, traffic congestion and general noise.</p> <p>The scale and intensity of the development is out of proportion to the</p>	<p>An assessment of the proposed developments amenity impacts, has been informed through a combination of technical reports, referrals and assessment against relevant legislation and development codes,</p> <p>The proposed development is further considered to meet the objectives of the R2 zone noting:</p>

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

Objection	Comments
<p>size of the area. It will lead to overcrowding, strain on local services and further environmental degradation.</p> <p>The new design will be much 'denser' and more urban and is an inappropriate overdevelopment of the site.</p> <p>The development will result in a loss of amenity for existing residents due to the increase in size proposed. The natural surroundings, open space and quiet atmosphere are vital components of the quality of life for those living in the area.</p>	<ul style="list-style-type: none"> The proposed development has been designed to mitigate its impacts upon the residential amenity and character of the area. The bulk and scale of the development has been carefully taken into consideration in terms of the existing topography of the land to reduce massing, bulk, scale and height impact to the adjoining neighbours.
<p>Larger restaurant</p> <p>The larger restaurant proposed will bring larger numbers of people into the area which will impact on parking and acoustics.</p> <p>Objection is raised to the hours of operation of the restaurant being Friday to Sunday till 12 midnight.</p>	<p>The increased restaurant size is not proposed as part of this DA, with approval granted under 7-1994-117-9.</p> <p>Conditions of consent have been recommended requiring the preparation of an operational noise management plan and ongoing compliance with prescribed noise limits. Although restaurant impacts are not a relevant consideration for this development.</p>
<p>Support</p> <p>Support was provided for the proposed development as five-star facilities will bring in more visitors to the area and be of benefit to the Port Stephens community.</p> <p>As a local business within the area, support was provided for the proposal. The development will result in local employment increasing through construction and maintenance / operational requirements.</p> <p>The high-class boutique hotel and restaurant attracts customers with high disposal income, which will have direct revenue impacts on the CBD which is a positive outcome.</p>	<p>Noted.</p>

Section 4.15(1)(e) The public interest

The proposal would promote increased employment and economic opportunity within Tomaree Peninsula, through delivery of 6 accommodation units and contemporary services. Noting the

ITEM 2 - ATTACHMENT 2 PLANNER'S ASSESSMENT REPORT.

significance of the Tomaree Peninsula in achieving local employment and economic revenue objectives, the proposal responds to local and regional planning objectives for the locality.

The proposed development occupies an area already largely cleared of vegetation, which minimises environmental impacts. The proposal includes adequate stormwater quantity and quality controls, and has been designed to respond to site constraints, including coastal management and ground water. The site is suitable to accommodate a building of the height and scale proposed, as demonstrated in the visual impact assessment and architectural plans submitted with the application. The proposal has been designed for compatibility with the current and future character, bulk, scale and massing of development in the immediate area.

Overall, the development is consistent with the relevant environmental planning instruments and adopted strategic planning policies 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.

On balance, the proposal is consistent to the public interest.

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

S7.11 development contributions apply to the development for the creation of 4 additional units.

CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

RECOMMENDATION

The application is recommended to be approved under delegated authority pursuant to s4.15 of the *Environmental Planning and Assessment Act 1979*, subject to conditions of consent provided as contained in the notice of determination.

ITEM 3 - ATTACHMENT 1

PLANNING PROPOSAL 893 PATERSON RD,
WOODVILLE.



893 Paterson Rd,
Woodville
Planning Proposal

**Proposed amendment to Port Stephens Local
Environmental Plan 2013**

Additional Permitted Use at Lot 10 DP 1035397,
893 Paterson Road, Woodville



**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD,
WOODVILLE.**

CONTENTS

SUMMARY	3
BACKGROUND	3
SITE	4
PART 1 – Objectives or intended outcomes	9
PART 2 – Explanation of provisions	10
PART 3 – Justification of strategic merit and site specific merit	11
Section A – Need for the planning proposal	11
Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?	11
Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?	11
Section B – Relationship to strategic planning framework	11
Q3. Will the planning proposal give effect to the objectives and actions of the Hunter Regional Plan and/or Greater Newcastle Metropolitan Plan (or any exhibited draft plans that have been prepared to replace these)?	12
Q4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?	12
Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?	19
Q6. Is the planning proposal consistent with applicable SEPPs?	19
Q7. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?	20
Section C – Environmental, social and economic impact	24
Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?	24
Q9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?	25
Q10. Has the planning proposal adequately addressed any social and economic effects?	25
Section D – Infrastructure (Local, State and Commonwealth)	28
Q11. Is there adequate public infrastructure for the planning proposal?	28
Section E – State and Commonwealth Interests	28
Q12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?	28
PART 4 – Mapping	28
PART 5 – Community consultation	29
PART 6 – Project timeline	30

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD,
WOODVILLE.****VERSION CONTROL**

Version	Date	Details
1	March 2025	Planning proposal for lodgement with Department of Planning, Infrastructure and Housing.

ATTACHMENTS

APPENDIX A – Land Use Conflict Risk Assessment (LUCRA)

APPENDIX B – Biodiversity Assessment

APPENDIX C – Flood Impact and Risk Assessment

APPENDIX D – Bush Fire Assessment Report

APPENDIX E – Noise Impact Assessment

APPENDIX F – Letter in support of proposal

FILE NUMBERS

Council: 58-2024-3-1

Department: PP-2024-2727

SUMMARY

Subject land: LOT 10 DP 1035397
893 PATERSON ROAD, WOODVILLE

Proponent: Wilson Planning

Proposed changes: Amendment to Port Stephens Local Environmental Plan 2013, to add an item to Schedule 1 'Additional Permitted Uses' to permit, with development consent, the use of Lot 10 DP 1035397, 893 Paterson Road, Woodville (the site), as a function centre.

BACKGROUND

The planning proposal seeks to amendment to Port Stephens Local Environmental Plan 2013 (LEP). The planning proposal seeks to use Clause 2.5 to add an item to Schedule 1 'Additional Permitted Uses' to permit, with development consent, the use of Lot 10 DP 1035397, 893 Paterson Road, Woodville, as a function centre.

There is currently a Port Stephens Council issued Development Consent No. 16-2018-557-1 for 'Temporary Use of Land – Marriage Ceremonies' on 14 September 2018 over the following allotments:

- Lot 92, DP 1050560, No. 837 Paterson Road, Woodville
- Lot 901, DP 1268662, No. 869 Paterson Road, Woodville
- Lot 10, DP 1035937, No. 893 Paterson Road, Woodville.

The key parameters for the DA reflected in the consent conditions were:

- The consent being time limited to five (5) years expiring 15 September 2023
- Guest numbers being limited to 120 persons on the site at any one time

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

- The ceremonies limited to not more than 52 days in any one calendar year (essentially one wedding ceremony per week).

The proponents applied to have the consent extended for a further five (5) year period via a Section 4.55(1A) modification to the existing consent. This amendment application was approved by Council on 13 January 2023 and permitted the 'Temporary Use of Land – Marriage Ceremonies' to operate from the site for a further five (5) years with the consent lapsing on 15 September 2028. The amended development consent retained the same operational parameters as the original consent.

Port Stephens Council issued the development consent as a temporary, time limited consent under Clause 2.8 of the LEP on the basis that a 'function centre' as defined by the LEP is a 'prohibited use' within the RU1 Primary Production Zone which applies to the land.

There are some limitations to the existing arrangements, including the lack of a high quality reception / function venues for wedding parties and their guests. Wedding parties will often book the Woodville School of Arts Hall located on the opposite side of Paterson Road as a reception venue. Alternatively, they are forced to choose to travel further afield if a larger or higher quality reception venue is required.

The 'wedding ceremony' use of the properties has been conducted for the last five (5) years with no adverse environmental, traffic or amenity impacts at the locality. The successful and harmonious operation of the wedding ceremony use was formative to Council deciding to grant a further 5-year temporary consent over the site.

Development for the purpose of a 'function centre' is not permitted within the current RU1 Primary Production zone under the LEP.

SITE

The subject site is legally described as Lot 10 in DP 1035397 and is known as 893 Paterson Road, Woodville. The subject site has an area of 10.52ha, a frontage of approximately 158m to Paterson Road on the eastern side, and a depth of approximately 660m. The western boundary of the site is defined by Paterson River. The land is located approximately 11km by road north-east of the Central Maitland Post Office in the locality of Woodville. The site's location is shown in Figure 1.

The subject site contains a substantial dwelling and rural outbuildings occupying around 1.0ha in the centre of the site. The eastern portion of the site (approximately 2.5ha) contains a large constructed lake surrounded by extensive ornamental gardens which provide a backdrop for the wedding ceremonies held within the site. The western portion of the site (around 7.0ha) contains cultivated river flats and extensive areas for livestock grazing. The current condition of, and improvements within, the site are shown in Figures 2-5.

Reticulated water and sewer are not available to the site, with rainwater tanks provided for water and on-site sewerage management system provided for the treatment of sewerage. Electricity and telecommunications infrastructure are available to the site. The site has legal frontage to, and access from, Paterson Road,

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

which is a sealed rural road with a speed limit of 60km/hr along the frontage of the site. The Paterson Road frontage is shown in Figure 6.

Parts of the site are flood prone; however, the location of the existing dwelling and proposed function centre are above the 1% AEP and PMF flood planning levels. The whole of the site is bush fire prone land (Vegetation Category 3) and a small section of the rear of the site (along the river) is mapped as containing 'biodiversity values' (BV).

The subject land is zone RU1 Primary Production under the Port Stephens Local Environmental Plan 2013 (the LEP). Figure 7 shows the zoning of the land. The objectives of the RU1 zone are:

- To encourage sustainable primary industry production by maintaining and enhancing the natural resource base.
- To encourage diversity in primary industry enterprises and systems appropriate for the area.
- To minimise the fragmentation and alienation of resource lands.
- To minimise conflict between land uses within this zone and land uses within adjoining zones.
- To facilitate a variety of tourist and visitor-orientated land uses that complement and promote a stronger rural sector appropriate for the area.

The subject site is adjoined by rural properties that are used for either cultivation (river flats) or grazing purposes. Lot sizes in the locality are varied with a few larger lots in the range of 40 to 60 hectares but with most in the range of 5 to 20 hectares. There are some rural small holdings lots with areas around 2ha that were created under historical LEP provisions which allowed the excision of 'concessional' allotments from larger rural holdings. A description of each of the sites is included below.

- Immediately to the north – 895 Paterson Road - 33ha farm used for extensive agriculture. Dwelling approximately 300m from location of proposed function centre.
- Immediately to the east –
 - 896 Paterson Road – 16ha farm 'Rosedale' used for extensive agriculture. Dwelling approximately 300m from location of proposed function centre, close to the Paterson Road vehicular entry to the subject site.
 - 876 Paterson Road – small holding used as a hobby farm. Dwelling approximately 500m from location of proposed function centre.
 - 866-866B Paterson Road – small holding used as a hobby farm. Dwelling approximately 400m from location of proposed function centre.
 - 864 Paterson Road – 12ha farm used for extensive agriculture. Dwelling approximately 600m from location of proposed function centre.
 - 870 Paterson Road - Woodville School of Arts (community) Hall
 - 860 Paterson Road - Iona Public School.
- Immediately to the south – 837 and 869 Paterson Road – 28ha farm 'Albion Farm' used for extensive agriculture and ornamental gardens.

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD,
WOODVILLE.**

Dwellings approximately 250m and 500m from location of proposed function centre.

- Immediately to the west (on the western side of Paterson River) –
 - 532 Tocal Road, Mindaribba – 27ha farm 'Mindaribba House' used for extensive agriculture and tourist and visitor accommodation. Was formally used for wedding ceremonies and receptions. Mindaribba House approximately 650m from location of proposed function centre.
 - 510 Tocal Road, Mindaribba – 12ha farm used for extensive agriculture. No dwelling.
 - 496 Tocal Road, Mindaribba – 2ha small holding used as a hobby farm. Dwelling approximately 1km from location of proposed function centre.
 - 474 Tocal Road, Mindaribba – 16ha farm used for extensive agriculture. Dwelling approximately 1.2km from location of proposed function centre.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD,
WOODVILLE.

FIGURE 1 – 893 Paterson Rd, Woodville (land the subject of the planning proposal is shown in red)



**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD,
WOODVILLE.**

**FIGURE 2 – Entry driveway and bridge over constructed lake, with main residence
behind**



**FIGURE 3 – Constructed lake at the front of the property, with existing wedding
ceremony location and dwelling beyond**



**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD,
WOODVILLE.**

FIGURE 4 – Grazing area at the rear of the site



FIGURE 5 – Lower section of the site at the rear, along Paterson River, used for grazing and cultivation

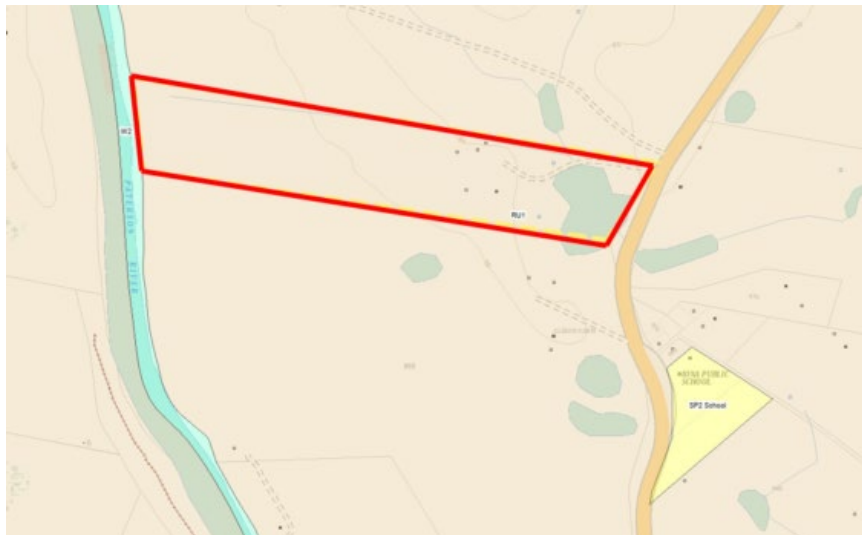


FIGURE 6 – The Paterson Road frontage of the site, with the existing access to the site to the right of the photo



ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

FIGURE 7 – Zoning extract showing the site in the RU1 zone



PART 1 – Objectives or intended outcomes

The planning proposal seeks to achieve the following outcomes:

- The proposal will allow the site, with consent, to have a function centre.

The intended outcome of this planning proposal is to amend Schedule 1 'Additional Permitted Uses' of the LEP to include an additional permitted use, 'function centre', on Lot 10 DP 1035397, 893 Paterson Road, Woodville.

PART 2 – Explanation of provisions

The objectives of the planning proposal will be achieved by the following amendments to the *Port Stephens Local Environmental Plan 2013*:

LEP Provision	Amendment	Explanation
Schedule 1 'Additional Permitted Uses'	Use of certain land at Paterson Road, Woodville (1) This clause applies to land at Paterson Road, Woodville, being Lot 10, DP 1035397. (2) Development for the purpose of a function centre is permitted with development consent.	Permit function centres with development consent on the subject site.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

The Additional Permitted Uses Map	Identify the subject site as a 'function centre' on the Additional Permitted Uses Map.	Identify function centres as being permitted with development consent on the subject site.
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PART 3 – Justification of strategic merit and site specific merit

Section A – Need for the planning proposal

Q1. Is the planning proposal a result of an endorsed LSPS, strategic study or report?

The proposal promotes rural enterprises and diversification of the rural economy, an objective of the Hunter Regional Plan (HRP); and aligns with Priorities 2 and 3 of the Port Stephens Local Strategic Planning Statement (LSPS), theme P1 of the Port Stephens Community Strategic Plan (CSP), and the Economy theme in the Port Stephens Hinterland Place Plan (HPP).

The planning proposal will:

- Enable continuation and augmentation of an existing land use activity that is developing as a 'destination' site within the Woodville locality, which builds upon the existing ornamental gardens (Albion Farm Gardens) established over the last two decades.
- Be situated and operated to minimise land use conflict and integrate effectively in its rural setting without affecting the ability of the land to be used for extensive agriculture.
- Showcase rural enterprises in the locality by promoting local rural produce and/or using this produce in catering at the function centre (paddock to plate).
- Enhance the range of visitor offerings in the Port Stephens hinterland environment consistent with maintaining the dominance of rural enterprises and farming.
- Enhance the biodiversity values of the site through expanded tree planting and landscaping of the site.

Q2. Is the planning proposal the best means of achieving the objectives or intended outcomes, or is there a better way?

Port Stephens Council issued Development Consent No. 16-2018-557-1 for 'Temporary Use of Land – Marriage Ceremonies' on 14 September 2018 over the land (and adjoining land). The consent was limited to wedding ceremonies with 120 persons not more than 52 times in a year, and time-limited to 5 years expiring 15 September 2023. A modification was approved for an extension of the temporary use for a further five (5) years, to 15 September 2028.

The owners of the land could continue to apply for extensions to the temporary use DA; however, they wish to make the arrangements to allow a permanent one, and to establish a formal function centre to cater for not only weddings but for a broader range of function types (e.g. corporate training, workshops etc) at other times.

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

Amending the LEP to allow an additional permitted use is the only option available to permit the marriage ceremonies on a permanent basis and permit the development for a function centre.

Section B – Relationship to the strategic planning framework**Q3. Will the planning proposal give effect to the objectives and actions of the Hunter Regional Plan and/or Greater Newcastle Metropolitan Plan (or any exhibited draft plans that have been prepared to replace these)?**

The planning proposal will give effect to the strategies and actions of the applicable objectives and priorities detailed in the HRP 2041, as outlined below.

Hunter Regional Plan 2041

The planning proposal is consistent with the Hunter Regional Plan (HRP) 2041.

Part 3 of the HRP “District Planning and Growth Areas” sets out specific projects across the Hunter which are to be a focus over the period of the plan. Of particular relevance is the Hunter’s Hinterland District, which is recognised as being vital to the region.

Part 3, Planning Priority 2 is to promote rural enterprises and diversification. It seeks to promote those types of rural enterprises that have a synergy with agriculture, for example, farm stays, camping or farm gate trails, along with larger visitor economy activities and events.

The proposed ‘function centre’ is the type of development contemplated by the HRP in the promotion of rural enterprises and diversification and is particularly suitable in the Hinterland District.

The planning proposal does not seek to make a ‘function centre’ a permissible use across the entirety of the RU1 Primary Production zone. Rather it proposes a site specific additional permitted use as a ‘function centre’ on a specific lot, which is considered to be well suited for it.

The proposal is appropriate in its local context, for example, the nature and pattern of adjoining land uses, the development consent history of the site, the ability of the proposed development to integrate with and operate harmoniously within its rural setting and the opportunity it provides to grow and support the local economy.

The planning proposal is also consistent with the following Part 2 Objectives as set out in the table below.

HRP Part 2 Objectives	Comment in context of proposal
Objective 6 - Conserve heritage, landscapes, environmentally sensitive	The Biodiversity Development Assessment Report (Appendix B) confirms that the proposed location of the future

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

areas, waterways and drinking water catchments.	development will avoid the Biodiversity Values on the site.
Objective 8 - Plan for businesses and services at the heart of healthy, prosperous and innovative communities.	The proposed function centre will attract visitors from outside the Port Stephens Local Government Area (LGA) who will potential seek accommodation and visit other local attractions.
Objective 9 - Sustain and balance productive rural landscapes.	<p>The extensive gardens of 'Gracemere' and Albion Farm have been in a constant state of expansion and revision since the mid-1970's (Albion Farm) and early 2000s (Gracemere). They have been developed alongside extensive agriculture within these sites and the adjoining rural properties over this period with no land management conflict. Additionally, the 'temporary' consent in September 2018 over the properties for the conducting of wedding ceremonies was an opportunity to trial the events to determine whether the operation would be suitable in its local context in terms of intensity of use and its associated impacts. The wedding ceremony use has operated for 5 years with no conflict with adjoining neighbours, which gave the Council sufficient confidence to issue a second 5 year temporary consent in September 2023.</p> <p>The expanded proposal will involve a modest increase in the number of function guests that can be catered for (from 120 up to 180 people) with the function venue itself occupying an area of the property which has been used historically for limited grazing and storage of farm materials and equipment. The proposal will have no impact on the cultivation of the lower flats adjoining the Paterson River. The rural occupation of the land requires the owners to generate additional income via the function centre and off-site sources of income.</p> <p>Additionally, both Dungog LEP and Gloucester LEP (who have large rural land holdings) permit function centres in the RU1 Primary Production zone, indicating that function centres can co-exist with</p>

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

	agricultural land uses and any potential conflicts can be appropriately managed.
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Q4. Is the planning proposal consistent with a council LSPS that has been endorsed by the Planning Secretary or GSC, or another endorsed local strategy or strategic plan?

The planning proposal is consistent with the LSPS, CSP and HPP as outlined below.

Port Stephens Local Strategic Planning Statement

The LSPS sets out the vision for land use in Port Stephens over the next 20 years. It is a document which closely aligns with the Hunter Regional Plan and demonstrates the strategies and initiatives that the Council will follow in order to meet the objectives and outcomes of the HRP.

The LSPS identifies various planning priorities for the Council and commitments which the Council must undertake within nominated time frames. The parts of the LSPS which have relevance to the planning proposal are listed in the table below:

Port Stephens Local Strategic Planning Statement	
Relevant planning priority	Comment in context of proposal
Priority 2: Make business growth easier	
<ul style="list-style-type: none"> Council acknowledges that the small business sector will continue to be a major jobs generator, particularly in creative, knowledge and service based, and tourism industries. Council recognises that by creating an environment where business can thrive, Council can facilitate the growth of innovative and successful enterprise and ensure existing industries can continue to provide jobs and opportunities in our LGA. Council commits to assessing rezoning requests consistent with local strategies. In this case the Council will need to consider the: <ul style="list-style-type: none"> Port Stephens Community Strategic Plan 2022-2032 	<p>Albion Farm Gardens and Gracemere have become successful small businesses and are looking to expand their capacity and improve the standard of facilities and level of service they provide. Relocating the business to another location is not a practical or viable alternative as the business has grown around the gardens, which have taken decades to establish. The gardens provide a setting for weddings that is distinct from that of the vineyards district within the Cessnock and Singleton LGAs.</p> <p>The formalisation and expansion of the wedding ceremony operations to full functions on the subject site will provide a source of employment and income for future staff.</p>

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

<ul style="list-style-type: none"> • Port Stephens Hinterland Place Plan 	
Priority 3: Support Tourism and Attract Events	
<ul style="list-style-type: none"> • Council recognises the importance of tourism to the local economy and the recent interest and investment in emerging tourist markets. • Council commits to investigating opportunities to facilitate land uses that can support the tourist and visitor economy. 	<p>The existing wedding ceremony venue is evolving into a destination for weddings. While not specifically a tourist development, the proposed function centre will further build upon the success of the activity to date by drawing visitors from out of the area who require local accommodation and would potentially extend their stay to visit other regional drawcards and participate in other local events, attractions and activities.</p> <p>The function centre has the ability to act as a catalyst for tourism more broadly for the region.</p>
Priority 9: Protect and Preserve Productive Agricultural Land	
<ul style="list-style-type: none"> • Council recognises the importance of the agricultural sector to the local economy in terms of its output and also as a source of employment. • There may be opportunities for existing agricultural businesses to capitalise on complementary uses such as artisan food premises, boutique breweries and wedding reception venues which can provide supplementary income for farm-based businesses. • Managing the impacts of new development in some areas requires assessing potential land use conflicts to ensure existing and potential agricultural uses are protected. • The Council commits to review local plans to encourage niche commercial, tourist and recreation activities that complement and promote agricultural industries. 	<p>In 2022, Council undertook an amendment of the LEP to incorporate additional permitted land uses within its rural zones. 'Function centres' were made permissible with consent in the RU2 Rural Landscape zone but not the RU1 Primary Production zone.</p> <p>Notwithstanding, the proposal will facilitate a niche commercial activity that has evolved over time to become not only an accepted operation in the local Woodville community, but which has a history of lawful operation under the 'temporary' consent provisions of the LEP. This has enabled the operators to demonstrate the compatibility of the development with adjoining/nearby land use activities.</p> <p>The proposed function centre would enable the operators the opportunity to promote other local produce and accommodation options as part of the experience and service it provides to function centre guests.</p> <p>A Land Use Conflict Risk Assessment (LUCRA) has been</p>

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

	carried out and can be found at Appendix A. This concludes that the proposal 'will be appropriate for the site and is unlikely to result in adverse impacts on surrounding properties or the agricultural use of surrounding land'.
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Port Stephens Community Strategic Plan 2022-2032

The CSP guides the planning and reporting activities of the Council to meet its Integrated Planning and Reporting framework obligations under the NSW Local Government Act.

The CSP involved extensive community consultation and focusses on 4 main themes. These themes assist Council in the development of its Delivery Program and Operational Plans. The themes, which have relevance to the planning proposal, are discussed in the table below.

Port Stephens Community Strategic Plan 2022-2032	
Relevant Theme	Comment in context of proposal
Our Place	
P1 Strong economy, vibrant local businesses, active investment.	<p>"Albion Farm Gardens" has secured itself a place in the local economy as a unique venue for the holding of wedding ceremonies that draws clientele from not only the immediate area but from as far away as the Central Coast, Sydney and Melbourne.</p> <p>The expansion of the operation to provide a fully equipped formal function venue containing function space, kitchen, toilet facilities, car parking, waste-water management facilities and landscaping requires significant expenditure which cannot reasonably be made under the current circumstances where the operation has only a temporary, time limited consent.</p> <p>The business, which is already a success in a temporary sense, is one that warrants support for the employment it will generate and the income it bring to the local economy</p>

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

	<p>The formalisation and expansion of the wedding ceremony operations to full functions on the subject site will provide a source of employment and income for future staff.</p> <p>The planning proposal will add to and reinforce the diversity of businesses in the LGA and enable the owners to make the necessary investment to grow this successful and evolving business for the future.</p>
Our Environment	
E3 Environmental resilience	<p>The land is subject to the following risks:</p> <ul style="list-style-type: none"> • Bush Fire Prone Land • Flood Prone Land. <p>These areas of risk are discussed in greater detail in later sections of the planning proposal. Both can be appropriately mitigated through design and management strategies in the operational phase of the development.</p>

Port Stephens Hinterland Place Plan (HPP)

The HPP was developed in close consultation with the local community to provide finer grained, more targeted strategies and outcomes which build upon the higher-level planning strategies contained in the CSP.

The Hinterland encompasses the agricultural and rural/bushland landscape connecting the Hunter, the Williams and the Paterson Rivers.

The HPP identifies the following key themes to help focus future initiatives. These are discussed in the table below.

Port Stephens Hinterland Place Plan	
Relevant Theme	Comment in context of proposal
Economy: New experiences and distinct business opportunities	
This theme identifies the importance of tourists and visitors to the economy and suggests that "...farm gate experiences, farm stays and low impact events can showcase the Hinterland's history, lifestyle and local produce while increasing vibrancy, community connection and economic outcomes".	A function centre sits outside the RU1 zoning provisions of the LEP'; however, the proposed 'function centre' on the subject land, as a one-off additional permitted use under the LEP would not compromise the intent of the HPP to protect and promote the values of the hinterland environment and economy.

ITEM 3 - ATTACHMENT 1

PLANNING PROPOSAL 893 PATERSON RD,
WOODVILLE.

	<p>Based on the findings of the LUCRA (Appendix A), the proposal is classified as something that offers 'low impact events' while at the same time increasing visitors and boosting the local economy.</p> <p>The proposal would allow for the formalisation of the temporary use that has been operating for over five (5) years and which has been granted a temporary consent for a further five (5) years.</p> <p>The use of the land for wedding ceremonies has become an integral and well-embraced element of the Woodville community and beyond. The existing use draws many people to the site for wedding ceremonies and this is expected to increase under the proposal, particularly as the facility will be expanded to cater for other types of functions and events. Visitors to the site from out of the area will book local accommodation and are likely to increase their stay to explore other places of interest and activities in the Port Stephens region.</p> <p>The proposal has the ability to display and support the outputs of other local businesses, for example, the use of locally produced food in the function centre.</p>
Environment: Protection and conservation of our environment	
This theme identifies that the rural and natural landscape in the Hinterland is important to the community	The planning proposal will have no major impacts on native vegetation, wetlands, riparian corridors. Any impacts on the rural landscape can be assessed during the assessment of a development application and there is considered adequate setbacks from the road and neighbours to mitigate potential impacts.
Character: The Hinterland and our unique identity	

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

The theme identifies the importance of the unique identity of the villages that make the Hinterland.	Gracemere and Albion Farm have established themselves as part of the distinctive character and fabric of Woodville. The planning proposal will facilitate the necessary investment to enable Gracemere to continue to deliver an improved standard of facilities and experience for many in the local community and beyond.
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Q5. Is the planning proposal consistent with any other applicable State and regional studies or strategies?

There are no other applicable State or regional studies or strategies.

Q6. Is the planning proposal consistent with applicable SEPPs?

An assessment of the relevant applicable SEPPs against the planning proposal is provided in the table below.

Table 1 – Relevant State Environmental Planning Policies (SEPP)

SEPP	Consistency and Implications
SEPP (Primary Production) 2021	
Chapter 2 Primary production and rural development Aims to support sustainable agriculture and aquaculture by facilitating the orderly, environmentally sustainable, and economic use and development of land for primary production and rural development	The proposal is not inconsistent with the provisions of this SEPP. It will not adversely impact the production potential of the adjoining rural land and any areas of potential conflict have been considered as part of a Land Use Conflict Risk Assessment (LUCRA) Report, which can be found in Appendix A.
SEPP (Resilience and Hazards) 2021	
Chapter 2 Coastal Management Promotes an integrated and co-ordinated approach to land use planning in the coastal zone consistent with the objects of the <i>Coastal Management Act 2016</i> .	The planning proposal is consistent with this SEPP. The subject land is located in the upper estuary of the Paterson River as identified under the Hunter Estuary Coastal Zone Management Plan. The proposed development will have no discernible impacts on the estuarine environment with the proposed development footprint to be located approximately 360m east of Paterson River. An on-site wastewater management strategy will be developed at development application stage to ensure that soil quality, water quality and any

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

	potential run-off is within relevant environmental thresholds. Any impacts can be assessed during the assessment of a development application.
Chapter 4 Remediation of Land This SEPP applies to land across NSW and states that land must not be developed if it is unsuitable for a proposed use because of contamination.	The planning proposal is consistent with this SEPP. The land is not within an investigation area, is not being used, or has been used for any of the activities listed in Table 1 of Appendix 1 of the guidelines, and the proposed land use is not residential, educational, recreational or childcare purposes, or for the purposes of a hospital. The planning proposal does not involve a change of zone.
SEPP (Biodiversity and Conservation) 2021	
Chapter 3 Koala habitat protection 2020 (Applies to land zoned RU1, RU2, or RU3 only) Encourages the conservation and management of natural vegetation areas that provide habitat for koalas to ensure permanent free-living populations will be maintained over their present range.	As outlined within the Biodiversity Development Assessment Report (provided as Appendix B), the planning proposal is not expected to impact on any koala habitat and is therefore consistent with this SEPP.

Q7. Is the planning proposal consistent with applicable Ministerial Directions (section 9.1 Directions)?

An assessment of relevant Ministerial Directions against the planning proposal is provided in the table below.

Table 2 – Relevant Ministerial Directions

Ministerial Direction	Consistency and Implications
1. PLANNING SYSTEMS	
1.1 Implementation of Regional Plans The objective of this direction is to give legal effect to the vision, land use strategy, goals, directions and actions contained in Regional Plans.	The planning proposal is consistent with the Hunter Regional Plan 2041. This is demonstrated in the response to Question 3.
1.4 Site Specific Provisions The objective of this direction is to discourage unnecessarily restrictive site specific planning controls.	The planning proposal does not contain any unnecessarily restrictive site-specific planning controls.
3. BIODIVERSITY AND CONSERVATION	

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

<p>3.1 Conservation Zones</p> <p>The objective of this direction is the protection and conservation of environmentally sensitive areas, by ensuring that planning proposals do not reduce the environmental protection standards applying to such land unless it is suitably justified by a relevant strategy or study or is of minor significance.</p>	<p>Direction 3.1 requires a planning proposal to include provisions relating to the protection and conservation of environmentally sensitive areas.</p> <p>As outlined within the Biodiversity Assessment (provided as Appendix B), the part of the site that is BV mapped, is in the same area as the Flood Prone Land. The proposed function centre will be located out of the flood mapping and therefore avoid the BV mapped areas. The planning proposal is therefore considered consistent with this direction.</p>
<p>3.2 Heritage Conservation</p> <p>The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.</p>	<p>The site does not contain any heritage items/places listed in the Port Stephens Local Environmental Plan 2013.</p> <p>The site does not contain any known Aboriginal areas, objects, places, or landscapes.</p> <p>The planning proposal is therefore considered consistent with this direction.</p>
<p>4. RESILIENCE AND HAZARDS</p>	
<p>4.1 Flooding</p> <p>The objectives of this direction are to ensure that development of flood prone land is consistent with the NSW Government's Flood Prone Land Policy and the principles of the Floodplain Development Manual 2005, and that the provisions of an LEP on flood prone land is commensurate with flood hazard and includes consideration of the potential flood impacts both on and off the subject land.</p>	<p>A Flood Impact and Risk Assessment was completed for the site. It determined that the proposed development is compatible with the existing flood hazard and does not result in adverse off-site flood impacts. The proposed function centre would be located above the Flood Planning Level and as such the risk to property is readily managed. There is also adequate flood free area above the PMF level on site so that there would be no major risk to life for occupants.</p> <p>The main flood risk is associated with isolation of the site, as the site access and local roads are cut at events in excess of the 20% AEP event. However, given the available flood warning time (greater than 12-hours), there is a sufficient lead time</p>

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

	<p>available to evacuate the site prior to loss of local flood access. Notwithstanding this evacuation opportunity, the availability of early flood warning enables events booked in at the site to be cancelled prior to commencement.</p> <p>The planning proposal is therefore considered consistent with this direction.</p>
<p>4.2 Coastal Management The objective of this direction is to protect and manage coastal areas of NSW. This direction applies to land within the coastal zone.</p>	<p>The subject land is located in the upper estuary of the Paterson River as identified under the Hunter Estuary Coastal Zone Management Plan. The proposed development will have no discernible impacts on the estuarine environment with the proposed development footprint to be located approximately 360m east of Paterson River.</p> <p>The planning proposal is therefore considered consistent with this direction.</p>
<p>4.3 Planning for Bushfire Protection The objectives of this direction are to protect life, property and the environment from bush fire hazards, by discouraging the establishment of incompatible land uses in bush fire prone areas, to encourage sound management of bush fire prone areas.</p>	<p>The proposal relates to bushfire prone land. A Bushfire Assessment Report (BAR) has been prepared by MJD Environmental. The BAR concludes that the proposed development 'will be able to meet the performance criteria for acceptable solutions for commercial development, giving due regard to the requirements of Chapter 8 of PBP 2019, specifically Section 8.3.1. A suitable package of BPMs has been developed that is commensurate with the assessed level of risk to the development'.</p> <p>The planning proposal is therefore considered consistent with this direction.</p>
<p>4.4 Remediation of Contaminated Land The objective of this direction is to reduce the risk of harm to human health and the environment by ensuring that contamination and</p>	<p>The land is not within an investigation area, is not being used, or has been used for any of the activities listed in Table 1 of Appendix 1 of the guidelines, and the proposed land use is not residential,</p>

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

remediation are considered by planning proposal authorities.	<p>educational, recreational or childcare purposes, or for the purposes of a hospital. The planning proposal does not involve a change of zone.</p> <p>The planning proposal is therefore considered consistent with this direction.</p>
<p>4.5 Acid Sulfate Soils</p> <p>The objective of this direction is to avoid significant adverse environmental impacts from the use of land that has a probability of containing acid sulphate soils.</p>	<p>The subject land is identified under the Port Stephens LEP 2013 as containing the following acid sulphate soil groups:</p> <ul style="list-style-type: none"> • Class 1 – low alluvial flats adjoining Paterson River. • Class 3 – rising slope from alluvial flats to the high point of the site between RL's • 2.5m and 7.5m AHD. • Class 5 – All land west of RL 7.5m AHD. <p>The risk of encountering acid sulphate soils on the site is highest on the river flats and reduces with increasing distance upslope from the river.</p> <p>The proposed function centre is to be located within the Class 5 soil group above RL 7.5m AHD.</p> <p>The proposed wastewater disposal will occupy the area above RL 4.6m and will be located within the Class 3 soil group.</p> <p>It is not anticipated that works on the site will require excavation or exposure of soils greater than 1.0m below natural ground level. The requirement for an 'acid sulphate soils management plan' as set out in Clause 7.1 of the Port Stephens LEP is not triggered on the basis that the risk of encountering and exposing these soils is low.</p>
9. PRIMARY PRODUCTION	
9.2 Rural Lands	The subject site has been used historically for limited grazing and

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

<p>The objective of this direction is to protect the agricultural production value of rural land and facilitate the orderly and economic development of rural lands for rural and related purposes. Applies to planning proposals that will affect an existing or proposed rural or environmental protection zone or changes the existing minimum lot size within a rural or environment protection zone</p>	<p>cultivation of the lower flats adjoining the Paterson River. These agricultural activities are at a relatively small scale and not economically viable in and of themselves.</p> <p>The HRP seeks to promote those types of rural enterprises that have a synergy with agriculture, things like, farm stays, camping or farm gate trails, along with larger visitor economy activities and events. The proposed 'function centre' is type of development contemplated by the HRP in the promotion of rural enterprises and diversification and is particularly suitable in the Hinterland District.</p> <p>The proposal is a good 'fit' in its local context taking into account the circumstances of the case. The nature and pattern of adjoining land uses, the development consent history of the site, the ability of the proposed development to integrate with and operate harmoniously within its rural setting and the opportunity it provides to grow and support the local economy.</p> <p>The LUCRA included with the planning proposal, concludes that the proposal 'will be appropriate for the site and its setting and is unlikely to result in adverse impacts on surrounding properties or the agricultural use of surrounding land'.</p>
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Section C – Environmental, social and economic impact

Q8. Is there any likelihood that critical habitat or threatened species, populations or ecological communities, or their habitats, will be adversely affected as a result of the proposal?

A small part of the subject site, along Paterson River, is mapped a 'Biodiversity Values'. The site is also mapped as containing PCT 3083 - Lower Hunter Tuckeroo Riparian Rainforest, which is associated with state listed Threatened Ecological Community (TEC) Lower Hunter Valley Dry Rainforest in the Sydney Basin and NSW

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

North Coast Bioregions, and Lowland Rainforest in the NSW North Coast and Sydney Basin Bioregions, as well as the federally listed Critically Endangered Lowland Rainforest of Subtropical Australia.

MJD Environmental completed a Biodiversity Assessment of the site and proposed location of the function centre. It concluded that the location of the proposed function centre would be situated above Flood Planning Level and as such, avoids areas containing Biodiversity Values mapping. The proposed footprint for the function centre contained a mix of native and exotic ground cover species, however, predominately exotic species were recorded. Canopy species within the lot are planted either as a windbreak or as ornamental individuals. Furthermore, the pasture is poor condition as the paddock is actively grazed by cattle and therefore unlikely to support biodiversity. Due to the level of disturbance on the site and the historical land use practices it is not expected that threatened species listed under either the Biodiversity Conservation Act or the Environmental Protection and Biodiversity Conservation Act would be present on the site or affected by the proposal.

Q9. Are there any other likely environmental effects as a result of the planning proposal and how are they proposed to be managed?

Flooding

The subject site is located on the left floodplain of the Paterson River, around 3km upstream of Dunmore Bridge at Woodville. The topography of the local floodplain is flat and low-lying, characterised by alluvial deposition and raised flood levee embankments. The western boundary of the site is adjacent the Paterson River and includes a section of the levee embankment on the left bank of the river at a crest level between 7 to 7.5m AHD. A low-lying flood channel east of the levee runs through the site with elevations down to ~1m AHD. The existing residential and farm buildings, and location of the proposed function centre, are on a higher spur of ground in the centre of the site typically above 9m AHD elevation. A small local catchment drains through the eastern portion of the site across the existing access road and bridge structure and through an on-site dam to the crossing of Paterson Road at the south-east corner of the site. The lowest elevation of the access road is ~4.6m AHD.

Torrent Consulting was engaged to prepare a Flood Impact and Risk Assessment (FIRA) (Appendix C). The report notes that the proposed location on the site for a potential function centre location will remain predominantly flood free for major flood events including the 1% AEP event. There is no filling of flood prone land required and a site provides area for a future function centre will have no impact on existing flood conditions.

The FIRA notes that the proposed development is located above the Flood Planning Level and therefore the risk to property is readily managed.

The principal flood risk is associated with isolation of the site as the site access and local roads are cut in events in excess of the 20% AEP event. However, given the available flood warning time (>12-hours via the BoM flood warning network), sufficient lead time is available to evacuate the Site prior to loss of local flood access. Notwithstanding this evacuation opportunity, the availability of early flood warning enables events booked in at the site to be cancelled prior to commencement.

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD,
WOODVILLE.**

A formal Flood Emergency Response Plan (FERP) will be required as part of a future development application and included in consent conditions.

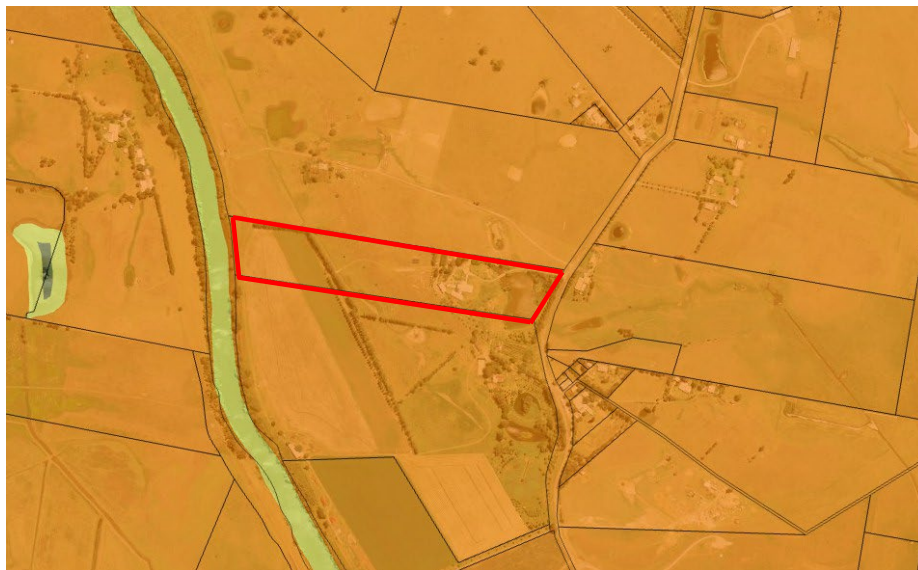
The FIRA has demonstrated the proposed development is not located in floodway, does not impact on the existing flood conditions, does not provide for additional dwelling density or propose a sensitive land use. The available flood warning provides for a proposed flood emergency response that enables patrons and staff for the proposed function centre to not be on site during an event either by pre-event cancellation or effective evacuation prior to access road inundation. Accordingly, there is no need to provide flood free access to or within the site.

The principal flood response strategy for the site remains the cancellation of events to not have people on site given the available warning for the mainstream river flooding. For the flash flooding conditions, critical durations are short given the size of the local catchments such that there is no significant isolation risk, noting the site access road will provide a 1% AEP flood immunity.

Accordingly, the planning proposal is considered to be compatible with the known flood risk.

Bushfire

The subject land is identified under the as being Bushfire Prone Land – Vegetation Category 3, as shown in Figure 8

FIGURE 8 – Bushfire Prone Land Map Extract

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD,
WOODVILLE.**

A Bushfire Assessment Report (BAR) has been prepared by MJD Environmental (Appendix D). The site inspection found that 'historical grazing and current agricultural use of the land has resulted in vegetation within the site predominantly consisting of exotic pasture species as well as an array of planted individuals within the manicured gardens and along wind breaks of the site'. As such, the vegetation classification in all directions is 'Grassland Vegetation'.

The BAR concludes that the proposed development 'will be able to meet the performance criteria for acceptable solutions for commercial development, giving due regard to the requirements of Chapter 8 of PBP 2019, specifically Section 8.3.1. A suitable package of BPMs has been developed that is commensurate with the assessed level of risk to the development'.

The proposed function centre is also considered likely to trigger the provisions of Section 8.3.11 of PBP relating to Public Assembly buildings with floor space area greater than 500m². The use is not defined as a Special Fire Protection Purpose (SFPP) under the provisions of the Rural Fire Act and its Regulations and does not require a Bush Fire Safety Authority (BFSA) but requires referral to the RFS under Section 4.14 of the Environmental Planning and Assessment Act 1979.

Noise

A Noise Impact Assessment (NIA) has been prepared by Reverb Acoustics (Appendix E). The assessment assumes a maximum of 180 guests and function hours of 9am - 11:30, with amplified music ceasing at 10pm.

The NIA concludes that 'the site is suitable for the intended purpose, providing recommendations outlined in this report are incorporated into the design. With these or equivalent measures in place, noise from the site will be either within the criterion or generally below the existing background noise level in the area for the majority of the time'.

The recommendations of the NIA can be incorporated in the future design of the proposed function centre and implemented through conditions of consent associated with a future development application.

Riparian Management

MJD Environmental prepared a Biodiversity Assessment (Appendix B). A desktop assessment and site visit were carried out. MJD concluded that 'the function centre is proposed to occur further than 40 m from the Paterson River and the second order stream which runs north to southeast, east of the site and through the man-made dam at the front of the property. Therefore, the proposal will not impact any waterfront land, and no Vegetated Riparian Zones (VRZ) are required to be established in accordance with the provisions of the Water Management Act'.

Q10. Has the planning proposal adequately addressed any social and economic effects?

ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD, WOODVILLE.

The planning proposal will not create any adverse social impacts. It will allow for the formalisation of a temporary land use/business that can operate within the rural area to encourage further investment and promote rural enterprises suitable in the Hinterland District.

The proposal is appropriate for the local context, which includes the nature and pattern of adjoining land uses, the development consent history of the site, the ability of the proposed development to integrate with and operate harmoniously within its rural setting, and the opportunity it provides to grow and support the local economy.

The formalisation and expansion of the wedding ceremony operations and allowance of other functions on the subject site will provide a source of employment and income for future staff.

The planning proposal provides a balance between the continued economic benefits associated with the wedding / function industry and the protection of the rural amenity.

Section D – Infrastructure (Local, State and Commonwealth)**Q11. Is there adequate public infrastructure for the planning proposal?**

Electricity and telecommunications infrastructure are available to the site. The site has legal frontage to, and access from, Paterson Road, which is a sealed rural road with a speed limit of 60km/hr along the frontage of the site.

Reticulated water and sewer are not available to the site, with rainwater tanks provided for water and on-site sewerage management system provided for the treatment of sewerage. An on-site waste water disposal report prepared in June 2023 concluded that the site is suitable for an on-site waste water management system. An on-site waste water management strategy will be developed at development application stage to ensure that soil quality, water quality and any potential run-off is within relevant environmental thresholds.

No additional community or social infrastructure is required as a result of the proposal.

Section E – State and Commonwealth Interests**Q12. What are the views of state and federal public authorities and government agencies consulted in order to inform the Gateway determination?**

The following agencies were consulted with during the scoping phase of this planning proposal:

- Department of Planning, Infrastructure and Housing
- Biodiversity and Conservation Division
- Transport for NSW
- Rural Fire Service
- Department of Primary Industries – Agriculture
- State Emergency Services

No agencies raised any objections to the planning proposal.

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD,
WOODVILLE.**

The Department of Primary Industries – Agriculture requested that a Land Use Conflict Assessment Report be prepared. It is included in the planning proposal as Appendix A.

PART 4 – Mapping

**PART 5 – Community consultation**

Community consultation would be undertaken in accordance with a future Gateway determination.

Notice of the public exhibition period would be placed in the local newspaper, The Examiner. The exhibition material would be on display at the following locations during normal business hours:

- Council's Administration Building, 116 Adelaide Street, Raymond Terrace
- Raymond Terrace Library, Port Stephens Street, Raymond Terrace
- Tomaree Library, Town Centre Circuit, Salamander Bay
- Medowie Community Centre, Cnr of Medowie and Ferodale Streets, Medowie

The planning proposal would also be available on Council's website.

**ITEM 3 - ATTACHMENT 1 PLANNING PROPOSAL 893 PATERSON RD,
WOODVILLE.****PART 6 – Project timeline**

The indicative timeframe for the planning proposal is shown in the table below.

Stage	Timeframe and/or date
Consideration by council	December 2024 - March 2025
Council decision	June 2025
Subject to Council determination	
Gateway referral to the Department	June 2025
Gateway determination	July 2025
Commencement and completion of public exhibition period	August 2025 – September 2025
Finalisation of planning proposal	October 2025 – November 2025
Gazettal of LEP amendment	January 2026