

# Central Coast

## Local Planning Panel

Central Coast  
LOCAL PLANNING PANEL MEETING  
Business Paper  
**17 September 2020**



# Meeting Notice

**The LOCAL PLANNING PANEL MEETING  
of Central Coast  
will be held remotely - online,  
THURSDAY 17 SEPTEMBER 2020 at 2.00 pm,  
for the transaction of the business listed below:**

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Jason Perica  
**Chairperson**

**Item No:** 1.1  
**Title:** Disclosures of Interest  
**Department:** Governance

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**Central Coast**  
Local Planning Panel

17 September 2020 Local Planning Panel Meeting

Reference: F2020/02502 - D14180296

The NSW Local Planning Panel Code of Conduct states that all panel members must sign a declaration of interest in relation to each matter on the agenda before or at the beginning of each meeting.

### **Recommendation**

***That Panel Members now confirm that they have signed a declaration of interest in relation to each matter on the agenda for this meeting and will take any management measures identified.***

**Item No:** 2.1  
**Title:** Confirmation of Minutes of Previous Meeting  
**Department:** Governance

17 September 2020 Local Planning Panel Meeting

Reference: F2020/02502 - D14180311

Author: Rachel Callachor, Local Planning Panel Support Coordinator

### **Summary**

*The Minutes of the following Meetings of the Local Planning Panel, which have been endorsed by the Chair of those meetings, are submitted for noting:*

- **Local Planning Panel Meeting held on 3 September 2020**
- **Local Planning Panel Supplementary Meeting held on 2 September 2020 regarding DA57302/2019**

### **Recommendation**

***That the minutes of the previous Local Planning Panel Meeting held on 3 September 2020 and Local Planning Panel Supplementary Meeting held on 2 September 2020 are submitted for noting.***

### **Attachments**

- |          |                                                                            |           |
|----------|----------------------------------------------------------------------------|-----------|
| <b>1</b> | MINUTES - Local Planning Panel - 3 September 2020                          | D14176314 |
| <b>2</b> | MINUTES – Local Planning Panel Supplementary Meeting<br>- 2 September 2020 | D14188697 |



## Local Planning Panel

### Minutes of the **LOCAL PLANNING PANEL MEETING**

Held remotely - online  
on 03 September 2020

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#### Panel Members

Chairperson	Donna Rygate
Panel Experts	Greg Flynn Linda McClure
Community Representative/s	Glenn Watts

#### Central Coast Council Staff Attendance

Salli Pendergast	Section Manager Development Assessment North
Amanda Hill	Development Planner Development Assessment North
Rachel Callachor	Local Planning Panel Support Coordinator

The Chair, Donna Rygate, declared the meeting open at 2.00pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

The Chair read an acknowledgement of country statement.

#### Apologies

*The Panel noted that no apologies had been received.*

#### 1.1 Disclosures of Interest

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*The Panel noted that disclosure forms had been submitted and no conflicts of interest had been identified.*

#### 2.1 Confirmation of Minutes of Previous Meeting

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*The Minutes of the following Meeting of the Local Planning Panel, which have been endorsed by the Chair of that meeting, were submitted for noting:*

- *Local Planning Panel Meeting held on 20 August 2020.*

*Moved: Donna Rygate*

*Seconded: Greg Flynn*

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**Public Forum**


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***No members of the public or representatives of the applicants registered to address the Panel.***

The Chair noted that the Panel would consider the Development Applications and Planning Proposal detailed in the Agenda, with only the first item meeting the State Government's new Public Meeting trigger for Local Planning Panels of '10-or-more' objections.

The Chair also noted that the Panel had received Supplementary Reports and information from Council Officers in relation to Items 3.1 and 3.3.

The Panel were invited to ask any questions of Council officers in relation to the application for agenda item 3.1 that they would like to ask in the public meeting. There were no questions asked.

The Local Planning Panel public meeting closed at 2:06pm. The Panel moved into deliberation from 2:08pm, which concluded at 2:55pm.

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**3.1 Section 8.2 Review Development Application No. DA/993/2019 - Proposed Boarding House - 17 Burns Road, Ourimbah**


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<b>Site Inspected</b>	Yes
<b>Relevant Considerations</b>	As per Council assessment report
<b>Material Considered</b>	<ul style="list-style-type: none"> <li>• Documentation with application</li> <li>• Council assessment report and supplementary report</li> <li>• Submissions</li> </ul>
<b>Council Recommendation</b>	Refusal
<b>Panel Decision</b>	<p><b>1 That the Local Planning Panel refuse the application subject to the reasons for refusal detailed below and having regard to the matters for consideration detailed in Section 8.2 of the Environmental Planning and Assessment Act.</b></p> <p><b>2 That Council advise those who made written submissions of the Panel's decision.</b></p> <p><b>3 That Council advise the relevant State Government authorities of the Panel's decision.</b></p>
<b>Reasons</b>	<p>1. Pursuant to Clause 4.15(1)(a)(i) of the <i>Environmental Planning and Assessment Act 1979</i>, the proposal does not satisfy the provisions of Clause 30AA of <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i>.</p>

2. The proposal includes structures located within a right of carriageway and is not consistent with the objects of the *Environmental Planning and Assessment Act 1979* in that it does not promote the orderly and economic use and development of the land. The proposed structures over the land would impede the rights of carriageway that exist over the land.
3. The proposal does not satisfy the provisions of Clause 7.9 of *Wyong Local Environmental Plan 2013*. The proposal is inadequate in the provision of essential services including vehicle access and storm water.
  - a. The proposal has not provided passing opportunities at least every 30 metres as per clause 3.2.2 of AS2890.1. The proposed single lane width is not supported.
  - b. A turning path assessment for the largest design vehicle likely to access the site including any delivery and service vehicles has not been undertaken.
  - c. The proposal does not provide a 5 metres wide right of access from the public road to each Ausgrid asset, as required by Ausgrid.
  - d. Owners consent has not been provided by adjoining land owners at 11, 11A and 13-15 Burns Road that may be impacted by earthworks such as battering and/or retaining walls for the internal roadway formation.
  - e. Details and modelling of the 1% AEP event have not been provided to allow an assessment of any adverse impacts on adjoining land owners from filling and diverting a natural overland flow path. Details of stormwater connection and management of adjoining properties to the west have not been provided.
  - f. On-site stormwater detention has not been adequately detailed and is required as there are downstream overland flooding issues.
4. Inadequate information to determine the likely impacts of the development as required by Clause 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
  - a. The site is in proximity (directly opposite) a listed heritage site (I48) at 2 Burns Road. The applicant has not addressed the objectives of Clause 5.10 of *Wyong Local Environmental Plan*.

- b. The Social Impact Assessment (SIA) did not include community consultation and does not provide for any mitigation against the perceived impacts of the community.
  - c. The Operational Plan of Management for the ongoing use of the boarding house is inadequate and does not provide confidence that the development will be well managed.
  - d. Building 1 is subject to the energy efficiency provisions of Section J of the BCA. The BASIX report submitted by the applicant has not identified the alternative assessment process required for Building 1.
  - e. A turning path assessment for the largest design vehicle likely to access the site has not been undertaken, to demonstrate the functionality of the driveway design.
5. The proposal results in amenity impacts to neighbouring properties, the streetscape and the immediately surrounding area and impacts to intended residents of the boarding house.
- a. Inadequate regard for the existing prevailing development pattern and privacy impacts of immediately adjoining properties.
  - b. Inadequate setback of the proposed driveway to boundaries with neighbouring properties and insufficient building and structural elements to reduce privacy impacts with neighbouring properties.
  - c. The proposed development does not provide a safe pedestrian route between neighbouring dwellings and Burns Road.
  - d. The proposed aesthetic of the development does not adequately reflect the residential character of the intended use or the residential character of the area.
  - e. There is insufficient information to adequately assess solar access is achieved to the communal room in building 1.
6. Adjoining property owners were notified of the proposed development in accordance with Council's policy. The Panel considered the concerns raised by the community in the submissions have been adequately addressed in the assessment report..

**Votes** The decision was unanimous

**3.2 DA 57912/2020 - 14 Balgara Rise NARARA  
Narara Eco Village - 18 Lot Strata Subdivision and easement for car parking**

**Site Inspected** Yes

**Relevant Considerations** As per Council assessment report

**Material Considered**

- Documentation with application
- Council assessment report

**Council Recommendation** Approval subject to conditions

**Panel Decision**

- 1** *The Panel is satisfied that the clause 4.6 written request from the applicant to vary the minimum lot size standard in Clause 4.1 of Gosford Local Environmental Plan 2014 adequately addresses the matters required to be addressed and demonstrated under clauses 4.6(3) and 4.6(4) of the LEP. The Panel is satisfied that the written request demonstrates that there are sufficient environmental planning grounds to justify the non-compliance with the development standard and that compliance with the development standards is unreasonable and unnecessary in the circumstances of the case, as the proposed development will be consistent with the objectives of the clause, the R2 – Low Density Residential zone and the Environmental Planning and Assessment Act 1979. Further, the variation is in the public interest as it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. The concurrence of the Secretary of the Department of Planning Industry & Environment may be assumed.*
- 2** *That the Panel grant consent to Development Application No. DA57912/2020 for strata subdivision (18 lots) of an approved cluster housing development on Lot: 36 DP270882, 14 Balgara Rise and easement for two car parking spaces on Lot 49 DP270882, Narara, subject to the conditions detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.*

**Reasons** 1 The proposal is consistent with the previously approved development applications.





**Local Planning Panel**

Minutes of the  
**LOCAL PLANNING PANEL SUPPLEMENTARY  
 MEETING**

Held remotely - online  
 On 2 September 2020

**Panel Members**

Chairperson	Donna Rygate
Panel Experts	Sue Francis Greg Flynn
Community Representative/s	Sue Hunt

**Central Coast Council Staff Attendance**

Chris Ross	Senior Development Planner Development Assessment South
Rachel Callachor	Local Planning Panel Support Coordinator

The Chairperson, Donna Rygate, declared the meeting open at 5:00pm.

This Supplementary meeting is to consider DA 57302/2019. As a Supplementary Report was provided to the Local Planning Panel on 25 August 2020, as per request at the Panel meeting of 23 July 2020 where the matter was deferred.

The Local Planning Panel Supplementary Meeting closed at 5:20pm

**3.3 DA 57302/2019 - 269 Brisbane Water Drive, West Gosford -  
 Redevelopment of Existing Shopping Centre with inclusion of a new  
 Centre Based Child Care Facility and new Food and Drink Premises**

<b>Site Inspected</b>	Yes
<b>Relevant Considerations</b>	As per Council assessment report, addenda and Supplementary report
<b>Material Considered</b>	<ul style="list-style-type: none"> <li>• Council assessment report and addenda</li> <li>• Submissions</li> <li>• Speakers at LPP meeting, 23 July 2020</li> <li>• Supplementary report</li> </ul>

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<b>Council Recommendation</b>	Approval subject to conditions
<b>Panel Decision</b>	<ol style="list-style-type: none"><li><b>1    <i>The Panel resolves to grant consent to the proposed development, subject to revised conditions and additions at attachment 1, and having regard to the matters for consideration detailed in Section 4.16 of the Environmental Planning and Assessment Act 1979.</i></b></li><li><b>2    <i>That Council advise those who made written submissions of the Panel's decision.</i></b></li><li><b>3    <i>That Council advise the relevant external authorities of the Panel's decision.</i></b></li></ol>
<b>Reasons</b>	<ol style="list-style-type: none"><li>1    Consent conditions are agreed subject to amendment in accordance with section 4.16 of the Environmental Planning and Assessment Act 1979.</li><li>2    Adjoining property owners were notified of the proposed development in accordance with Council's policy and concerns raised in submissions have been considered and addressed where applicable</li><li>3    In relation to the height of the pylon sign, Gosford DCP 2013 3.7.7.2 (ii) specifies a maximum 6m height control.</li></ol>
<b>Votes</b>	Unanimous
<b>Attachments</b>	<b>Attachment 1 Conditions of Consent – DA57302/2019</b>

**STAGE 1: Food and Drink premises works, partial demolition works, car park works, fencing works, landscaping works****1. PARAMETERS OF THIS CONSENT****1.1. Approved Plans and Supporting Documents**

Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and drawn by Squillace, and to which is affixed a Council stamp "*Development Consent*" unless modified by any following condition.

**Architectural Plans**

<b>Drawing</b>	<b>Description</b>	<b>Sheets</b>	<b>Issue</b>	<b>Date</b>
DA1 - 02	Demolition plan North	1	C	20.11.2019
DA1 - 03	Demolition Plan South	1	B	26.06.2019
DA1 - 04	First Floor Demolition Plan North	1	E	7.11.2019
DA1 - 05	First Floor Demolition Plan South	1	B	26.06.2019
DA1 - 10	Site Plan	1	G	07.11.2019
DA1- 11	Main Floor Plan North	1	J	04.06.2020
DA1 - 12	Main Floor Plan South	1	I	29.07.2020
DA1 - 13	First Floor Plan South	1	F	15.04.2020
DA1 - 14	Roof Plan North	1	F	15.04.2020
DA1 - 15	Roof Plan South	1	D	17.09.2019
DA1 - 16	Elevations 1	1	K	07.11.2019
DA1 - 17	Elevations 2	1	J	17.09.2019
DA1 - 18	Elevations 3	1	J	18.09.2019
DA1 - 19	Elevations 4	1	J	18.09.2019
DA1 - 20	Sections	1	J	18.09.2019
DA1 - 21	Signage Details	1	G	18.09.2019
DA1 - 23	Staging Plans	1	A	23.09.2019

DA1 – 24	Staging Plans	1	A	23.09.2019
DA1 - 25	Staging Plans	1	A	23.09.2019
DA01	0-2 Age Group Outdoor Play Plan	1	B	26.11.2019
DA02	2-5 Age Group Outdoor Play Plan	1	B	26.11.2019
L_101	Landscape Architectural Plan – Southern Zone	1	F	04.08.2020
L_102	Landscape Architectural Plan – Northern Zone	1	E	19.09.2019
40644 005DT – (1 – 13)	Detail Survey	13	C	03.06.2019

### Supporting Documentation

ECM No.	Title	Date
D13869471	Statement of Environmental Effects	November 2019
ECMD25452055	Air Quality Report	December 2019
ECMD25427310	Kids Club Operational Management Plan	No Date
ECMD25427304	Civil Stormwater Plans	10 November 2019
ECMD25427308	Acoustic Report	November 2019
ECMD25280261	Operation Plan - Hungry Jacks	No Date
ECMD25427305	Traffic Report	26 November 2019
D14063447	TfNSW Agency Advice	01.04.2020
D14136526	Landscape Planting Schedule (Architectural Details Sheet 2 (Drawing L_502 issue C)	04.08.2020

1.2. Approval is granted for the development to be carried out in 3 stages in the following manner:  
Stage 1 –

- Re-sheeting and reconfiguration of the southern portion of the existing carpark
- Removal of the Return and Earn facility from the site.
- Construction of Hungry Jacks Pad Site
- Hungry Jacks building signage, pylon signage and banner signage
- Hungry Jacks new car parking spaces
- Acoustic fence between pad site and neighbouring property
- Hungry Jacks pad site landscaping, including vegetation buffer to adjoining residential land.
- Establishment of all landscaping associated with the southern portion of the carpark.
- And ancillary works as required

Stage 2 –

- Demolition of existing tavern and construction of 24 car parking spaces and 3 motorcycle spaces in the location of the former tavern. 20 of the new spaces are to be marked as temporary spaces to service the child care centre

- 
- Amenities upgrade with addition of a new parent's room
  - Demolition of existing walls to first floor
  - Conversion of existing office space to 121 place childcare centre
  - Installation of new lift to accommodate first floor tenancies
  - Building facades Signage for childcare
  - And ancillary works as required

#### Stage 3 –

- Re-sheeting and reconfiguration of the northern portion of the existing carpark
- Construction of new shade sails to carpark
- New carpark vehicular entry/exits
- New play area along with forecourt refurbishment with outdoor seating
- New mall and shopfront to Coles supermarket entry
- Pedestrian arcade from Brisbane Water Drive includes new feature ceiling
- Upgrading to the building façade
- Reconfiguration of existing shopping centre loading dock.
- Establishment of all landscaping associated with the northern portion of the carpark.
- New signage towers associated with the Shopping Centre
- Establishment of all remaining landscaping elements.
- And ancillary works as required

Works are to be finalised for each stage prior to the release of the Occupation Certificate for each stage.

- 1.3. Carry out all building works in accordance with the Building Code of Australia.

## **2. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE**

**All conditions under this section must be met prior to the issue of any Construction Certificate for the relevant stage**

- 2.1 All conditions under this section must be met prior to the issue of any Construction Certificate.
- 2.2 No activity is to be carried out on-site until the Construction Certificate has been issued, other than:
- a. Site investigation for the preparation of the construction; and / or
  - b. Implementation of environmental protection measures, such as erosion control and the like that are required by this consent; and
  - c. Demolition.
- 2.3 Submit amendments to the approved plans to the Accredited Certifier pursuant to clause 139 of the *Environmental Planning and Assessment Regulation 2000* that must detail:
- a) Plan DA1.12 – Main Floor Plan South is to be modified in the following manner:
    1. The acoustic fence shown between the fast food premises and the residential dwellings is to be designed and indicated on plans to achieve the maximum height of 2700mm at a point no closer than 500mm from the dividing fence line. This is to be achieved through the fence being constructed so as the vertical portion, located at the boundary ceases at

2000mm and the remainder of the fence height is to be angled away from the residential dwellings at a maximum angle of 33 degrees, matching that of mid-winter sunlight.

2. The plan is to be revised to identify all mixed and recyclables waste storage containers /storage and servicing location for the food and drink premises.
  - b) Plan DA1. 23, 24, 25 - Staging Plans 1-3 are to be revised to match the details within Condition 1.2 of this consent.
  - c) Plan DA1.21, Signage Details is to be revised to indicate a maximum height of the Pylon Sign to be no greater than 6000mm.
  - d) Plans DA1.16, 17, 18, and 19, being Elevations 1 - 4 are to be revised to indicate a maximum height of Signage Towers to be no greater than 6000mm.
- 2.4 A Waste Management Plan in accordance with Chapter 7.2 – Waste Management of Gosford DCP 2013 for Construction, Use of Premises and Ongoing management of waste is to be submitted for the proposed Hungry Jacks to Council’s Waste Services Unit for approval. Plan assessment fees apply.
- 2.5 Submit an application to Council under section 305 of the *Water Management Act 2000* to obtain a section 307 Certificate of Compliance. The *Application for a 307 Certificate under section 305 Water Management Act 2000* form can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au) . Early application is recommended.
- A section 307 Certificate must be obtained prior to the issue of any Construction Certificate.
- 2.6 Submit to Council a dilapidation report detailing the condition of all Council assets within the vicinity of the development. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs, street lights or any other Council assets in the vicinity of the development.
- The dilapidation report will be required to be submitted to Council prior to the issue of the Section 138 Roads Act Works approval or the issue of any construction certificate for works on the site. The dilapidation report may be updated with the approval of Council prior to the commencement of works. The report will be used by Council to establish damage to Council’s assets resulting from the development works.
- 2.7 Submit to the Accredited Certifier responsible for issuing the construction certificate for works within the development site detailed design drawings and design reports for the following engineering works:
- a) Construction of driveways, ramps and car parking areas in accordance with the requirements of the current edition Australian Standard AS/NZS 2890: Parking Facilities and other applicable Australian Standards.
  - b) Construction of nutrient and pollution control measures. Design in accordance with Chapter 6.7 - *Water Cycle Management* of the Gosford Development Control Plan 2013. A nutrient and pollution control report including an operation and maintenance plan must accompany the design

- c) Construction of stormwater drainage collection and piping of all stormwater runoff from areas within the site to the existing stormwater system within the site. Existing stormwater discharge points within the site are to be utilised to connect stormwater from the site to Council's drainage system in the road reserve/s.

Detailed design drawings and design reports acceptable to the Accredited Certifier must be included in the Construction Certificate documentation.

- 2.8 Submit engineering details prepared and certified by a practising structural engineer that comply with *Council's Building Over or Adjacent to Sewer and Water Main Guidelines* to the satisfaction of Council. Engineering details must be submitted to Council's Water Assessment Team for approval. Plan assessment fees apply.
- 2.9 Submit details to the Principal Certifying Authority of the design of the fit out of the food premises. The design of the fit out of the food premises is to comply with the *Food Act 2003, Food Regulation 2010, Australia New Zealand Food Standards Code, Australian Standard AS 4674-2004: Design, Construction and Fit-out of Food Premises* and Clause G1.2 of the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate. Details of compliance are to be included in the plans and specifications for the Construction Certificate.
- 2.10 Submit details to the Principal Certifying Authority of any proposed mechanical ventilation systems. The design of the mechanical ventilation is to comply with the relevant requirements of Clause F4.12 of the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate, Australian Standard AS 1668.1:2015 *The use of ventilation and air conditioning in buildings – Fire and smoke control in buildings* and Australian Standard 1668.2:2012 *The use of ventilation and air conditioning in buildings – Mechanical ventilation in buildings* (including exhaust air quantities and discharge location points). These details are to be included in the Construction Certificate.
- 2.11 Provide certification to the Principal Certifying Authority to confirm the final fit-out of the food premises complies with the *Food Act 2003, Food Regulation 2010, Australia New Zealand Food Standards Code, Australian Standard AS 4674-2004: Design, Construction and Fit-out of Food Premises* and Clause G1.2 of the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate.
- 2.12 Submit a trade waste application for approval to Council as the Water and Sewer Authority in order to discharge liquid trade waste into the sewerage system. This form can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au)
- 2.13 Submit details showing that the levels of fire safety within the premises will achieve total conformity with the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate / an adequate level of fire safety in accordance with a fire safety report prepared by a suitably qualified person.  
The fire safety report must detail the measures considered appropriate to satisfy the relevant performance requirements of the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate to:

- protect persons using the building, and to facilitate their egress from the building in the event of fire, or
- restrict the spread of fire to other buildings nearby

**Note:** Required by Clause 94 of the *Environmental Planning and Assessment Regulation 2000*.

- 2.14 Pay to Council a contribution amount of \$22,300.00, that may require adjustment at time of payment, in accordance with the Central Coast Regional Section 7.12 Development Contribution Plan 2019.

The total amount to be paid must be indexed each quarter in accordance with the Consumer Price Index (All Groups index) for Sydney issued by the Australian Statistician as outlined in the contribution plan.

Contact Council's Contributions Planner on 1300 463 954 for an up-to-date contribution payment amount.

Any Construction Certificate must not be issued until the developer has provided the Certifier with a copy of a receipt issued by Council that verifies the contributions have been paid. A copy of this receipt must accompany the documents submitted by the principal certifier to Council under Clause 104/Clause 160(2) of the Environmental Planning and Assessment Regulation 2000.

A copy of the Contribution Plan may be inspected at the offices of Central Coast Council, 49 Mann Street Gosford, or 2 Hely Street Wyong, or on Council's website:

[Development Contributions - former Gosford LGA](#)

### 3. PRIOR TO COMMENCEMENT OF ANY WORKS

- 3.1. All conditions under this section must be met prior to the commencement of any works.
- 3.2. Appoint a Principal Certifying Authority for the building work:
- a. The Principal Certifying Authority (if not Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than two (2) days before the building work commences.
  - b. Submit to Council a Notice of Commencement of Building Works or Notice of Commencement of Subdivision Works form giving at least two (2) days' notice of the intention to commence building or subdivision work. The forms can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au)
- 3.3. Erect a sign in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:
- a. The name, address and telephone number of the Principal Certifying Authority for the work; and
  - b. The name of the principal contractor and a telephone number at which that person can be contacted outside of working hours; and
  - c. That unauthorised entry to the work site is prohibited.

- d. Remove the sign when the work has been completed.
- 3.4. Submit both a Plumbing and Drainage Inspection Application, with the relevant fee, and a Plumbing and Drainage Notice of Work in accordance with the *Plumbing and Drainage Act 2011* (to be provided by licensed plumber). These documents can be found on Council's website at: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au)

Contact Council prior to submitting these forms to confirm the relevant fees.

This condition only applies if installation/alteration of plumbing and/or drainage works are proposed (excludes stormwater drainage)

- 3.5. Obtain a Construction Certificate for the construction works within the private property.
- 3.6. Prepare a Construction Traffic and Pedestrian Management Plan (CTPMP) for all activities related to works within the site. The plan must be prepared and implemented only by persons with Roads and Maritime Service accreditation for preparing and implementing traffic management plans at work sites.

The CTPMP must describe the proposed construction works, the traffic impacts on the local area and how these impacts will be addressed.

The CTPMP must address, but not be limited to, the following matters:

- Ingress and egress of construction related vehicles to the development site.
- Details of the various vehicle lengths that will be used during construction and the frequency of these movement.
- Use of swept path diagrams to demonstrate how heavy vehicles enter, circulate and exit the site or Works Zone in a forward direction.
- Deliveries to the site, including loading / unloading materials and requirements for work zones along the road frontage to the development site. A Plan is to be included that shows where vehicles stand to load and unload, where construction plant will stand, location of storage areas for equipment, materials and waste, locations of Work Zones (if required) and location of cranes (if required).
- Works Zones if heavy vehicles cannot enter or exit the site in a forward direction.
- Control of pedestrian and vehicular traffic where pre-construction routes are affected.
- Temporary Road Closures.

Where the plan identifies that the travel paths of pedestrians and vehicular traffic are proposed to be interrupted or diverted for any construction activity related to works inside the development site an application must be made to Council for a Road Occupancy Licence. Implementation of traffic management plans that address interruption or diversion of pedestrian and/or vehicular traffic must only take place following receipt of a Road Occupancy Licence from Council or the Roads and Maritime Service where on a classified road.

Where a dedicated delivery vehicle loading and unloading zone is required along the road frontage of the development site a Works Zone Application must be lodged and approved by Council. A minimum of 3 months is required to allow Traffic Committee endorsement and Council approval. The Construction Traffic and Pedestrian Management Plan must be reviewed and updated during construction of the development to address any changing site conditions.

A copy of the Construction Traffic and Pedestrian Management Plan must be held on site at all times and be made available to Council upon request.

- 3.7 Submit a dilapidation report to Council, the Accredited Certifier and relevant adjoining property owners. The report is to be prepared by a suitably qualified person detailing the structural characteristics of all buildings located on properties immediately adjoining the site boundaries and any council asset in the vicinity of the development. The report must document and provide photographs that clearly depict any existing damage to the improvements erected upon allotments immediately adjoining the development site and to the road, kerb, footpath, driveways, water supply and sewer infrastructure, street trees and street signs or any other Council asset in the vicinity of the development.

In the event that access to an adjoining property(s) for the purpose of undertaking the dilapidation report is denied, submit evidence in writing demonstrating that all steps were taken to obtain access to the adjoining property(s).

- 3.8 Disconnect, seal and make safe all existing site services prior to the commencement of any demolition on the site. Sewer and water services must be disconnected by a licensed plumber and drainer with a Start Work Docket submitted to Council's Plumbing and Drainage Inspector as the Water and Sewer Authority.
- 3.9 Erect a temporary hoarding or temporary construction site fence between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works, if the works:
- a. could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
  - b. could cause damage to adjoining lands by falling objects, or
  - c. involve the enclosure of a public place or part of a public place

**Note 1:** A structure on public land or on or over a public road requires the prior approval of the relevant authority under the Local Government Act 1993 or the Roads Act 1993, respectively.

**Note 2:** The Work Health and Safety Act 2011 and Work Health and Safety Regulation 2011 contain provisions relating to scaffolds, hoardings and other temporary structures.

#### 4. DURING WORKS

- 4.1. All conditions under this section must be met during works.
- 4.2. Carry out construction or demolition works during the construction phase of the development only between the hours as follows:

7.00am and 5.00pm Monday to Saturday

No construction or demolition works associated with the development are permitted to be carried out at any time on a Sunday or a public holiday.

- 4.3. During the construction phase of the development, if any Aboriginal object (including evidence of habitation or remains), is discovered during the course of the work:
- a. All excavation or disturbance of the area must stop immediately in that area, and
  - b. The Office of Environment and Heritage must be advised of the discovery in accordance with section 89A of the *National Parks and Wildlife Act 1974*.

**Note:** If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the *National Parks and Wildlife Act 1974*.

- 4.4 It is an offence under the *National Parks and Wildlife Act 1974* to disturb an Aboriginal artefact without a Permit. If during works suspected Aboriginal heritage items (stone tool artefacts, shell middens, axe grinding groves, pigment or engraved rock art, burials or scar trees) are identified, works will cease and OEH (131555) will be contacted.
- 4.5 Implement all erosion and sediment control measures and undertake works in accordance with the approved Erosion and Sediment Control Plan, prepared by Danmor Consulting Engineers, dated 10.11.19. Update the plan as required during all stages of the construction or in accordance with *the 'Blue Book' (Managing Urban Stormwater: Soils and Construction, Landcom, 2004)*.
- 4.6 Classify all excavated material removed from the site in accordance with NSW EPA (2014) *Waste Classification Guidelines* prior to disposal. All excavated material must be disposed of to an approved waste management facility, and receipts of the disposal must be kept on-site.
- 4.7 Do not give rise to water pollution as defined in the *Protection of the Environment Operation Act 1997*.
- 4.8 Implement dust suppression measures on-site during works to suppress dust generated by vehicles and equipment. Dust must also be suppressed at all other stages of construction in order to comply with the *Protection of the Environment Operations Act 1997*.
- 4.9 Immediately notify Council of any new information which comes to light during works which has the potential to alter previous conclusions about site contamination.
- 4.10 Keep a copy of the stamped approved plans on-site for the duration of site works and make the plans available upon request to either the Principal Certifying Authority or an officer of Council.

## 5. PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE

- 5.1. All conditions under this section must be met prior to the issue of any Occupation Certificate.
- 5.2. Complete construction of the stormwater management system in accordance with the Stormwater Management Plan and Australian Standard AS 3500.3-*Stormwater drainage systems*. Certification of the construction by a suitably qualified consultant must be provided to the Principal Certifier.
- 5.3. Repair any damage to Council's infrastructure and road reserve as agreed with Council. Damage not shown in the dilapidation report submitted to Council before the development works had commenced will be assumed to have been caused by the development works unless the Developer can prove otherwise.
- 5.4. Complete the civil engineering works within the development site in accordance with the detailed design drawings and design reports plans within the construction certificate.
- 5.5. Amend the Deposited Plan (DP) for lot 11 DP 880156 to:
- 1) Include an Instrument under the *Conveyancing Act 1919* for the following restrictive covenants; with Council having the benefit of these covenants and having sole authority to release and modify. Wherever possible, the extent of land affected by these covenants must be defined by bearings and distances shown on the plan. The plan and instrument must:
    - Create a 'Restriction on the use of Land' over all lots containing a nutrient / pollution facility restricting any alteration to such facility or the erection of any structure over the facility or the placement of any obstruction over the facility.
  - 2) Include an instrument under the *Conveyancing Act 1919* for the following positive covenants; with Council having the benefit of these covenants and having sole authority to release and modify. Covenant(s) required:
    - a) To ensure on any lot containing a nutrient / pollution facility that:
      - i. the facility will remain in place and fully operational.
      - ii. the facility is maintained in accordance with the operational and maintenance plan so that it operates in a safe and efficient manner.
      - iii. Council's officers are permitted to enter the land to inspect and repair the facility at the owner's cost.
      - iv. Council is indemnified against all claims of compensation caused by the facility.

Note: Standard wording, acceptable to Council, for covenants can be obtained by contacting Council Subdivision Certificate Officer.

Submit to the Principal Certifier copies of registered title documents showing the restrictive and positive covenants.

- 5.6. Complete Construction of driveways, ramps and car parking areas in accordance with the requirements of the current edition Australian Standard AS/NZS 2890: *Parking Facilities*, other applicable Australian Standards and the detailed designs and design reports within the construction certificate. Certification by a suitably qualified person that construction is complete is to be provided to the Principal Certifier.

- 5.7 Install acoustic fences along the boundary between the Food and Drink Premises and 267 Brisbane Water Dr, West Gosford. The fences should be a minimum 2700mm solid capped and lapped timber fence above FGL, designed in accordance with Condition 2.3(a)(1) and maintained to ensure no gaps at all times. The cost of the fence in its entirety is to be borne by the beneficiary of this consent.
- 5.8 A qualified acoustic consultant is to confirm that the specification and location of the mechanical plant and exhaust fans shall not exceed those listed in Section 8.2 of the *Noise Impact Assessment* prepared by Reverb Acoustics, dated August 2019.
- 5.9 Provide certification to the Principal Certifying Authority to confirm the final fit-out of the food premises complies with the *Food Act 2003, Food Regulation 2010, Australia New Zealand Food Standards Code, Australian Standard AS 4674-2004: Design, Construction and Fit-out of Food Premises* and Clause G1.2 of the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate.
- 5.10 No food handling, as defined by the NSW *Food Act 2003*, is permitted in the food premises prior to the issue of the Occupation Certificate.
- 5.11 Provide certification from a mechanical engineer to the Principal Certifying Authority that the construction, installation and operation of the exhaust hood ventilation system meet the requirements of:
- Australian Standard AS 1668 Part 1-2015: *The use of ventilation and air-conditioning in buildings - Fire and smoke control in buildings*
  - Australian Standard AS 1668 Part 2-2012: *The use of ventilation and air-conditioning in buildings - Mechanical ventilation in buildings*
- 5.12 Submit a Food Premises registration form to Council. The form can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au)
- 5.13 Install floor waste bucket traps in commercial kitchen food preparation and handling areas.
- 5.14 Install in-sink strainers within the commercial kitchen sink waste outlets.
- 5.15 Install approved commercial grease arrestor (minimum capacity \*1500 litres) in association with the food premises.
- 5.16 The following is to be implemented:
- Install floor waste screens or basket arrestors in waste bin storage/wash areas.
  - Connect waste bin wash waste water to sewer in accordance with Australian Standards AS/NZ 3500 Plumbing & Drainage Regulations.
  - Exclude ingress of stormwater into Council' Sewerage System

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- 5.17 Complete the landscaping works as detailed on Plan L\_101 – Landscape Architectural Plan – Southern Zone, issue F, Dated 04.08.2020.
- 5.18 Install all carpark lighting and restaurant lighting so as all lighting is shielded in a manner that ensures no light is cast higher than the dividing fence of the southern boundary.

## 6. ONGOING OPERATION

- 6.1 Restrict deliveries to during the day (7am-6pm) & evening (6pm-10pm). No deliveries at night (10pm-7am).
- 6.2 Install the drive-thru speaker boxes so they face towards the centre of the shopping centre site and away from residential dwellings.
- 6.3 Restrict waste collection of the Food and Drink Premises to weekdays between 7.00am to 6.00pm.
- 6.4 Operate in accordance with Operational Management Plan Hungry Jack's.
- 6.5 Maintain the boundary fences at all times. The is to be free of any visible air gaps. The cost of maintenance of the fence is the sole responsibility of the owner or management of the shopping centre.
- 6.6 The person benefiting this consent must supply to Council, at three months intervals for a period of 12 months after the restaurant begins operating, an acoustic assessment of operational noise emissions from the premises. This acoustic assessment is to be undertaken by a suitably qualified and experienced Acoustic Consultant and is to identify any areas where further noise mitigation measures **may be required**.
- 6.7 Store all waste generated on the premises in a manner so that it does not pollute the environment.
- 6.8 Transport all waste generated on the premises to a facility which is licensed to receive that material.
- 6.9 Comply with all commitments generally as detailed in the Waste Management Plan as/when approved by Council's Waste Services Unit in line with Condition 2.4.
- 6.10 Do not place or store waste material, waste product or waste packaging outside the approved waste storage enclosure.
- 6.11 Construct and manage the waste storage enclosure in accordance with the provisions of Gosford Development Control Plan 2013, Part 7: *Chapter 7.2 Waste Management*, Appendix D and Appendix G, as applicable.
- 6.12 Food waste to be stored in a designated Food Waste Refrigerator prior to disposal alternatively food waste to be separately stored for disposal of maximum 2-3 day intervals.
- 6.13 All waste to be serviced at a suitable frequency to ensure available waste storage at all times.

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- 6.14 Lodge a new Trade Waste application when there is a change of ownership / occupancy or change to the activities licenced under this approval. As part of this process, Council will reassess the Liquid Trade Waste requirements for the site and update the Liquid Trade Waste approval document as appropriate. This form can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au)
- 6.15 Maintain all works associated with the approved Landscape Plan L101 – Landscape Architectural Plan – Southern Zone, issue F, Dated 04.08.2020, and Plan L102 - Landscape Architectural Plan – Northern Zone, issue E, Dated 19.09.2019, and the Landscape Planting Schedule (Landscape Architectural Details, sheet 2, issue C, Dated 04.08.2020 throughout all stages of the development in perpetuity. Plants and landscaping as approved are to be replaced and maintained as required for the lifetime of the development.
- 6.16 Ensure all lighting associated with the carpark and restaurant remains shielded in a manner that permits no light to be cast higher than the dividing fence on the southern boundary.

## PENALTIES

Failure to comply with this development consent and any condition of this consent may be a **criminal offence**. Failure to comply with other environmental laws may also be a **criminal offence**.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

### Warnings as to Potential Maximum Penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

## ADVISORY NOTES

- The inspection fee for works associated with approvals under the *Roads Act 1977* is calculated in accordance with Council's current fees and charges policy.
- Payment of a maintenance bond may be required for civil engineering works associated with this development. This fee is calculated in accordance with Council's fees and charges.
- It is an offence under the *National Parks and Wildlife Act 1974* to disturb an Aboriginal artefact without a Permit.

- Discharge of sediment from a site may be determined to be a pollution event under provisions of the Protection of the Environment Operations Act 1997. Enforcement action may commence where sediment movement produces a pollution event.
- The following public authorities may have separate requirements in the following aspects:
  - a. Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments
  - b. Jemena Asset Management for any change or alteration to the gas line infrastructure
  - c. Ausgrid for any change or alteration to electricity infrastructure or encroachment within transmission line easements
  - d. Telstra, Optus or other telecommunication carriers for access to their telecommunications infrastructure
  - e. Central Coast Council in respect to the location of water, sewerage and drainage services.
- Carry out all work under this Consent in accordance with SafeWork NSW requirements including the Workplace Health and Safety Act 2011 No 10 and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- **Dial Before You Dig**

Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.
- *Telecommunications Act 1997* (Commonwealth)

Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.

**STAGE 2: Construction of Parents Room, First Floor Works to Facilitate New Childcare Centre, New Lift to First Floor Tenancies, Childcare Signage****7. PARAMETERS OF THIS CONSENT****7.1. Approved Plans and Supporting Documents**

Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and drawn by Squillace, and to which is affixed a Council stamp "*Development Consent*" unless modified by any following condition.

**Architectural Plans**

<b>Drawing</b>	<b>Description</b>	<b>Sheets</b>	<b>Issue</b>	<b>Date</b>
DA1 - 02	Demolition plan North	1	C	20.11.2019
DA1 - 03	Demolition Plan South	1	B	26.06.2019
DA1 - 04	First Floor Demolition Plan North	1	E	7.11.2019
DA1 - 05	First Floor Demolition Plan South	1	B	26.06.2019
DA1 - 10	Site Plan	1	G	07.11.2019
DA1- 11	Main Floor Plan North	1	J	04.06.2020
DA1 - 12	Main Floor Plan South	1	I	29.07.2020
DA1 - 13	First Floor Plan South	1	F	15.04.2020
DA1 - 14	Roof Plan North	1	F	15.04.2020
DA1 - 15	Roof Plan South	1	D	17.09.2019
DA1 - 16	Elevations 1	1	K	07.11.2019
DA1 - 17	Elevations 2	1	J	17.09.2019
DA1 - 18	Elevations 3	1	J	18.09.2019
DA1 - 19	Elevations 4	1	J	18.09.2019
DA1 - 20	Sections	1	J	18.09.2019
DA1 - 21	Signage Details	1	G	18.09.2019
DA1 - 23	Staging Plans	1	A	23.09.2019

DA1 – 24	Staging Plans	1	A	23.09.2019
DA1 - 25	Staging Plans	1	A	23.09.2019
DA01	0-2 Age Group Outdoor Play Plan	1	B	26.11.2019
DA02	2-5 Age Group Outdoor Play Plan	1	B	26.11.2019
L_101	Landscape Architectural Plan – Southern Zone	1	F	04.08.2020
L_102	Landscape Architectural Plan – Northern Zone	1	E	19.09.2019
40644 005DT – (1 – 13)	Detail Survey	13	C	03.06.2019

### Supporting Documentation

ECM No.	Title	Date
D13869471	Statement of Environmental Effects	November 2019
ECMD25452055	Air Quality Report	December 2019
ECMD25427310	Kids Club Operational Management Plan	No Date
ECMD25427304	Civil Stormwater Plans	10 November 2019
ECMD25427308	Acoustic Report	November 2019
ECMD25280261	Operation Plan - Hungry Jacks	No Date
ECMD25427305	Traffic Report	26 November 2019
D14063447	TfNSW Agency Advice	01.04.2020
D14136526	Landscape Planting Schedule (Architectural Details Sheet 2 (Drawing L_502 issue C)	04.08.2020

#### 7.2. Stage 2 involves the following works–

- Demolition of existing tavern and construction of 24 car parking spaces and 3 motorcycle spaces in the location of the former tavern. 20 of the new spaces are to be marked as temporary spaces to service the child care centre
- Amenities upgrade with addition of a new parent’s room
- Demolition of existing walls to first floor
- Conversion of existing office space to 121 place childcare centre
- Installation of new lift to accommodate first floor tenancies
- Building facades Signage for childcare
- And ancillary works as required

Works are to be finalised appropriate for each stage prior to the release of the Occupation Certificate.

#### 7.3 Carry out all building works in accordance with the Building Code of Australia.

**8. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE**

All conditions under this section must be met prior to the issue of any Construction Certificate for the relevant stage

- 8.1 All conditions under this section must be met prior to the issue of any Construction Certificate.
- 8.2 No activity is to be carried out on-site until the Construction Certificate has been issued, other than:
- d. Site investigation for the preparation of the construction; and / or
  - e. Implementation of environmental protection measures, such as erosion control and the like that are required by this consent; and
  - f. Demolition.
- 8.3 Submit amendments to the approved plans to the Accredited Certifier pursuant to clause 139 of the *Environmental Planning and Assessment Regulation 2000* that must detail:
- a) Plan DA1.11 – Main Floor Plan North is to be modified in the following manner:
    - 1. The Plan is to be revised to identify clearly all mixed and recyclables waste storage containers /storage and servicing location for the Childcare Centre, the various tenancies within the existing shopping centre, and the supermarket. The plan is to correspond with the revised Operational Waste Management Plan as specified within Condition 8.4 of this consent.
- 8.4 An Operational Waste Management Plan to revise waste generation rates consistent with the Better practice guide for resource recovery in residential developments for the proposed Child Care Centre. ie. 20 litres/child/day mixed waste and 5 litres/child/day recyclables waste is to be submitted to Council's Waste Services Unit for approval. Assessment fees apply.
- 8.5 Submit an application to Council under section 305 of the *Water Management Act 2000* to obtain a section 307 Certificate of Compliance. The *Application for a 307 Certificate under section 305 Water Management Act 2000* form can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au) . Early application is recommended.
- A section 307 Certificate must be obtained prior to the issue of any Construction Certificate.
- 8.6 Submit to Council a dilapidation report detailing the condition of all Council assets within the vicinity of the development. The report must document and provide photographs that clearly depict any existing damage to the road, kerb, gutter, footpath, driveways, street trees, street signs, street lights or any other Council assets in the vicinity of the development.

The dilapidation report will be required to be submitted to Council prior to the issue of the Section 138 Roads Act Works approval or the issue of any construction certificate for works on the site. The dilapidation report may be updated with the approval of Council prior to the commencement of works. The report will be used by Council to establish damage to Council's assets resulting from the development works.

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- 8.7 Submit to the Accredited Certifier responsible for issuing the construction certificate for works within the development site detailed design drawings and design reports for the following engineering works:
- a) Construction of driveways, ramps and car parking areas in accordance with the requirements of the current edition Australian Standard AS/NZS 2890: Parking Facilities and other applicable Australian Standards.
  - b) Construction of nutrient and pollution control measures. Design in accordance with Chapter 6.7 - *Water Cycle Management* of the Gosford Development Control Plan 2013. A nutrient and pollution control report including an operation and maintenance plan must accompany the design
  - c) Construction of stormwater drainage collection and piping of all stormwater runoff from areas within the site to the existing stormwater system within the site. Existing stormwater discharge points within the site are to be utilised to connect stormwater from the site to Council's drainage system in the road reserve/s.

Detailed design drawings and design reports acceptable to the Accredited Certifier must be included in the Construction Certificate documentation.

- 8.8 Submit details showing that the levels of fire safety within the premises will achieve total conformity with the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate / an adequate level of fire safety in accordance with a fire safety report prepared by a suitably qualified person.

The fire safety report must detail the measures considered appropriate to satisfy the relevant performance requirements of the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate to:

- protect persons using the building, and to facilitate their egress from the building in the event of fire, or
- restrict the spread of fire to other buildings nearby

**Note:** Required by Clause 94 of the *Environmental Planning and Assessment Regulation 2000*.

## 9. PRIOR TO COMMENCEMENT OF ANY WORKS

- 9.1. All conditions under this section must be met prior to the commencement of any works.
- 9.2. Appoint a Principal Certifying Authority for the building work:
- c. The Principal Certifying Authority (if not Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than two (2) days before the building work commences.
  - d. Submit to Council a Notice of Commencement of Building Works or Notice of Commencement of Subdivision Works form giving at least two (2) days' notice of the intention to commence building or subdivision work. The forms can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au)

- 9.3. Erect a sign in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:
- e. The name, address and telephone number of the Principal Certifying Authority for the work; and
  - f. The name of the principal contractor and a telephone number at which that person can be contacted outside of working hours; and
  - g. That unauthorised entry to the work site is prohibited.
  - h. Remove the sign when the work has been completed.
- 9.4. Submit both a Plumbing and Drainage Inspection Application, with the relevant fee, and a Plumbing and Drainage Notice of Work in accordance with the *Plumbing and Drainage Act 2011* (to be provided by licensed plumber). These documents can be found on Council's website at: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au)

Contact Council prior to submitting these forms to confirm the relevant fees.

This condition only applies if installation/alteration of plumbing and/or drainage works are proposed (excludes stormwater drainage)

- 9.5. Obtain a Construction Certificate for the construction works within the private property.
- 9.6. Prepare a Construction Traffic and Pedestrian Management Plan (CTPMP) for all activities related to works within the site. The plan must be prepared and implemented only by persons with Roads and Maritime Service accreditation for preparing and implementing traffic management plans at work sites.

The CTPMP must describe the proposed construction works, the traffic impacts on the local area and how these impacts will be addressed.

The CTPMP must address, but not be limited to, the following matters:

- Ingress and egress of construction related vehicles to the development site.
- Details of the various vehicle lengths that will be used during construction and the frequency of these movement.
- Use of swept path diagrams to demonstrate how heavy vehicles enter, circulate and exit the site or Works Zone in a forward direction.
- Deliveries to the site, including loading / unloading materials and requirements for work zones along the road frontage to the development site. A Plan is to be included that shows where vehicles stand to load and unload, where construction plant will stand, location of storage areas for equipment, materials and waste, locations of Work Zones (if required) and location of cranes (if required).
- Works Zones if heavy vehicles cannot enter or exit the site in a forward direction.
- Control of pedestrian and vehicular traffic where pre-construction routes are affected.
- Temporary Road Closures.

Where the plan identifies that the travel paths of pedestrians and vehicular traffic are proposed to be interrupted or diverted for any construction activity related to works inside the development site an application must be made to Council for a Road Occupancy Licence. Implementation of traffic management plans that address interruption or diversion of pedestrian and/or vehicular traffic must only take place following receipt of a Road Occupancy Licence from Council or the Roads and Maritime Service where on a classified road.

Where a dedicated delivery vehicle loading and unloading zone is required along the road frontage of the development site a Works Zone Application must be lodged and approved by Council. A minimum of 3 months is required to allow Traffic Committee endorsement and Council approval. The Construction Traffic and Pedestrian Management Plan must be reviewed and updated during construction of the development to address any changing site conditions.

A copy of the Construction Traffic and Pedestrian Management Plan must be held on site at all times and be made available to Council upon request.

- 9.7 Disconnect, seal and make safe all existing site services prior to the commencement of any demolition on the site. Sewer and water services must be disconnected by a licensed plumber and drainer with a Start Work Docket submitted to Council's Plumbing and Drainage Inspector as the Water and Sewer Authority.
- 9.8 Erect a temporary hoarding or temporary construction site fence between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works, if the works:
- d. could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
  - e. could cause damage to adjoining lands by falling objects, or
  - f. involve the enclosure of a public place or part of a public place

**Note 1:** A structure on public land or on or over a public road requires the prior approval of the relevant authority under the Local Government Act 1993 or the Roads Act 1993, respectively.

**Note 2:** The Work Health and Safety Act 2011 and Work Health and Safety Regulation 2011 contain provisions relating to scaffolds, hoardings and other temporary structures.

## 10. DURING WORKS

- 10.1. All conditions under this section must be met during works.
- 10.2. Carry out construction or demolition works during the construction phase of the development only between the hours as follows:

7.00am and 5.00pm Monday to Saturday

No construction or demolition works associated with the development are permitted to be carried out at any time on a Sunday or a public holiday.

- 10.3. During the construction phase of the development, if any Aboriginal object (including evidence of habitation or remains), is discovered during the course of the work:
- c. All excavation or disturbance of the area must stop immediately in that area, and
  - d. The Office of Environment and Heritage must be advised of the discovery in accordance with section 89A of the *National Parks and Wildlife Act 1974*.
- Note:** If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the *National Parks and Wildlife Act 1974*.
- 10.4 It is an offence under the *National Parks and Wildlife Act 1974* to disturb an Aboriginal artefact without a Permit. If during works suspected Aboriginal heritage items (stone tool artefacts, shell middens, axe grinding groves, pigment or engraved rock art, burials or scar trees) are identified, works will cease and OEH (131555) will be contacted.
- 10.5 Implement all erosion and sediment control measures and undertake works in accordance with the approved Erosion and Sediment Control Plan, prepared by Danmor Consulting Engineers, dated 10.11.19. Update the plan as required during all stages of the construction or in accordance with *the 'Blue Book' (Managing Urban Stormwater: Soils and Construction, Landcom, 2004)*.
- 10.6 Classify all excavated material removed from the site in accordance with NSW EPA (2014) *Waste Classification Guidelines* prior to disposal. All excavated material must be disposed of to an approved waste management facility, and receipts of the disposal must be kept on-site.
- 10.7 Do not give rise to water pollution as defined in the *Protection of the Environment Operation Act 1997*.
- 10.8 Removal of greater than 10m<sup>2</sup> of non-friable asbestos and the removal of all friable asbestos must be undertaken by a licensed asbestos removal and in compliance with the *NSW Government Workcover How to Safely Remove Asbestos Code of Practice 2011*.
- 10.9 Notify Council when plumbing and drainage work will be ready for inspection(s) and make the work accessible for inspection in accordance with the *Plumbing and Drainage Act 2011*.
- 10.10 All excavated material removed from the site must be classified in accordance with NSW EPA (1999) *Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes* prior to disposal. All excavated material must be disposed of to an approved waste management facility and receipts of the disposal must be kept on site.
- 10.11 Implement dust suppression measures on-site during works to suppress dust generated by vehicles and equipment. Dust must also be suppressed at all other stages of construction in order to comply with the *Protection of the Environment Operations Act 1997*.
- 10.12 Immediately notify Council of any new information which comes to light during works which has the potential to alter previous conclusions about site contamination.

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10.13 Keep a copy of the stamped approved plans on-site for the duration of site works and make the plans available upon request to either the Principal Certifying Authority or an officer of Council.

## 11. PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE

- 11.1. All conditions under this section must be met prior to the issue of any Occupation Certificate.
- 11.2 Complete construction of the stormwater management system in accordance with the Stormwater Management Plan and Australian Standard AS 3500.3-*Stormwater drainage systems*. Certification of the construction by a suitably qualified consultant must be provided to the Principal Certifier.
- 11.3 Repair any damage to Council’s infrastructure and road reserve as agreed with Council. Damage not shown in the dilapidation report submitted to Council before the development works had commenced will be assumed to have been caused by the development works unless the Developer can prove otherwise.
- 11.4 Complete the civil engineering works within the development site in accordance with the detailed design drawings and design reports plans within the construction certificate.
- 11.5 Complete Construction of driveways, ramps and car parking areas in accordance with the requirements of the current edition Australian Standard AS/NZS 2890: *Parking Facilities*, other applicable Australian Standards and the detailed designs and design reports within the construction certificate. Certification by a suitably qualified person that construction is complete is to be provided to the Principal Certifier.
- 11.6 A qualified acoustic consultant is to certify the specifications for window glazing and adsorbent ceiling are as per those listed in Section 8.1 of the *Noise Impact Assessment* prepared by Reverb Acoustics, dated August 2019.
- 11.7 Install in-sink strainers within the commercial childcare centre kitchen sink waste outlets.
- 11.8 Install floor waste bucket traps in commercial childcare centre kitchen food preparation and handling areas.
- 11.9 Install approved commercial grease arrestor (minimum capacity 1000 litres) in association with the Childcare centre kitchen, assuming hot food is to be prepared on site.
- 11.10 The following is to be implemented:
- Install floor waste screens or basket arrestors in waste bin storage/wash areas associated with the childcare centre.
  - Connect waste bin wash waste water to sewer in accordance with Australian Standards AS/NZ 3500.2.2018 Plumbing & Drainage – Sanitary Plumbing & Drainage.
  - Exclude ingress of stormwater into Council’s sewerage System.
- 11.11 Twenty (20) of the car parking spaces located in the general footprint of the former tavern site are to be marked and signposted in a clear manner as temporary spaces to service the child care centre.

## 12. ONGOING OPERATION

- 12.1 The activities conducted at the premise are not to give rise to offensive noise, as defined in the *Protection of the Environment Operations Act 1997*.
- 12.2 Operating hours are restricted to the following times:
- Monday to Friday: 6:30am to 6:30pm.
- 12.3 The use of outdoor play areas is restricted to a maximum of two hours per day.
- 12.4 Accommodation limits are restricted to the following:
- 0-2 years: 36 children
  - 1.5-2.5 years: 15
  - 2-3 years: 30 children
  - 3-5 years: 40 children
- 12.5 Operate in accordance with the Childcare Centre Operation Plan.
- 12.6 Should a report of a noise nuisance from the operation of the Childcare Centre be received and confirmed by Council the person benefiting this consent must supply to Council, within 30 days, an acoustic assessment of operational noise emissions from the premises to be undertaken by a suitably qualified and experienced Acoustic Consultant that identify any areas where further noise mitigation measures **will be required**.
- 12.7 Comply with all commitments generally as detailed in the Waste Management Plan required to be prepared and approved by Council's Waste Services Unit under Condition 8.3(c)(1).
- 12.8 Locate the approved waste storage enclosure / area as indicated in accordance with the Waste Management Plan required to be prepared and approved by Council's Waste Services Unit under Condition 8.3(a)(1).
- 12.9 Do not place or store waste material, waste product or waste packaging outside the approved waste storage enclosure.
- 12.10 Construct and manage the waste storage enclosure in accordance with the provisions of Gosford Development Control Plan 2013, Part 7: *Chapter 7.2 Waste Management*, Appendix D and Appendix G, as applicable.
- 12.11 Food waste to be stored in a designated Food Waste Refrigerator prior to disposal alternatively food waste to be separately stored for disposal of maximum 2-3 day intervals.
- 12.12 All waste to be serviced at a suitable frequency to ensure available waste storage at all times.
- 12.13 Lodge a new Liquid Trade Waste application when there is a change of ownership / occupancy or change to the activities licenced under this approval. As part of this process, Council will reassess the Liquid Trade Waste requirements for the site and update the Liquid Trade Waste approval document as appropriate. This form can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au)

12.14 The twenty (20) car parking spaces located in the general footprint of the former tavern site marked and signposted in a clear manner as temporary spaces to service the child care centre are to be maintained as temporary parking spaces exclusively for the use of child care drop off and pick up for the lifetime of the development.

## PENALTIES

Failure to comply with this development consent and any condition of this consent may be a **criminal offence**. Failure to comply with other environmental laws may also be a **criminal offence**.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

### Warnings as to Potential Maximum Penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

## ADVISORY NOTES

- The inspection fee for works associated with approvals under the *Roads Act 1977* is calculated in accordance with Council's current fees and charges policy.
- Payment of a maintenance bond may be required for civil engineering works associated with this development. This fee is calculated in accordance with Council's fees and charges.
- It is an offence under the *National Parks and Wildlife Act 1974* to disturb an Aboriginal artefact without a Permit.
- Discharge of sediment from a site may be determined to be a pollution event under provisions of the Protection of the Environment Operations Act 1997. Enforcement action may commence where sediment movement produces a pollution event.
- The following public authorities may have separate requirements in the following aspects:
  - f. Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments
  - g. Jemena Asset Management for any change or alteration to the gas line infrastructure

- h. Ausgrid for any change or alteration to electricity infrastructure or encroachment within transmission line easements
  - i. Telstra, Optus or other telecommunication carriers for access to their telecommunications infrastructure
  - j. Central Coast Council in respect to the location of water, sewerage and drainage services.
- Carry out all work under this Consent in accordance with SafeWork NSW requirements including the Workplace Health and Safety Act 2011 No 10 and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
  - Dial Before You Dig  
Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.
  - *Telecommunications Act 1997* (Commonwealth)  
Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.

### **STAGE 3: Construction of Balance of New Carparking Surfaces, Shade Sails, Façade updates, New Mall Entry for Coles Tenancy, New Signage Towers, Reconfiguration of Loading Docks**

## **13. PARAMETERS OF THIS CONSENT**

### **13.1. Approved Plans and Supporting Documents**

Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and drawn by Squillace, and to which is affixed a Council stamp "*Development Consent*" unless modified by any following condition.

**Architectural Plans**

<b>Drawing</b>	<b>Description</b>	<b>Sheets</b>	<b>Issue</b>	<b>Date</b>
DA1 - 02	Demolition plan North	1	C	20.11.2019
DA1 - 03	Demolition Plan South	1	B	26.06.2019
DA1 - 04	First Floor Demolition Plan North	1	E	7.11.2019
DA1 - 05	First Floor Demolition Plan South	1	B	26.06.2019
DA1 - 10	Site Plan	1	G	07.11.2019
DA1- 11	Main Floor Plan North	1	J	04.06.2020
DA1 - 12	Main Floor Plan South	1	I	29.07.2020
DA1 - 13	First Floor Plan South	1	F	15.04.2020
DA1 - 14	Roof Plan North	1	F	15.04.2020
DA1 - 15	Roof Plan South	1	D	17.09.2019
DA1 - 16	Elevations 1	1	K	07.11.2019
DA1 - 17	Elevations 2	1	J	17.09.2019
DA1 - 18	Elevations 3	1	J	18.09.2019
DA1 - 19	Elevations 4	1	J	18.09.2019
DA1 - 20	Sections	1	J	18.09.2019
DA1 - 21	Signage Details	1	G	18.09.2019
DA1 - 23	Staging Plans	1	A	23.09.2019
DA1 – 24	Staging Plans	1	A	23.09.2019
DA1 - 25	Staging Plans	1	A	23.09.2019
DA01	0-2 Age Group Outdoor Play Plan	1	B	26.11.2019
DA02	2-5 Age Group Outdoor Play Plan	1	B	26.11.2019
L_101	Landscape Architectural Plan – Southern Zone	1	F	04.08.2020
L_102	Landscape Architectural Plan – Northern Zone	1	E	19.09.2019

40644 005DT – (1 – 13)	Detail Survey	13	C	03.06.2019
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**Supporting Documentation**

ECM No.	Title	Date
D13869471	Statement of Environmental Effects	November 2019
ECMD25452055	Air Quality Report	December 2019
ECMD25427310	Kids Club Operational Management Plan	No Date
ECMD25427304	Civil Stormwater Plans	10 November 2019
ECMD25427308	Acoustic Report	November 2019
ECMD25280261	Operation Plan - Hungry Jacks	No Date
ECMD25427305	Traffic Report	26 November 2019
D14063447	TfNSW Agency Advice	01.04.2020
D14136526	Landscape Planting Schedule (Architectural Details Sheet 2 (Drawing L_502 issue C)	04.08.2020

## 13.2. Stage 3 involves the following works–

- Re-sheeting and reconfiguration of the northern portion of the existing carpark
- Construction of new shade sails to carpark
- New carpark vehicular entry/exits
- New play area along with forecourt refurbishment with outdoor seating
- New mall and shopfront to Coles supermarket entry
- Pedestrian arcade from Brisbane Water Drive includes new feature ceiling
- Upgrading to the building façade
- Reconfiguration of existing shopping centre loading dock.
- Establishment of all landscaping associated with the northern portion of the carpark.
- New signage towers associated with the Shopping Centre
- Establishment of all remaining landscaping elements.
- And ancillary works as required

Works are to be finalised appropriate for each stage prior to the release of the Occupation Certificate.

## 13.3. Carry out all building works in accordance with the Building Code of Australia.

**14. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE**

**All conditions under this section must be met prior to the issue of any Construction Certificate for the relevant stage**

14.1 All conditions under this section must be met prior to the issue of any Construction Certificate.

14.2 No activity is to be carried out on-site until the Construction Certificate has been issued, other than:

- g. Site investigation for the preparation of the construction; and / or

- h. Implementation of environmental protection measures, such as erosion control and the like that are required by this consent; and
  - i. Demolition.
- 14.3 Submit amendments to the approved plans to the Accredited Certifier pursuant to clause 139 of the *Environmental Planning and Assessment Regulation 2000* that must detail:
- a) Plan DA1.11 – Main Floor Plan North is to be modified in the following manner:
    - 1. The Plan is to be revised to identify all mixed and recyclables waste storage containers /storage and servicing locations as per alterations and additions under this stage of the application. The plan is to correspond with the revised Operational Waste Management Plan as specified within Condition 14.4 of this consent.
- 14.4 A Waste Management Plan in accordance with Chapter 7.2 – Waste Management of Gosford DCP 2013 for Construction, Use of Premises and Ongoing management of waste to be submitted for the proposed stage 3 works. The Waste Management Plan is to be submitted to Council’s Waste Services Unit for approval. assessment fees apply.
- 14.5 Submit an application to Council under section 305 of the *Water Management Act 2000* to obtain a section 307 Certificate of Compliance. The *Application for a 307 Certificate under section 305 Water Management Act 2000* form can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au) . Early application is recommended.
- A section 307 Certificate must be obtained prior to the issue of any Construction Certificate.
- 14.6 Submit to the Accredited Certifier responsible for issuing the construction certificate for works within the development site detailed design drawings and design reports for the following engineering works:
- a) Construction of driveways, ramps and car parking areas in accordance with the requirements of the current edition Australian Standard AS/NZS 2890: Parking Facilities and other applicable Australian Standards.
  - b) Construction of nutrient and pollution control measures. Design in accordance with Chapter 6.7 - *Water Cycle Management* of the Gosford Development Control Plan 2013. A nutrient and pollution control report including an operation and maintenance plan must accompany the design
  - c) Construction of stormwater drainage collection and piping of all stormwater runoff from areas within the site to the existing stormwater system within the site. Existing stormwater discharge points within the site are to be utilised to connect stormwater from the site to Council’s drainage system in the road reserve/s.

Detailed design drawings and design reports acceptable to the Accredited Certifier must be included in the Construction Certificate documentation.

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14.7 Submit details showing that the levels of fire safety within the premises will achieve total conformity with the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate / an adequate level of fire safety in accordance with a fire safety report prepared by a suitably qualified person.

The fire safety report must detail the measures considered appropriate to satisfy the relevant performance requirements of the National Construction Code Series, Building Code of Australia, Volume 1 and 2 as appropriate to:

- protect persons using the building, and to facilitate their egress from the building in the event of fire, or
- restrict the spread of fire to other buildings nearby

**Note:** Required by Clause 94 of the *Environmental Planning and Assessment Regulation 2000*.

## 15. PRIOR TO COMMENCEMENT OF ANY WORKS

15.1. All conditions under this section must be met prior to the commencement of any works.

15.2. Appoint a Principal Certifying Authority for the building work:

- e. The Principal Certifying Authority (if not Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than two (2) days before the building work commences.
- f. Submit to Council a Notice of Commencement of Building Works or Notice of Commencement of Subdivision Works form giving at least two (2) days' notice of the intention to commence building or subdivision work. The forms can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au)

15.3. Erect a sign in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:

- i. The name, address and telephone number of the Principal Certifying Authority for the work; and
- j. The name of the principal contractor and a telephone number at which that person can be contacted outside of working hours; and
- k. That unauthorised entry to the work site is prohibited.
- l. Remove the sign when the work has been completed.

15.4. Obtain a Construction Certificate for the construction works within the private property.

15.5 Prepare a Construction Traffic and Pedestrian Management Plan (CTPMP) for all activities related to works within the site. The plan must be prepared and implemented only by persons with Roads and Maritime Service accreditation for preparing and implementing traffic management plans at work sites.

The CTPMP must describe the proposed construction works, the traffic impacts on the local area and how these impacts will be addressed.

The CTPMP must address, but not be limited to, the following matters:

- Ingress and egress of construction related vehicles to the development site.
- Details of the various vehicle lengths that will be used during construction and the frequency of these movement.
- Use of swept path diagrams to demonstrate how heavy vehicles enter, circulate and exit the site or Works Zone in a forward direction.
- Deliveries to the site, including loading / unloading materials and requirements for work zones along the road frontage to the development site. A Plan is to be included that shows where vehicles stand to load and unload, where construction plant will stand, location of storage areas for equipment, materials and waste, locations of Work Zones (if required) and location of cranes (if required).
- Works Zones if heavy vehicles cannot enter or exit the site in a forward direction.
- Control of pedestrian and vehicular traffic where pre-construction routes are affected.
- Temporary Road Closures.

Where the plan identifies that the travel paths of pedestrians and vehicular traffic are proposed to be interrupted or diverted for any construction activity related to works inside the development site an application must be made to Council for a Road Occupancy Licence. Implementation of traffic management plans that address interruption or diversion of pedestrian and/or vehicular traffic must only take place following receipt of a Road Occupancy Licence from Council or the Roads and Maritime Service where on a classified road.

Where a dedicated delivery vehicle loading and unloading zone is required along the road frontage of the development site a Works Zone Application must be lodged and approved by Council. A minimum of 3 months is required to allow Traffic Committee endorsement and Council approval. The Construction Traffic and Pedestrian Management Plan must be reviewed and updated during construction of the development to address any changing site conditions.

A copy of the Construction Traffic and Pedestrian Management Plan must be held on site at all times and be made available to Council upon request.

- 15.6 Disconnect, seal and make safe all existing site services prior to the commencement of any demolition on the site. Sewer and water services must be disconnected by a licensed plumber and drainer with a Start Work Docket submitted to Council's Plumbing and Drainage Inspector as the Water and Sewer Authority.
- 15.7 Erect a temporary hoarding or temporary construction site fence between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works, if the works:
- g. could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
  - h. could cause damage to adjoining lands by falling objects, or
  - i. involve the enclosure of a public place or part of a public place

**Note 1:** A structure on public land or on or over a public road requires the prior approval of the relevant authority under the Local Government Act 1993 or the Roads Act 1993, respectively.

**Note 2:** The *Work Health and Safety Act 2011* and *Work Health and Safety Regulation 2011* contain provisions relating to scaffolds, hoardings and other temporary structures.

## 16. DURING WORKS

- 16.1. All conditions under this section must be met during works.
- 16.2. Carry out construction or demolition works during the construction phase of the development only between the hours as follows:
- 7.00am and 5.00pm Monday to Saturday
- No construction or demolition works associated with the development are permitted to be carried out at any time on a Sunday or a public holiday.
- 16.3. During the construction phase of the development, if any Aboriginal object (including evidence of habitation or remains), is discovered during the course of the work:
- All excavation or disturbance of the area must stop immediately in that area, and
  - The Office of Environment and Heritage must be advised of the discovery in accordance with section 89A of the *National Parks and Wildlife Act 1974*.
- Note:** If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the *National Parks and Wildlife Act 1974*.
- 16.4. It is an offence under the *National Parks and Wildlife Act 1974* to disturb an Aboriginal artefact without a Permit. If during works suspected Aboriginal heritage items (stone tool artefacts, shell middens, axe grinding groves, pigment or engraved rock art, burials or scar trees) are identified, works will cease and OEH (131555) will be contacted.
- 16.5. Implement all erosion and sediment control measures and undertake works in accordance with the approved Erosion and Sediment Control Plan, prepared by Danmor Consulting Engineers, dated 10.11.19. Update the plan as required during all stages of the construction or in accordance with *the 'Blue Book' (Managing Urban Stormwater: Soils and Construction, Landcom, 2004)*.
- 16.6. Classify all excavated material removed from the site in accordance with NSW EPA (2014) *Waste Classification Guidelines* prior to disposal. All excavated material must be disposed of to an approved waste management facility, and receipts of the disposal must be kept on-site.
- 16.7. Do not give rise to water pollution as defined in the *Protection of the Environment Operation Act 1997*.

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- 16.8. Removal of greater than 10m<sup>2</sup> of non-friable asbestos and the removal of all friable asbestos must be undertaken by a licensed asbestos removal and in compliance with the *NSW Government Workcover How to Safely Remove Asbestos Code of Practice 2011*.
- 16.9 Notify Council when plumbing and drainage work will be ready for inspection(s) and make the work accessible for inspection in accordance with the *Plumbing and Drainage Act 2011*.
- 16.10 Implement dust suppression measures on-site during works to suppress dust generated by vehicles and equipment. Dust must also be suppressed at all other stages of construction in order to comply with the *Protection of the Environment Operations Act 1997*.
- 16.11 Immediately notify Council of any new information which comes to light during works which has the potential to alter previous conclusions about site contamination.
- 16.12 Keep a copy of the stamped approved plans on-site for the duration of site works and make the plans available upon request to either the Principal Certifying Authority or an officer of Council.

## 17. PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE

- 17.1. All conditions under this section must be met prior to the issue of any Occupation Certificate.
- 17.2 Complete construction of the stormwater management system in accordance with the Stormwater Management Plan and Australian Standard AS 3500.3-*Stormwater drainage systems*. Certification of the construction by a suitably qualified consultant must be provided to the Principal Certifier.
- 17.3 Repair any damage to Council's infrastructure and road reserve as agreed with Council. Damage not shown in the dilapidation report submitted to Council before the development works had commenced will be assumed to have been caused by the development works unless the Developer can prove otherwise.
- 17.4 Complete the civil engineering works within the development site in accordance with the detailed design drawings and design reports plans within the construction certificate.
- 17.5 Complete Construction of driveways, ramps and car parking areas in accordance with the requirements of the current edition Australian Standard AS/NZS 2890: *Parking Facilities*, other applicable Australian Standards and the detailed designs and design reports within the construction certificate. Certification by a suitably qualified person that construction is complete is to be provided to the Principal Certifier.
- 17.6 Complete the landscaping works as detailed on Plan L101 – Landscape Architectural Plan – Southern Zone, issue F, Dated 04.08.2020, and Plan L102 - Landscape Architectural Plan – Northern Zone, issue E, Dated 19.09.2019.
- 17.7 Install the twenty (20) bicycle parking spaces as per the plan DA1-12 Main Floor South, issue I, Dated 29.07.2020.

## 18. ONGOING OPERATION

- 18.1 Store all waste generated on the premises in a manner so that it does not pollute the environment
- 18.2 Transport all waste generated on the premises to a facility which is licensed to receive that material.
- 18.3 Comply with all commitments generally as detailed in the Waste Management Plan required to be prepared and approved by Council's Waste Services Unit under Condition 14.4.
- 18.4 Locate the approved waste storage enclosure / area as indicated in accordance with the Waste Management Plan required to be prepared and approved by Council's Waste Services Unit under Condition 14.3(a)(1).
- 18.5 Do not place or store waste material, waste product or waste packaging outside the approved waste storage enclosure.
- 18.6 Construct and manage the waste storage enclosure in accordance with the provisions of Gosford Development Control Plan 2013, Part 7: *Chapter 7.2 Waste Management*, Appendix D and Appendix G, as applicable.
- 18.7 Food waste to be stored in a designated Food Waste Refrigerator prior to disposal alternatively food waste to be separately stored for disposal of maximum 2-3 day intervals.
- 18.8 All waste to be serviced at a suitable frequency to ensure available waste storage at all times.
- 18.9 Lodge a new Liquid Trade Waste application when there is a change of ownership / occupancy or change to the activities licenced under this approval. As part of this process, Council will reassess the Liquid Trade Waste requirements for the site and update the Liquid Trade Waste approval document as appropriate. This form can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au)
- 18.10 Maintain all works associated with the approved Landscape Plan L101 – Landscape Architectural Plan – Southern Zone, issue F, Dated 04.08.2020, and Plan L102 - Landscape Architectural Plan – Northern Zone, issue E, Dated 19.09.2019, and the Landscape Planting Schedule (Landscape Architectural Details, sheet 2, issue C, Dated 04.08.2020 throughout all stages of the development in perpetuity. Plants and landscaping as approved are to be replaced and maintained as required for the lifetime of the development.
- 18.11 The twenty (20) bicycle parking spaces as per the plan DA1-12 Main Floor South, issue I, Dated 29.07.2020 are to be maintained in a useable and safe manner for the lifetime of the development.

## PENALTIES

Failure to comply with this development consent and any condition of this consent may be a **criminal offence**. Failure to comply with other environmental laws may also be a **criminal offence**.

Where there is any breach Council may without any further warning:

- 
- Issue Penalty Infringement Notices (On-the-spot fines);
  - Issue notices and orders;
  - Prosecute any person breaching this consent, and/or
  - Seek injunctions/orders before the courts to retain and remedy any breach.

### Warnings as to Potential Maximum Penalties

Maximum Penalties under NSW Environmental Laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

### ADVISORY NOTES

- The inspection fee for works associated with approvals under the *Roads Act 1977* is calculated in accordance with Council's current fees and charges policy.
- Payment of a maintenance bond may be required for civil engineering works associated with this development. This fee is calculated in accordance with Council's fees and charges.
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  - k. Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments
  - l. Jemena Asset Management for any change or alteration to the gas line infrastructure
  - m. Ausgrid for any change or alteration to electricity infrastructure or encroachment within transmission line easements
  - n. Telstra, Optus or other telecommunication carriers for access to their telecommunications infrastructure
  - o. Central Coast Council in respect to the location of water, sewerage and drainage services.
- Carry out all work under this Consent in accordance with SafeWork NSW requirements including the Workplace Health and Safety Act 2011 No 10 and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.

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Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the Criminal Code Act 1995 (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.

**Item No:** 3.1  
**Title:** Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works

**Department:** Environment and Planning

17 September 2020 Local Planning Panel Meeting

Reference: DA/153/2020 - D14096629  
Author: Amanda Hill, Town Planner  
Manager: Salli Pendergast, Principal Development Planner North  
Approver: Andrew Roach, Unit Manager, Development Assessment

### Summary

An application has been received for a change of use of a former nursing home to a boarding house and associated works at 51 Peel Street, Toukley. The application aims to utilise the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH)

The proposal is a redevelopment of an existing three-storey building that was previously used as a nursing home (residential care facility) until 2018. The initial proposal for a 72-room boarding house has been revised to a 64-room boarding house following concerns raised by Council officers. The proposed boarding house will now include 37 single rooms and 27 double rooms, including one manager's room and 4 accessible rooms. At capacity, the boarding house would provide accommodation for 91 people, including an on-site manager. There is one internal common room; outdoor common areas and parking.

The application has been referred to the Local Planning Panel as a result of the number of written objections received during the public exhibition period. There are 120 submissions that have been received following notification of the proposal. The application is recommended for refusal.

<b>Applicant</b>	Mr C Ahadizadeh
<b>Owner</b>	G Ahadizadeh Pty Ltd and Mr A Ahadizadeh and Mr C Ahadizadeh
<b>Application No</b>	DA/153/2020
<b>Description of Land</b>	Lot 2 DP 850314, 51 Peel Street, TOUKLEY NSW 2263
<b>Proposed Development</b>	Change of Use from Nursing Home to Boarding House & Associated Works
<b>Site Area</b>	3616.1 m <sup>2</sup>
<b>Zoning</b>	R1 General Residential
<b>Existing Use</b>	Residential Care Facility (Nursing Home)
<b>Employment Generation</b>	No
<b>Estimated Value</b>	\$475,000.00

**3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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**Recommendation**

- 1 That the Local Planning Panel refuse the application subject to reasons for refusal detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act.**
- 2 That Council advise those who made written submissions of the Panel's decision.**
- 3 That Council advise the relevant external authorities of the Panel's decision.**

**Key Issues**

- Whether the proposal meets the requirements of Clause 30A of *State Environmental Planning Policy (Affordable Rental Housing) 2009* with regard to being consistent with the character of the area;
- Whether the proposed development is considered unsatisfactory with regard to *Wyong Local Environmental Plan 2013*, particularly the objectives of the zone;
- The potential impacts of the development on the locality (including waste, social impacts, noise, amenity, parking) and whether there is sufficient information submitted in support of the application determine the extent of likely significant impacts;
- Whether the extent of works/building intervention proposed are suitable to convert an old/outdated building from its previous use (residential aged care) into an entirely different use (boarding house);
- The proposal is not in the public interest, having regard for the matters raised in submissions received in relation to the proposal.

**Precis:**

<b>Proposed Development</b>	Change of Use from Nursing Home (Residential Care Facility) to Boarding House & Associated Works under the provisions of <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i> .
<b>Permissibility and Zoning</b>	The subject site is zoned <i>R1 General Residential</i> under the provisions of <i>Wyong Local Environmental Plan 2013</i> . Boarding Houses are a permissible use in the zone. However, the proposal relies upon the provisions of <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i> .

**3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

<b>Relevant Legislation</b>	<ul style="list-style-type: none"> <li>• <i>Environmental Planning and Assessment Act 1979</i> (EP&amp;A Act).</li> <li>• <i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i> (SEPP ARH).</li> <li>• <i>State Environmental Planning Policy (Coastal Management) 2018</i></li> <li>• <i>Wyong Local Environmental Plan 2013</i> (WLEP 2013).</li> <li>• <i>Draft Central Coast Local Environmental Plan 2018</i> (CCLEP).</li> <li>• <i>Wyong Development Control Plan 2013</i>.</li> </ul>
<b>Current Use</b>	Residential Care Facility (Nursing Home)
<b>Integrated Development</b>	No
<b>Submissions</b>	<p>The development application was notified (in accordance with the provisions of the <i>Wyong Development Control Plan 2013</i>) from 11 March 2020 to 1 April 2020.</p> <p>120 written submissions in objection were received. (An evaluation of matters raised in these submissions is included later in this report).</p>

**Background**

The development application (as submitted) proposed the redevelopment of the existing three-storey building and change of use from a nursing home (Residential Care Facility) to a boarding house with 72 rooms to accommodate 95 people.

The initial Social Impact Assessment Report prepared in support of the application (by Judith Stubbs & Associates, dated 26 February 2020) highlighted the potential social impacts of the proposal. Not all boarding rooms were self-contained, and as such, presented low amenity for occupants. The recommendations of the Social Impact Assessment included but not limited to:

- Reducing the number of boarding rooms to allow for all rooms to be self-contained (bathroom and kitchen facilities).
- Reconfigure internal common areas to open onto the outdoor common areas.
- Adopt a Plan of Management.

The applicant was requested to amend the proposed development and provide the following information (as summarised):

- Significantly reduce the number of boarding rooms.
- Revise all rooms sizes to comply with SEPP ARH.
- Provide bathroom and kitchen facilities to all boarding rooms.

### **3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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- Improve the overall amenity of the building for future occupants by proposing works to upgrade the existing building internally and externally to accommodate the change of use from an aged care facility to a boarding house.
- Have regard to provisions of Chapter 2.4 Multiple Dwelling Residential Development under Wyong Development Control Plan 2013 where the SEPP ARH is silent.
- Landscape Plan.
- A Plan of Management (POM).
- An acoustic assessment report.
- A Crime Prevention Through Environmental Design (CPTED) Report.

The applicant submitted amended plans that reduced the number of boarding rooms to 64; provided one internal communal area; outdoor common areas (as existing); minor façade works; carparking; and landscaping. A revised Social Impact Assessment; Plan of Management; Access Report; Landscape Plan and Acoustic Assessment Report was also submitted.

The assessment of the development application is based on the amended plans and documents received.

#### **The Site**

The subject site is commonly known as No. 51 Peel Street, Toukley and is legally described as Lot 2 DP 850314. The subject site has a frontage with Peel Street and rear access is obtained via Alice Parade.

The land contains an existing three-storey masonry building with a metal flat roof that was previously used as a nursing home (residential care facility). Council records indicate that the use of the care home/residential care facility ceased in approximately 2018. The site also has an existing car park accessed off Alice Parade; outdoor recreation areas; and ancillary outbuildings. The current building is in a state of disrepair due to vandalism.

The site slopes generally to the north-east (from Alice Parade to Peel Street) with a fall of 7.9 metres across the length of the lot (approximately 90 metres). Tuggerah Lake is located north-west of the subject site on the opposite side of Peel Street.

The site is zoned R1 General Residential under the provisions of *Wyong Local Environmental Plan 2013* (WLEP 2013).

**3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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**Figure 1 – Aerial photograph of subject site and adjoining properties (site outlined in blue)**



**Figure 2 – Photograph of subject site from Peel Street**

**3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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*Figure 3 – Photograph from car park and view to Alice Parade and the north facade*



*Figure 4 – Photo of west facade*

**3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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*Figure 5 – Photo of south and north (internal) façades*



*Figure 6 – Photo of north facade*

3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)

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Figure 7 - Zoning Map

### Surrounding Development

Directly to the north-east of the subject site are residential lots, primarily occupied by single-storey dwelling houses.

To the south-west is a seniors living development known as 'Toukley Waters Village' containing approximately 20 dwelling units.

To the south of the subject site (opposite side of Alice Parade) are one and two storey single dwellings. Land in this location is zoned *R2 Low Density Residential* under WLEP 2013.

To the west of the subject site is vacant land. Tuggerah Lake and a Crown Land reserve is located opposite the site on Peel Street and is zoned *RE1 Public Recreation* under WLEP 2013.

### **3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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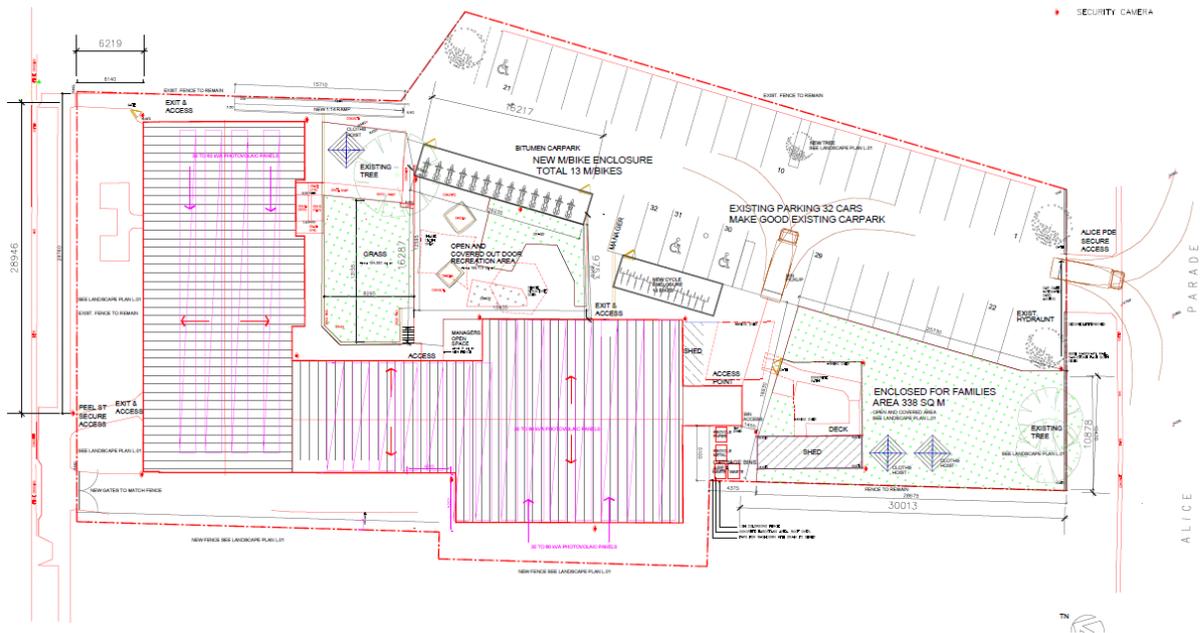
#### **The Proposed Development**

Development Application No. 153/2020 seeks approval for the change of use from a nursing home to a boarding house and associated works utilising the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009 (SEPP ARH)*.

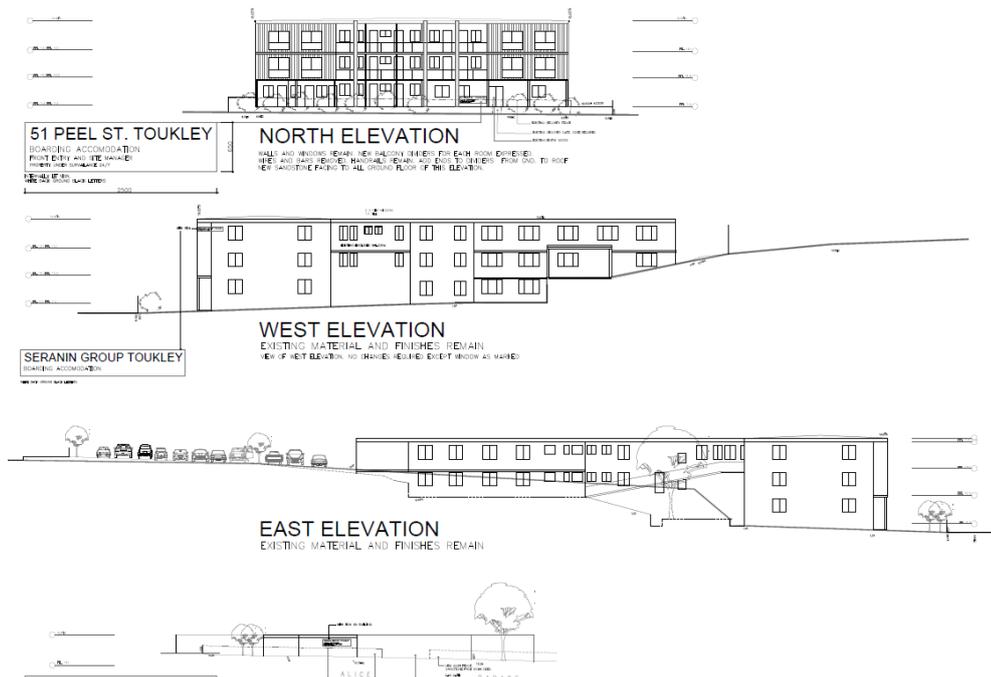
The proposed development will consist of:

- Internal works utilising existing room and corridor configuration of the existing nursing home building to create 64 boarding rooms, comprising 37 single rooms and 27 double rooms (within this configuration one manager's room will be provided and 4 of the rooms are proposed to be accessible rooms);
- The boarding house is proposed to provide accommodation for 91 people (90 boarders and 1 on-site manager).
- All boarding rooms will contain bathroom and kitchenette facilities; a bed; bedside table; desk and chair; wardrobe and television; and air-conditioning.
- The accessible rooms are room No. 60 and 64 located on bottom floor level; room No. 42 located on middle floor level; and room No. 18 located on top floor level.
- A communal room with kitchenette and Managers Office on top floor level.
- Shared laundry facilities on all floor levels containing a total of 6 coin-operated washing machines and washtubs.
- External works to the Peel Street façade of the building to remove existing wires and bars from balconies; add sandstone facing to facade and balcony dividers for each room.
- 3 outdoor common areas which are existing that include a grassed area; open and outdoor covered recreation area.
- 3 clothes hoists/lines.
- The existing car park accessed of Alice Parade will be utilised and 'made good' to accommodate proposed parking for 33 car spaces; 13 motorbike spaces and 13 bicycle spaces.
- New external accessible ramp adjoining the north-east boundary providing access from bottom floor level to the car park.
- New south-west boundary fences and retain existing boundary fencing.
- Landscaping.
- Bin storage and access off the car park.

**3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**



**Figure 8 – Proposed site plan**



**Figure 9 – Proposed Elevations**

### 3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)

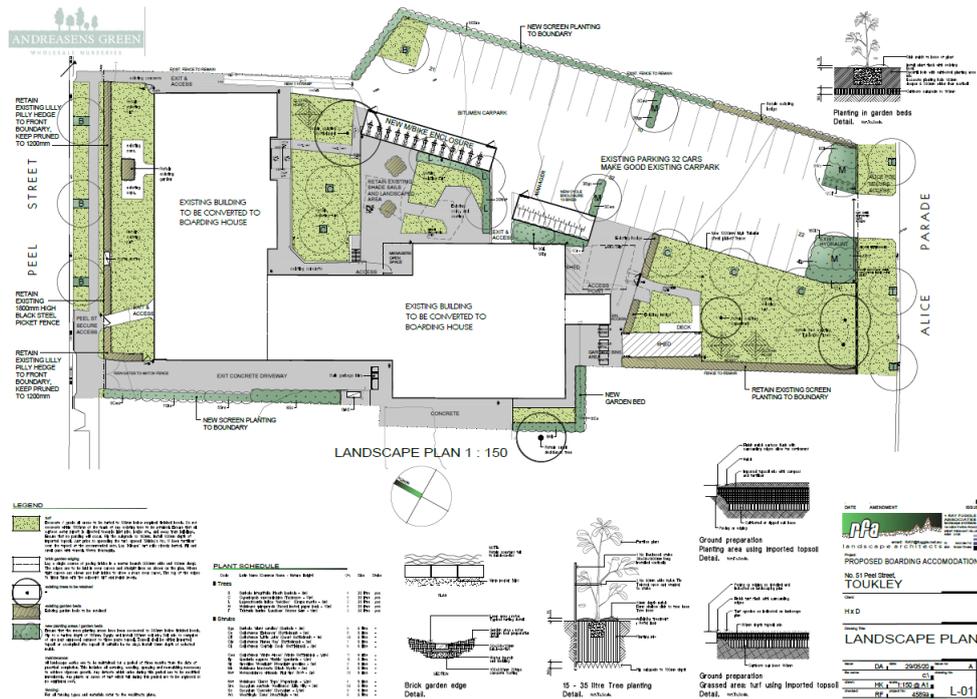


Figure 10 – Proposed Landscape Plan

#### Assessment

Having regard for the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 and other statutory requirements, the assessment has identified the following key issues, which are elaborated upon for the Panel’s information.

Any tables relating to plans or policies are provided as an attachment.

#### State Environmental Planning Policy (Affordable Rental Housing) 2009

Whilst development for the purpose of a boarding house is permissible in the *R1 General Residential* zone under the provisions of *Wyang Local Environmental Plan 2013* (see permissibility comments later in this report), the proposal seeks to rely on the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (SEPP ARH), which provides a set of development controls that differ from the controls that Council would rely upon in a merit assessment.

Clause 3 of the SEPP ARH policy lists the aims of the policy as follows:

- (a) to provide a consistent planning regime for the provision of affordable rental housing,

**3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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*(b) to facilitate the effective delivery of new affordable rental housing by providing incentives by way of expanded zoning permissibility, floor space ratio bonuses and non-discretionary development standards,*

*(c) to facilitate the retention and mitigate the loss of existing affordable rental housing,*

*(d) to employ a balanced approach between obligations for retaining and mitigating the loss of existing affordable rental housing, and incentives for the development of new affordable rental housing,*

*(e) to facilitate an expanded role for not-for-profit-providers of affordable rental housing,*

*(f) to support local business centres by providing affordable rental housing for workers close to places of work,*

*(g) to facilitate the development of housing for the homeless and other disadvantaged people who may require support services, including group homes and supportive accommodation.*

SEPP ARH identifies that “Division 3 – Boarding Houses” applies to land within any of the following zones or any equivalent land use zones:

*(a) Zone R1 General Residential,*

*(b) Zone R2 Low Density Residential,*

*(c) Zone R3 Medium Density Residential,*

*(d) Zone R4 High Density Residential,*

*(e) Zone B1 Neighbourhood Centre,*

*(f) Zone B2 Local Centre,*

*(g) Zone B4 Mixed Use*

The subject site is zoned *R1 General Residential* under the provisions of *Wyang Local Environmental Plan 2013* (WLEP 2013) and *Division 3 – Boarding Houses* under SEPP ARH applies. Thus, the proposal is required to be assessed under Division 3.

The SEPP ARH does not provide a definition of boarding house, however, WLEP 2019 defines a *Boarding House* as follows:

*boarding house means a building that—*

*(a) is wholly or partly let in lodgings, and*

*(b) provides lodgers with a principal place of residence for 3 months or more, and*

*(c) may have shared facilities, such as a communal living room, bathroom, kitchen or laundry, and*

*(d) has rooms, some or all of which may have private kitchen and bathroom facilities, that accommodate one or more lodgers, but does not include backpackers' accommodation, a group home, hotel or motel accommodation, seniors housing or a serviced apartment.*

### 3.1 **Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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The proposal has been assessed against the requirements of *Division 3 – Boarding Houses* and the evaluation against this Division is included as **Attachment 2**.

In summary, the proposal does not comply with *Clause 30A – Character of Local Area* which states:

*'A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.'*

The proposal utilises the existing building which was designed as a nursing home. There are no changes proposed to improve the existing appearance or functionality of the building to better address the street and in order to provide a more residential presence and improved building facade (which are dated and visually institutional in appearance).

The building will present as the future residential address for up to 91 people and as such, architectural improvements to the building façade and opportunities for improved landscaping to the street front areas would be warranted and appropriate to enhance this address – especially given the primarily residential character of the area, containing mainly one and two storey residential dwellings and the very dated appearance of the existing infrastructure on site.

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

The provisions of *State Environmental Planning Policy (Coastal Management) 2018* (SEPP Coastal Management) require Council to consider the aims and objectives of the SEPP when determining an application within defined Coastal Management Areas. The Coastal Management Areas are areas defined on maps issued by the NSW Department of Planning Industry & Environment. The subject property falls within the mapped coastal management areas and falls within the '*coastal environment area*' and the '*coastal use area*'.

##### *Coastal Environment Area:*

Clause 13(1) prescribes that development consent must not be granted unless Council has considered whether the proposed development is likely to cause an adverse impact on coastal environmental values and natural coastal processes, the water quality of the marine estate, and marine vegetation, native vegetation and fauna and their habitats.

##### *Coastal Use Area:*

Clause 14(1) prescribes that development consent must not be granted unless Council has considered whether the proposed development is likely to cause an adverse impact on the

### **3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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existing, safe access to and along the foreshore, overshadowing, wind funneling and the loss of views from public places to foreshores, the visual amenity and scenic qualities of the coast, and cultural and built environment heritage.

It is considered that the proposed development will not adversely affect the above matters.

#### **Wyong Local Environmental Plan 2013 - Zoning & Permissibility**

The subject site is zoned *R1 General Residential* under the provisions of WLEP 2013. Development for the purpose of a 'boarding house' is permissible within the *R1 General Residential* zone. However, the application has been made relying upon the provisions of *SEPP (Affordable Rental Housing) 2009*.

The R1 General Residential zone is based on the following objectives:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To promote "walkable" neighbourhoods.*
- *To ensure that development is compatible with the scale and character of the local area and complements the existing streetscape.*

Clause 2.3 of the ELEP 2013 requires the consent authority to have regard to the objectives for the zone when determining a development application in respect of land within the zone.

The development does not comply with the objectives of the *R1 General Residential* zone. In particular:

1. The development does not provide for the housing needs of the community; and
2. The nature and intensity of the use proposed is not compatible with the character of the local area nor does it complement the existing streetscape.

Whilst it is recognised that the proposed development aims to utilise an existing building, the building is very out-dated and in a generally poor state of repair and has issues with its functionality for residential accommodation in the manner proposed. Significant changes to both the appearance and functionality of the existing building are needed to better integrate

### **3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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the locality, to better connect with the street and to better address the proposed residential purpose of the building for lodgers.

There is a defined need for affordable housing (and a variety of housing types) for the Central Coast. However, it must not only be affordable, but also well designed, well located and well managed.

The development proposes an inadequate design and layout, inadequate tenancy management arrangements and inadequate property management arrangements which would potentially cause a negative social impact for both residents and neighbours.

The proposal is not well-adapted to be a boarding house. The repurposing of an existing building that will cause social impacts is not enabling the land to provide suitable facilities and services to meet the day to day needs of residents within the R1 zone.

For the abovementioned reasons the proposed development does not achieve the objectives of the zone.

#### **Wyong Local Environmental Plan 2013 - Clause 4.3 – Height of Buildings**

Under this clause the mapped building height for the subject site is 16m. The proposal does not intend to change the existing building height.

#### **Wyong Local Environmental Plan 2013 - Clause 4.4 – Floor space ratio**

Under this clause the mapped floor space ratio for the subject site is 0.6:1. The proposal has a floor space ratio of 0.6:1 and complies with this clause.

#### **Wyong Local Environmental Plan 2013 - Clause 7.1 - Acid Sulphate Soils**

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

This clause requires consideration to be given to certain development on land that is mapped as being subject to actual or potential acid sulfate soils (ASS). The subject site has been identified as containing Class 5 acid sulfate soils. There are no works proposed that would impact upon ASS.

#### **Wyong Local Environmental Plan 2013 - Clause 7.9 – Essential Services**

This clause requires Council to ensure that services such as water, sewer, electricity, and stormwater drainage and road access can be adequately provided.

### **3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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There are existing services on site such as water, sewer, stormwater drainage and electricity. However, the application has not demonstrated that all of these services are adequately provided for the development to cater for the proposed boarding house use and number of residents.

#### **Draft Central Coast Local Environmental Plan 2018 (CCLEP 2018)**

*Draft Central Coast Local Environmental Plan 2018 (CCLEP)* was exhibited from 2 December 2018 to 28 February 2019. Under Draft CCLEP, the site retains its *R1 General Residential* zoning and development for the purpose of boarding house remains a permissible use within the zone (again noting that, in this case, the application is relying on the provisions of SEPP ARH).

#### **Wyong Development Control Plan 2013 Chapter 2.4 – Multiple Dwelling Residential Development**

As the proposal relies upon the provisions of SEPP ARH, the Wyong Development Control Plan 2013 (WDCP 2013) is not strictly applicable.

In the absence of a development control plan for boarding houses, the proposal has been assessed having regard to the relevant requirements of Chapter 2.4 – *Multiple Dwelling Residential Development* for guidance in aspects in which the SEPP ARH is silent. The assessment concludes the proposal does not comply with a number of requirements. An assessment of the relevant requirements is located under **Attachment 3**.

#### **Wyong Development Control Plan 2013 Chapter 3.1 – Site Waste Management**

A Waste Management Plan was submitted with the application in accordance with the DCP.

The application does not clearly address waste storage requirements and collection arrangements with the following matters of note: The proposed bulk waste bin storage area located off Alice Parade is not screened. Insufficient information has been provided as the proposal does not address gradients within the storage area not exceeding 3% for travel of bins to be rolled out and rolled back for collection by waste services truck. Truck swept turning paths have not been designed and certified to Australian Standard AS2890.2 for the waste truck/vehicle to enter, manoeuvre internally and exit the site safely. Additionally, the waste truck/vehicle size has not been provided.

#### **Likely Impacts of the Development - Built Environment**

The proposal aims to utilise an existing building for a new purpose where there is minimal work proposed to be carried out to achieve this end. The existing development comprises an out-dated nursing home building, carpark and service areas, which was at the time purpose built for aged care. The nature of aged care and the needs of the residents differs to the nature of the proposed use as a boarding house. The former includes residents who are often

### **3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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heavily dependent on staff to support their needs. The social needs of residents in these two forms of housing are also very different and not readily interchangeable. As such, the urban form that is needed to accommodate and cater for these needs differs significantly. As a result, it is a challenging and costly task to retrofit (and bring up to modern standards) an existing outdated building originally designed for a separate purpose (nursing of aged care residents) than the currently proposed purpose (boarding house).

The design of the development does not reflect the residential character of the proposed use. The facades of the building are cluttered with pipework and air-conditioning units which appear to have been 'retro-fitted' to the building over the years. Internal corridors are long and enclosed offering limited natural lighting/ventilation.

Retained architectural elements of the design create an 'institutionalised' feel, reminiscent of government facilities (hospitals, schools and the like) of yesteryear. The design of the building, without significant alteration, will not aid or contribute to a supporting environment and may lead to social impacts for the intended residents and surrounding residential areas.

The building does not readily lend itself to safer by design principles that are essential for boarding house accommodation like access control, natural surveillance and space activity management. This is due to the building being designed around staffing arrangements to support the dependent residents under the previous use of the site (aged care).

The repurposing of the existing building from a nursing home to a boarding house is not considered suitable without significant intervention. The current state of the building is dilapidated, unsafe and unhealthy. The bottom floor level of the building has evident mould growth on internal walls and water leaks. Information accompanying the proposal does not include a comprehensive maintenance plan addressing such matters.

The proposed internal communal room is inadequate in size for the number of boarding rooms and residents, and is further constrained by being on one floor level. Ideally, the communal room should have good passive surveillance by occupants of the boarding house including the on-site manager and provide access to the outside.

The proposed on-site managers room is small and has no kitchen facilities and is unlikely to attract a suitable manager for the boarding house. The location of the on-site managers room is not located near the proposed reception area which would be desirable in monitoring building access and for availability to tenants and would be considered best practice.

There is no lift within the existing building. Accessible rooms such as room No. 42, 60 and 61 will need to exit the building to access other floor levels of the building such as the common room and managers office on the top floor level. Equitable building access is not provided for all residents.

### **3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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Some rooms on the bottom floor level have little or limited solar access, appear to have damp issues and have a potential to develop mould issues. This is potentially intensified by the very small size of the rooms and poor ventilation. This could potentially negatively impact on health and wellbeing of intended residents.

The floor plan layout and length of corridors could present a significant issue in the event of an emergency evacuation, particularly for tenants with mobility issues or mental impairments.

A thorough assessment of the proposed development's impact on the built environment has been undertaken in terms of WLEP 2013 and the submissions received and it is considered the potential built environment impacts are unreasonable.

#### **Likely Impacts of the Development - Natural Environment**

The proposal will use existing stormwater and drainage infrastructure and this is considered satisfactory in relation to impacts on the natural environment.

#### **Likely Impacts of the Development - Social Impacts**

The potential social impacts of the proposal have been considered having regard for the Social Impact Assessment Reports submitted with the application and the submissions received against the proposal. The application has been reviewed by Council's Social Planner.

It is acknowledged that boarding houses are an important source of accommodation and the need for affordable and low cost housing on the Central Coast is high and as a result generally the provision of a mix of affordable housing is considered to be of social benefit rather than social impact in circumstances where it is well managed, well designed and well located.

The proposal does not include 24 hour/7 day a week on-site management. More than one manager would be needed to provide this 24/7 coverage. Without this, safety and amenity impacts for residents and neighbours is likely to occur.

The Plan of Management (POM) submitted has conflicting information with the SIA. A full time on-site manager and 3 casual staff will be required to work 9am to 10pm Monday to Sunday and Weekends 10am to 5pm. There is no 24 hour/7 day a week on-site management and different weekend hours proposed for staff.

The POM does not include an emergency management plan nor does it outline a procedure for after-hours access for emergency services as required by the NSW Police.

The proposed boarding house is not well located for employment or education hubs or government services such as Centrelink. The SIA cites that most residents will be workers, students and retired people, however, the proposal is not located near required amenities to cater for these people.

### **3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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Council received 120 submissions objecting to the development during the Development Application notification period. NSW Police have raised very strong concerns about this development, especially in relation to appropriate management, safety for tenants and ability for emergency services to access people in the building in an emergency.

Due to the strong community objection, lack of mitigation measures to address community concerns and lack of a reasonable Plan of Management, the application is considered unsatisfactory and insufficient information is available to address the likely social impacts of the development.

#### **Likely Impacts of the Development - Noise Impacts**

The submitted Noise Impact Assessment provides a reasonable insight into background noise conditions, however, there is limited analysis included in the report to assess the likely acoustic impacts of the boarding house use on neighbouring residents.

#### **Likely Impacts of the Development - Safer by Design**

The NSW Police (Tuggerah Lakes Police District) have reviewed the submitted Crime Prevention Through Environmental Design (CPTED) report. A revised CPTED report was requested by Council having regard to the NSW Police recommendations.

A revised CPTED report was not submitted. However, the applicant advised Council that the Police CPTED recommendations were included in the Plan of Management.

The Plan of Management does not adequately address the CPTED four key strategies – Surveillance, Access Control, Territorial Reinforcement and Space/Activity Management with regard to comments made by NSW Police.

The application is considered unsatisfactory in this regard and insufficient information has been provided to address the likely impacts of the proposed development with regard to with crime, safety and security.

#### **Likely Impacts of the Development - Economic Impacts**

The proposed rent for the single rooms is \$190 - \$200 per week but to be affordable for a single person on a very low income, rent would need to be \$159.23 per week. The proposed rent for the double rooms is \$250 per week but to be affordable for a couple on a very low income, rent would need to be only \$238.85 per week.

The SIA uses broad income categories that hide the lack of affordability for people likely to access boarding house accommodation such as single people on very low incomes.

### 3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)

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With these settings, rent is not set to benefit the people who need affordable housing in the Central Coast.

The application is not supported based on likely economic impacts of the development where the rents associated with the proposal will not be affordable for the area.

#### Community Submissions

The application was notified in accordance with *Chapter 1.2 (Notification of Development Proposals) of Wyong Development Control Plan 2013 (WDCP 2013)* from 11 March 2020 to 1 April 2020.

A total of 120 submissions in objection were received. A summary of the issues raised during the notification period are detailed below, with comments where appropriate:

- The development will increase traffic in the area.

*Comment:* The application has not addressed traffic generated by the development apart from identifying that a regular bus service is within 400m of the site. The RMS Guide to Traffic Generating Developments does not indicate a generation rate for boarding houses, however given the nature of the proposal and its proximity to the Toukley Town Centre it is not anticipated that there will be a significant impact on the surrounding road network by traffic generated by the proposed boarding house.

- Insufficient carparking for 95 residents on the site.

*Comment:* SEPP ARH requires that car parking be provided at the rate of 0.5 parking spaces per boarding room if the development is not carried out by or on behalf of a social housing provider. The development is not carried out on behalf of a social housing provider. For 63 boarding rooms, 32 parking spaces are required. A parking space is provided for the on-site manager. A total of 33 parking spaces are provided for residents and the on-site manager. The proposal complies with the SEPP ARH with regard to carparking.

- The proposal is not compatible with the character of the area.

*Comment:* The design of the development is required to meet Clause 30A of SEPP ARH and be compatible with the character of the local area. It is considered the proposed development does not satisfy Clause 30A. This issue is included within the recommended reasons for refusal.

- Where is the safety and security for neighbouring residents in their homes with 95 people residing in this building?

### **3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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*Comment:* There is insufficient information with regard to Safer by Design principles provided with the application to address potential impacts associated with crime and safety and to confirm the security of neighbouring properties.

- The property is not within 400m walking distance of B2 or B4 zoning as required by Clause 27(3) of SEPP ARH.

*Comment:* The proposed development is not required to be within an accessible area as defined by SEPP ARH as the subject site is located within the R1 General Residential Zone.

- Several of the rooms fail to meet the minimum room size of 12m<sup>2</sup> and does not comply with SEPP ARH.

*Comment:* The proposed boarding room sizes comply with Clause 29 of SEPP ARH.

- There is no long-term mechanism to ensure tenants would receive low rent status.

*Comment:* Under SEPP ARH, Part 2, Division 3 Boarding Houses, there is no requirement to address the affordability of boarding room rents before an application is approved. However, the proposed rent is not set to benefit the people who need affordable housing in the Central Coast. This issue is included within the recommended reasons for refusal.

- Lack of Management

*Comment:* Based on the proposed 64 rooms, the development has not provided a reasonable level of management. This issue is included within the recommended reasons for refusal.

- Increase crime and antisocial behaviour

*Comment:* The NSW Police in their comments raised concerns that a high number of persons on the site has the potential for more crime opportunities including noise complaints, malicious damage, domestics and mental health.

- Social impact

*Comment:* The application has not provided sufficient information to determine the likely social impacts of the development. This issue is included within the recommended reasons for refusal.

- There is no proposal to make the building energy efficient or change the streetscape design to improve liveability of the site.

### **3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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*Comment:* Should the application be approved, the building will be required to comply with Section J Energy Efficiency requirements of the Building Code of Australia. The proposed works to the front façade are limited and the design of the proposal does not reflect the residential character of the proposed use.

- Children's safety in Osbourne Park will be affected by activity 95 unsupervised male occupants.

*Comment:* This is speculation with no evidence to substantiate this claim. The comment is considered to be based on perception rather than fact.

- How will complaints be managed?

*Comment:* The Plan of Management includes information on how complaints will be managed. However, the insufficient information received with no 24 hour/7 day a week on-site management raises concerns with how complaints will be managed.

- This development is not in keeping with the social demographic of the area.

*Comment:* The proposed development in its current form is considered to provide a social and economic impact to the surrounding area based on the insufficient information received.

- The likely occupants being men and young adults will create a gender imbalance in the area.

*Comment:* This is speculation with no evidence to substantiate this claim. The comment is considered to be based on perception rather than fact.

- 2 clothes hoists for 95 residents is not sufficient.

*Comment:* There is insufficient information in the application on drying facilities to cater for 91 residents.

- Noise from 95 residents will impact the surrounding residential properties.

*Comment:* The Noise Impact Assessment provides insufficient information to assess the likely acoustic impacts of the boarding house use on neighbouring residents.

- How will one on-site manager deal with 95 people?

*Comment:* Insufficient information cannot adequately determine the suitability and effectiveness of one on-site manager for 90 residents within the boarding house.

### 3.1 **Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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- Will the on-site manager be from a recognized company or organisation where complaints can be made, or a standalone position which can ignore complaints?

*Comment:* Should the application be approved, the on-site manager will be employed by the owner of the site.

- The development will impact residential house prices in the area.

*Comment:* This is speculation and no evidence has been provided to support this. The impact of the proposed development on the value of adjoining properties is not a matter for consideration under s. 4.15 of the EP&A Act.

- As a nursing home facility provided employment. By changing the use, any employment opportunity for the local community is reduced.

*Comment:* The proposed development is not employment generating.

- The community is not convinced that a 72 room/95 resident boarding house is a need for the current local residents. The current permissible use as an aged care site meets the needs of the Toukley community perfectly.

*Comment:* It is considered the proposed development is not in the public interested and suitable for the site.

- How will waste be managed from the site?

*Comment:* Waste will be collected from within the car park off Alice Parade. The insufficient information on waste management that has been received cannot ensure that waste collection trucks will be able to enter and exit the site in accordance with the Australian Standards or that waste management arrangements would be satisfactory for the proposal.

- Are fire safety standards going to be adequate?

*Comment:* Should the application be approved, compliance with the Building Code of Australia will be a requirement before a construction certificate can be issued.

#### **Submissions from Public Authorities**

##### NSW Police

Tuggerah Lakes Police District have made comment on the proposed development. Concerns have been raised with regard to the number of proposed boarding rooms and residents, and management. Concerns have also been raised that a high number of persons on the site has

### **3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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the potential for more crime opportunities including noise complaints, malicious damage, domestics and mental health for the NSW Police.

The NSW Police made recommendations for the development to comply with Safer by Design principles and to significantly reduce the number of boarding rooms and residents.

From the NSW Police on-site inspection, the site needs major renovations to come up to the requirements required for a Boarding House. The security of the site would have to take into account the adoption of suitable security measures in relation to boundary security fencing and gating into the site.

The application has not provided sufficient information to justify compliance with the Crime Prevention Guidelines of the New South Wales Environmental Planning and Assessment Act, 1979 as recommended by the NSW Police. The NSW Police from Tuggerah Lakes Police District have major concerns with the proposed number of boarding rooms, management and security of the boarding house, and do not support this application as proposed at this time.

#### **Internal Consultation**

The application was referred to the following internal officers and the following comments have been provided:

##### Development Engineer

The application has been assessed by Council's Development Engineer in relation to roads, vehicle access, drainage and water/sewer and no objection was raised.

##### Transport Engineer

The application has been assessed by Council's Traffic Engineer in relation to traffic; pedestrian safety; vehicle access to the site; on-street and off-street parking; and no objection was raised.

##### Environmental Health Officer (Noise)

The application has been assessed by Council's Environmental Health Officer in relation to acoustic impacts and the proposal is not supported.

##### Building Surveyor

The application has been assessed by Council's Building Surveyor in relation to disabled access and compliance with the BCA.

### **3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)**

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#### Social Planner

Council's Social Planner has reviewed the submitted Social Impact Assessment. The social planner has identified inadequacies in the documentation submitted. These inadequacies are included in the recommended reasons for refusal.

#### Waste Services Officer

The application has been assessed by Council's Waste Management Assessment Officer in relation to site waste management and is not supported.

#### Contributions Officer

As the application is not supported, contributions have not been applied.

#### **Ecologically Sustainable Principles:**

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles.

#### **Climate Change**

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application.

This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope/combat/withstand these potential impacts.

#### **Other Matters for Consideration - Contributions**

Contributions would apply if the application was to be supported.

#### **Suitability of the Site for the Development**

For the reasons identified in the above assessment and contained within the recommended reasons for refusal, it is considered that the site is not suitable for the proposed development in the manner proposed.

The site and the existing building are both unsuitable for the proposed use without extensive intervention. The intended retrofitting a purpose built and outdated nursing home building for a quite separate and different purpose from that which the building was originally

### 3.1 Development Application DA/153/2020 - 51 Peel Street, Toukley - Change of Use from Nursing Home to Boarding House and Associated Works (contd)

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designed for, in combination with very limited proposed building alterations or upgrade works will result in unacceptable internal and external impacts.

#### The Public Interest

For the reasons identified in the above assessment and contained within the recommended reasons for refusal and having regard for the matters raised in public submissions, the proposal is not considered to be in the public interest.

#### Conclusion and recommendation

On the basis of the assessment under the heads of consideration in Section 4.15 of the *Environmental Planning and Assessment Act 1979*, the proposal is recommended for refusal for the reasons outlined in **Attachment 1**.

#### Reasons for decision

The reasons for the decision as recommended under the assessment of this application are as follows:

- The proposal is considered unsatisfactory with regard to *State Environmental Planning Policy (Affordable Rental Housing) 2009* and with regard to Clause 30A Character of local area.
- The proposal is considered unsatisfactory under the heads of consideration set out in Section 4.15 of the *Environmental Planning and Assessment Act 1979*.
- The proposal is considered unsatisfactory with regard to *Wyang Local Environmental Plan 2013* with regard to zone objectives.
- There is insufficient information provided to determine all likely significant impacts.
- The proposal is not in the public interest, having regard for the matters raised in submissions received in relation to the proposal.

#### Attachments

1	Reasons for Refusal		D14096441
2	SEPP Affordable Housing Compliance Assessment		D14093764
3	DCP Chapter 2.4 Compliance Table		D14096046
4	Redacted Development Plans		D14178148
5	Proposed Development and Landscape Plans	Provided Under Separate Cover	D14178150

<b>Applicant</b>	Mr C Ahadizadeh
<b>Owner</b>	G Ahadizadeh Pty Ltd and Mr A Ahadizadeh and Mr C Ahadizadeh
<b>Application No</b>	DA/153/2020
<b>Description of Land</b>	Lot 2 DP 850314, 51 Peel Street, TOUKLEY NSW 2263
<b>Proposed Development</b>	Change of Use from Nursing Home to Boarding House & Associated Works

**Attachment 1 - Reasons for refusal**

1. The proposal is considered unsatisfactory with regard to *State Environmental Planning Policy (Affordable Rental Housing) 2009*. The development does not comply with regard to Clause 30A Character of local area.
2. The proposal is not consistent with the R1 General Residential zone objectives of *Wyong Local Environmental Plan 2013*. The development does not comply with the objectives of the R1 zone of *Wyong Local Environmental Plan 2013*. In particular, the development does not provide for the housing needs of the community and is not compatible with the character of the local area.
3. The potential social impacts of the proposal have not been satisfactorily addressed having regard to Clause 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
4. The proposal has not satisfactorily addressed potential safety, security and crime prevention impacts having regard to Clause 4.15(1)(b) of the *Environmental Planning and Assessment Act 1979*.
5. The proposal results in unacceptable amenity impacts to neighbouring properties, the streetscape and the immediate surrounding area. The proposal results in amenity impacts for intended residents of the boarding house. These impacts include relationship and character of neighbouring lots, facilities and provision of adequate access as follows:
  - a) The proposed aesthetic of the development does not adequately reflect the residential character of the intended use or the residential character of the area.
  - b) The proposal does not have adequate regard for a residential built form. The development proposes no visual interest and integration of building elements to improve its architectural quality and its compatibility within a residential area.
  - c) Potential acoustic issues for neighbouring properties.
6. The site and existing building are unsuitable for the proposed use as follows:

- a) The scale and intensity of the proposed development is unsuitable for the site. It has not been demonstrated that the number of boarders proposed can be appropriately managed on the site.
  - b) The intended retrofitting of a purpose built and outdated nursing home building for a separate and different purpose from that which the building was originally designed for, in combination with very limited proposed building alterations or upgrade works will result in unacceptable internal and external impacts.
  - c) The internal layout of the development is unsuitable for the proposed use resulting in boarding rooms with a low level of amenity (poor solar access and ventilation); inadequate and poorly located common facilities; and lengthy corridors unsuitable for emergency evacuation, particularly for tenants with mobility issues.
  - d) The existing internal layout and design of the building does not readily allow retrofitting to ensure safety and security for occupants and neighbouring properties in accordance with CPTED principles.
  - e) The proposal does not have adequate regard to equitable access within the development. There is no internal lift access between accessible rooms and facilities within the development.
7. A significant number of submissions have been received raising concerns regarding the proposal in particular regard to social impacts, security and crime prevention. The proposed development does not satisfactorily or reasonably address the matters raised in submissions. The proposal is not in the public interest.
8. Inadequate information has been provided to identify and address the likely impacts of the development in relation the following key matters:
- a) The submitted Social Impact Assessment (SIA) has not provided for any mitigations to address community concerns.
  - b) The development has provided insufficient information to address affordability and adequately assess the economic impacts of the development where rents will not be affordable for the area.
  - c) The Plan of Management does not include 24 hour 7 day per week on-site management. The Plan of Management does not include an emergency management plan nor does it outline a procedure for after-hours access for emergency services as required by the NSW Police.
  - d) The development has provided insufficient information to assess the impacts to the amenity and safety of residents and neighbours.

- e) The application does not satisfactorily address the waste storage and collection arrangements needed to service the proposed development.
  
- f) The proposal does not satisfy the provisions of Clause 7.9 of *Wyang Local Environmental Plan 2013*. The application provides insufficient information to demonstrate that existing services such as water, sewer, stormwater drainage and electricity are adequately provided to cater for the proposed boarding house use and number of residents.

**Attachment 2 - State Environmental Planning Policy (Affordable Rental Housing) 2009  
– Compliance Assessment against Division 3 – Boarding Houses**Clause 26 Land to which this Division applies

Clause 26 of SEPP ARH states:

*This Division applies to land within any of the following land use zones or within a land use zone that is equivalent to any of those zones—*

- (a) Zone R1 General Residential,*
- (b) Zone R2 Low Density Residential,*
- (c) Zone R3 Medium Density Residential,*
- (d) Zone R4 High Density Residential,*
- (e) Zone B1 Neighbourhood Centre,*
- (f) Zone B2 Local Centre,*
- (g) Zone B4 Mixed Use.*

**Comment:**

The subject site is located within the R1 General Residential Zone, and Division 3 applies.

Clause 27 Development to which this Division applies

Clause 27 of SEPP ARH states:

- (1) This Division applies to development, on land to which this Division applies, for the purposes of boarding houses.*
- (2) Despite subclause (1), clauses 29, 30 and 30A do not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone in the Sydney region unless the land is within an accessible area.*
- (3) Despite subclause (1), clauses 29, 30 and 30A do not apply to development on land within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use or within a land use zone that is equivalent to any of those zones.*

**Comment:**

The subject site is located within the R1 General Residential Zone, and Division 3 applies.

Clause 29 Standards that cannot be used to refuse consent

Clause 29 of SEPP ARH contains development standards that cannot be used to refuse development consent.

The proposal has been assessed against the merits of these standards as follows:

Development Standard	Proposal	Compliance
<p><i>(1) A consent authority must not refuse consent to development to which this Division applies on the grounds of density or scale if the density and scale of the buildings when expressed as a floor space ratio are not more than:</i></p> <p><i>(a) the existing maximum floor space ratio (FSR) for any form of residential accommodation permitted on the land, or</i></p> <p><i>(b) if the development is on land within a zone in which no residential accommodation is permitted - the existing maximum floor space ratio for any form of development permitted on the land, or</i></p> <p><i>(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:</i></p> <p><i>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less, or</i></p>	<p>The site is subject to a mapped maximum floor space ratio (FSR) standard under WLEP 2013 of 0.6:1.</p> <p>The proposed development does not increase the existing FSR, and thus the existing FSR of the existing building will remain unchanged at 0.6:1.</p> <p>The proposal can also utilise the bonus provision under 1(c)(i) however does not need too given the existing building's FSR complies.</p>	<p>Yes</p>

<p>(ii) 20% of the existing maximum floor space ratio, if the existing maximum floor space ratio is greater than 2.5:1.</p>		
<p>(2)(a) <b>building height</b> if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land.</p>	<p>The site is mapped as being subject to a maximum building height under WLEP 2013 of 16m.</p> <p>The existing building height will remain unchanged.</p>	Yes
<p>(b) <b>landscaped area</b> if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,</p>	<p>The proposed landscape treatment for the development is compatible with the surrounding streetscape.</p>	Yes
<p>(c) <b>solar access</b> where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,</p>	<p>The proposal includes a communal living room on the upper floor level which will receive more than three hours of direct sunlight during mid-winter.</p>	Yes
<p>(d) <b>private open space</b> if at least the following private open space areas are provided (other than the front setback area):  (i) one area of at least 20 square metres with a</p>	<p>A communal private open space area is provided within the existing covered outdoor recreation area of more than 100m<sup>2</sup>.</p>	Yes

<p><i>minimum dimension of 3 metres is provided for the use of the lodgers,</i></p> <p><i>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation,</i></p>	<p>A private open space area is provided for the on-site manager outside the managers room and meets the minimum requirements.</p>	<p>Yes</p>
<p><b>(e) parking if:</b></p> <p><i>(i) in the case of development carried out by or on behalf of a social housing provider—at least 0.2 parking spaces are provided for each boarding room, and</i></p> <p><i>(ii) in the case of development carried out by or on behalf of a social housing provider not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</i></p> <p><i>(iia) in the case of any development not carried out by or on behalf of a social housing provider — at least 0.5 parking spaces are provided for each boarding room,</i></p> <p><i>(iii) in the case of any development – not more than 1 parking space is provided for each person employed in connection with the development and who is resident on the site.</i></p>	<p>The development is not carried out by or on behalf of a social housing provider and 0.5 parking spaces are required for each boarding room (63 rooms) = 32 parking spaces are required and proposed.</p> <p>A parking space is provided for the on-site manager.</p> <p>A total of 33 parking spaces are provided for residents and the on-site manager.</p>	<p>Yes</p>

<p><b>(f) accommodation size</b> if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</p> <p>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</p> <p>(ii) 16 square metres in any other case.</p>	<p>The development plans confirm each boarding room meets the required gross floor area.</p>	<p>Yes</p>
<p>(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.</p>	<p>All boarding rooms have private kitchen and bathroom facilities</p>	<p>Yes</p>

### Clause 30 Standards for Boarding Houses

Clause 30 of SEPP ARH sets out additional standards for boarding houses. In the absence of a development control plan for boarding houses the proposal has been assessed against the merits of these standards as follows:

Development Standard	Proposal	Compliance
<p>(1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:</p> <p>(a) if a boarding house has 5 or more boarding rooms, at least one communal living room will be provided,</p> <p>(b) no boarding room will have a gross floor area</p>	<p>(a) The boarding house has 63 rooms and a common living room is provided.</p> <p>(b) No boarding house room exceeds 25m<sup>2</sup>.</p> <p>(c) No boarding rooms will be occupied by more than two lodgers.</p>	<p>Yes</p>

<p><i>(excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres,</i></p> <p><i>(c) no boarding room will be occupied by more than 2 adult lodgers,</i></p> <p><i>(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger,</i></p> <p><i>(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding room or on site dwelling will be provided for a boarding house manager,</i></p> <p><i>(f) (Repealed)</i></p> <p><i>(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use,</i></p> <p><i>(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.</i></p>	<p>(d) Each boarding room has bathroom and kitchen facilities.</p> <p>(e) The proposed boarding house has a capacity to accommodate 90 lodgers and a boarding room for an on-site manager is provided.</p> <p>(g) NA</p> <p>(h) Storage space for 13 bikes and 13 motorbikes is required and provided.</p>	
<p><i>Clause 30AA - A consent authority must not grant development consent to a boarding house on land</i></p>	<p>The subject site is located within Zone R1 General Residential.</p>	<p>N/A</p>

<i>within Zone R2 Low Density Residential or within a land use zone that is equivalent to that zone unless it is satisfied that the boarding house has no more than 12 boarding rooms.</i>		
<i>Clause 30A - A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.</i>	An assessment of Character is provided below.	No

#### Clause 30A – Character of Local Area

Clause 30A of SEPP ARH requires the consent authority to consider whether the design of the development is compatible with the character of the local area. Character is the relationship to other buildings with respect to building height, setbacks and landscaping.

The existing character of the local area can be described as an established low-density residential neighbourhood with predominantly older style single storey dwelling houses and some newer one and two storey dwelling houses with the existing three-storey building on the subject site. The immediate area also includes the Toukley Waters Village which is comprised of 20 independent living units for those over 55. The future character of the area can be described as medium to higher density residential development including multiple dwelling housing and residential flat buildings up to 16m in building height due to zoning of the land being R1 General Residential under *Wyong Local Environmental Plan 2013* (WLEP 2013).

The proposed development is predominantly an internal redevelopment of the existing three storey building on the subject site which was previously used as a nursing home (residential care facility). Existing materials and finishes to the external façade of the building will remain with balcony dividers installed and the existing bars and wires removed from the front balcony's facing Peel Street. Additional landscaping is proposed to the eastern and western boundaries and a sandstone facing to the front façade. The existing pipework and air-conditioning units will remain on the external walls.

As the building already exists, in its current form is considered to be part of the existing character of the local area as it has co-existed with the residential area.

However, the proposed buildings change of use to a boarding house where its use is changing from that of a residential care facility to residential accommodation within the defined meanings under WLEP 2013 must be considered in the assessment of character.

The character test considers whether the design of the development is compatible with the local character. In *Project Venture Development v Pittwater Council [2005] NSWLEC 19*, compatible in an urban design context is *capable of existing together in harmony*.

In *Kevin Gregory and Patricia Gregory v Central Coast Council [2017] NSWLEC 1400* (Gregory v Central Coast) at clause 30 the Commissioner states: *To undertake the comparative exercise mandated by cl30A I need to understand from the evidence the design of the development, the extent of the local area and the existing and desired /likely future character of the local area*. This case law takes into consideration the established character; the desired future character of the locality permitted under an LEP; and relevant controls applicable to the permitted forms of development under a DCP.

The findings at clause 71 under Gregory v Central Coast are:

*After careful consideration of all of the evidence including my own observations while standing in the local area (as defined by the planners) I have decided that the design of the development is not compatible with character of the local area. Put simply, the development is not harmonious with the existing low-density residential development or the adjoining single-storey commercial strip or the anticipated future development in this local area under the current planning controls.*

The existing and desired future character of the local area has been described above. The proposed modifications to the existing building to accommodate the boarding house use has been provided above. WLEP 2013 permits boarding houses and other residential accommodation such as residential flat buildings and multiple dwelling housing in the R1 General Residential zone. The proposed modifications to the building have not considered the relevant residential controls under Wyong Development Control Plan 2013 (WDCP 2013). The proposed design of the building is not compatible with the character of the local area and is development that is not capable of existing in harmony with the existing low density residential development or the future development within the local area under WLEP 2013 and WDCP 2013 and therefore fails the character test.

Based on the above, it is considered the proposed boarding house is not considered to be compatible with the character of the local area and does not satisfy Clause 30A of SEPP ARH.

## Attachment 3

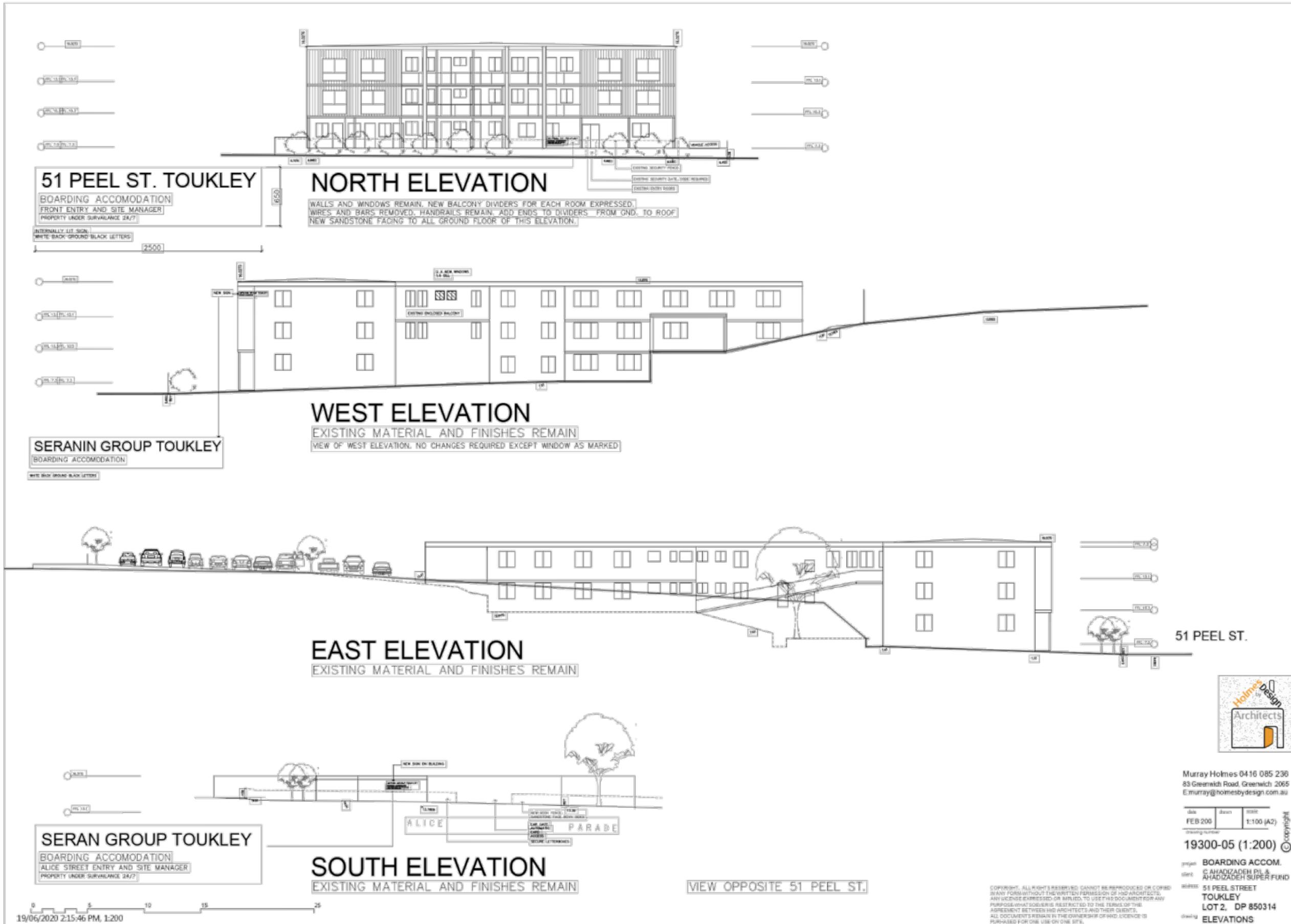
## Wyong Development Control Plan 2013 – Chapter 2.4 Multiple Dwelling Residential Development - Compliance Table

Requirement	Proposal	Complies?
<b>2.0 Context</b>		
Submission of a suitable site analysis to be provided with the development application (s2.1.1)	A site analysis plan has not been provided.	No
<b>3.0 Scale</b>		
Building heights to comply with Heights of Building Map under WLEP 2013 (3.1.1)	The building height remains unchanged and is less than 16m.	Yes
Minimum of 25% of site area to be soft landscaping. (s3.2)	Existing soft landscaping remains with new proposed landscaping and results in 34% of the site.	Yes
<b>4.0 Built Form</b>		
<b>4.1 Construction and Appearance of Development</b>		
Buildings facades to be articulated in length and height, monotonous and unbroken lengths of wall >10m in length and >3m in height not permitted. Visual interest to be provided for two storey designs. (s4.1.1b)	The building façade will remain unchanged with improvements to remove wires and bars from the front balcony and add a sandstone facing to the front facade. Existing pipe work and air conditioning units clutter the façade. No visual interest and integration of building elements is proposed to the existing building to improve its architectural quality; and its compatibility being a residential use within a residential area in line with the objectives of the clause.	No
Garages shall not dominate the street elevations (s4.1.1c)	At grade carparking is located within the site with access from the rear off Alice Parade.	N/A
Roof design to be related to the built form and size and scale of the building. (s4.1.2)	The existing roof will remain unchanged.	N/A
<b>4.2 Cut and Fill</b>		
Cut and fill considerations (s4.2)	There is no excavation works proposed.	N/A
<b>4.3 Building Lines</b>		
<b>RFB – 3 or more storeys in Height (s4.3.3)</b>		
Front setbacks for development: 7.5m with some exceptions.	The existing setbacks will remain unchanged. The existing front setback is 6.1m which does not	N/A
Side and rear setbacks:		

First to fourth storeys: 6.0m	comply however the proposal is to change the use of the existing building where the existing setbacks would not be unreasonable.	
<b>4.6 Pedestrian Access</b>		
Pedestrian access design see section 4.6 for requirements.	Pedestrian access is provided off Peel Street and the car park too within the building. However, accessible routes are not provided internally to all floor levels. There is no lift proposed to accommodate equitable internal accessibility. Only stairs and external ramps can be used to move between floors if an occupant has a disability and/or mobility impairment. An occupant would need to exit the building to gain access to another floor level. It is considered the proposal is not well connected for its occupants.	No
<b>5.0 Density</b>		
<b>5.1 Floor Space Ratio</b>		
R1 – As specified under WLEP 2013 Mapping. In areas not mapped a maximum FSR = 0.6:1.	FSR = 0.6:1	Yes
<b>6.0 Amenity</b>		
<b>6.4 Privacy</b>		
Visual and Acoustic Privacy	The existing built form, external windows and open space areas will remain unchanged. However, the proposed number of people residing within the building and using the outdoor areas may impact upon the visual and acoustic privacy of the adjoining neighbours. The Noise Impact Assessment has not analysed noise impacts from the boarding house use.	No
<b>6.5 Views</b>		
Developments should be designed to minimise view loss from adjoining and adjacent properties. (s9.4)	Existing views to the Lake will be retained as there are no external works proposed that would cause any undue view loss.	Yes
<b>7.0 Services</b>		
Details of services available and impacts on existing services to be provided.	There are existing services on site such as water, sewer, stormwater drainage and electricity. The	No

	application has not demonstrated that all of these services are adequately provided for the development to cater for the proposed boarding house use and number of residents.	
<b>8.0 Stormwater Management</b>		
Stormwater management plan to be submitted with the development application. (s7.3)	It is assumed existing stormwater will remain connected and any improvements can be conditioned should the application be approved.	Yes
<b>9.0 Landscaping</b>		
A Landscape plan prepared by an approved consultant to be submitted with the development application.	Existing landscaping will be retained on the site.  New landscaping is proposed to the eastern and western boundaries including street trees on the Peel Street and Alice Parade frontages and within the car park.	Yes
<b>12.0 Social Dimensions</b>		
<b>12.2 Facilities and Amenities</b>		
An internal laundry shall be provided within each dwelling.	Shared laundry facilities are provided on each floor level. However, there is insufficient information to ascertain whether 6 coin-operated washing machines are suitable for 91 residents.	No
<b>13.0 Aesthetics</b>		
<b>13.1 Fencing</b>		
Details of material, height, type and extent of all proposed fencing shall be shown on development application plans.	Existing fencing is to be retained to the front and rear boundaries and side north, north-east and south west boundaries. New boundary fencing is proposed along the side western boundary.  During a site inspection it was noted that there is no boundary fencing existing between the subject site and No. 53 Peel Street.  Fencing is shown on the submitted landscape plan.	Yes





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date FEB 200  
drawn  
sheet 1:100 (A2)  
drawing number 19300-05 (1:200)

project BOARDING ACCOM.  
client C AHADZADEH P/L & AHADZADEH SUPER FUND  
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drawing ELEVATIONS

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**Item No:** 4.1  
**Title:** DA/58327/2020 - 15 Lynnette Crescent East  
Gosford - Alterations and additions to the Existing  
Dwelling, Carport, Cabana, Inground swimming  
pool and retaining structures  
**Department:** Environment and Planning

**Central Coast**  
Local Planning Panel

17 September 2020 Local Planning Panel Meeting

Reference: 011.2020.00058327.001 - D14107188  
Author: Gary Evans, Principal Health and Building Surveyor  
Scott Rathgen, Section Manager, Central Coast Building Certification North  
Approver: Brian Jones, Unit Manager, Environment and Certification

### Summary

An application has been received for alterations and additions to the existing dwelling, carport, cabana, inground swimming pool and retaining structures. The application has been examined having regard to the matters for consideration detailed in section 4.15 of the Environmental Planning and Assessment Act and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The application is referred to the Local Planning Panel due to a potential conflict of interest - a joint owner of the property and is a Specified Council employee who is principally engaged in exercising functions under the *Environmental Planning and Assessment Act 1979*.

<b>Applicant</b>	Mrs TL Votano
<b>Owner</b>	Mr CJ and Mrs TL Votano
<b>Application No</b>	58327/2020
<b>Description of Land</b>	Lot 20 DP 29159 -15 Lynnette Crescent, EAST GOSFORD
<b>Proposed Development</b>	Alterations and additions to the existing dwelling, carport, cabana, inground swimming pool and retaining structures
<b>Site Area</b>	701.9 m <sup>2</sup>
<b>Zoning</b>	R2 Low Density Residential
<b>Existing Use</b>	Dwelling house
<b>Employment Generation</b>	N/A
<b>Estimated Value</b>	\$270,000

### Recommendation

- 1 That the Local Planning Panel refuse the application for the reasons detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act.**
- 2 That Council advise those who made written submissions of the Panel's decision.**

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

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**Key Issues**

- The owner of the development site is a delegated staff member within Council's Environment and Planning Directorate. Accordingly, the development application is required to be referred to the Local Planning Panel for determination;
- The proposal seeks a significant variation to the required primary road setback to permit the development. The significant variation is not supported and is considered out of character with the existing streetscape and non-compliant with relevant setback objectives of Chapter 3.1 "*Dwelling Houses, Secondary Dwellings and Ancillary Development*";
- The proposal includes significant earthworks within the rear yard area of the allotment. The extent of the proposed earthworks and subsequent retaining, could be reduced via a more balanced level of cut and fill, thereby achieving an improved design outcome;
- Assessing staff sought to negotiate amendments to the development proposal with the applicant. Amended plan details responding to the concerns with the development, as raised by assessing staff, have not been provided by the applicant; and
- Objection to the development has been received from the adjoining landowner, which upon review, is considered to have merit.

**Precis:**

<b>Proposed Development</b>	Alterations and additions to the existing dwelling, carport, cabana, inground swimming pool and retaining structures.
<b>Permissibility and Zoning</b>	<p>The subject site is zoned <i>R2 - Low Density Residential</i> under the provisions of <i>Gosford Local Environmental Plan 2014 (Gosford LEP 2014)</i>.</p> <p>The proposed development is defined as a 'dwelling house' which is defined under the <i>Gosford LEP 2014</i> as;</p> <p><b>'dwelling house'</b> means – a building containing only one dwelling.</p> <p>The use is permissible with consent of Council within the zone.</p>

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

<b>Relevant Legislation</b>	<p>The following planning policies and control documents are relevant to the development and were considered as part of the assessment.</p> <ul style="list-style-type: none"> <li>• <i>Environment Planning and Assessment Act 1979 - section 4.15 (EP&amp;A Act)</i></li> <li>• <i>Gosford Local Environmental Plan 2014 (GLEP 2014)</i></li> <li>• <i>Draft Central Coast Local Environmental Plan 2018 (Draft CCLEP 2018)</i></li> <li>• <i>Gosford Development Control Plan 2013 Chapter 2.1 Character</i></li> <li>• <i>Gosford Development Control Plan 2013 Chapter 3.1 Dwelling Houses, Secondary Dwellings and Ancillary Development (Gosford DCP 2013)</i></li> <li>• <i>Gosford Development Control Plan 2013 Chapter 7.1 Carparking (Gosford DCP 2013)</i></li> </ul>
<b>Current Use</b>	Dwelling house
<b>Integrated Development</b>	No
<b>Submissions</b>	<p>The development application was notified in accordance with the provisions of the <i>Gosford Development Control Plan 2013 Chapter 7.3 - Notification of Development Proposals</i> from 13 May 2020 until 3 June 2020. One (1) written submissions was received.</p> <p>An evaluation of matters raised within this submission is included later in this report.</p>

**Variations to Policies**

**Variation 1**

Clause	Clause 3.1.3.1a
Standard	The proposed carport is required to be located a minimum of 1.0m behind the average primary road setback displayed by the nearest two dwelling houses located within 40m of the site.
LEP/DCP	Chapter 3.1 "Dwelling Houses, Secondary Dwellings and Ancillary Development"
Departure basis	The development seeks a reduced primary road setback of 1.0 m for the proposed carport in lieu of the required average

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

	primary road setback of approximately 9.2m (being 1.0 m behind the required average setback of 8.2m). This represents a variation of 8.2 m or 89%.
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**Variation 2**

Clause	Clause 3.1.6.1
Standard	No retaining wall for fill is to be within 1m of a side or rear boundary unless within 1.5m of any external wall of a dwelling.  Fill for development other than for a dwelling is to generally comply with the exempt provisions SEPP (Exempt and Complying Development Codes) 2008.
LEP/DCP	Chapter 3.1 "Dwelling Houses, Secondary Dwellings and Ancillary Development"
Departure basis	The development seeks to extend fill to the southern allotment boundary with a maximum height of 0.8m. This fill is to be retained at the boundary contrary to the provisions of Clause 3.1.6.1 and the exempt provisions of the SEPP (Exempt and Complying Development Codes) 2008.

**The Site**

The site is a single lot identified as Lot 20 DP 29159 No. 15 Lynnette Crescent, East Gosford. The site is located on the western side of Lynnette Avenue having a total area of 701.9 m<sup>2</sup>. The site contains a two storey residential dwelling with existing driveway access to Lynnette Ave (Figure 1).

The subject site is zoned *R2 - Low Density Residential* under the provisions of *Gosford Local Environmental Plan 2014 (Gosford LEP 2014)* (Figure 2).

4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)



Figure 1: Aerial photograph of subject site with the site etched in blue.

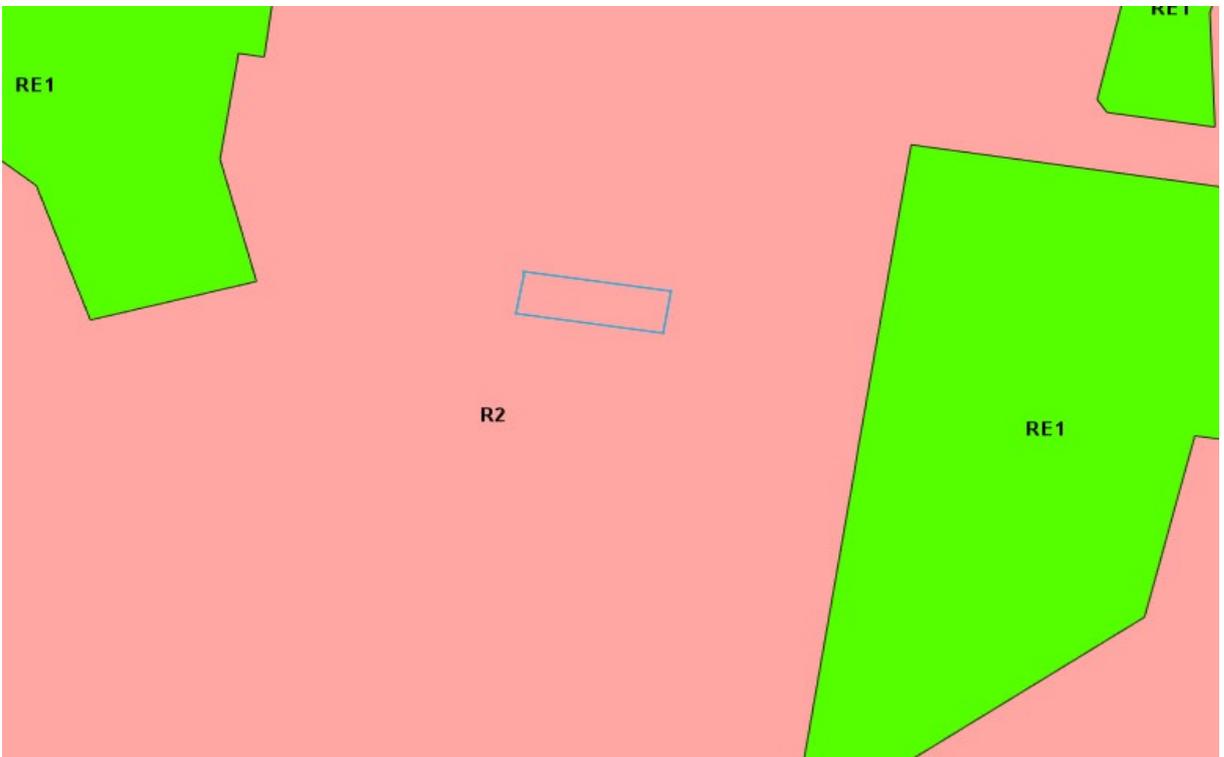


Figure 2: Extract of Gosford Local Environmental Plan 2014 zoning map with the site etched in blue.

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

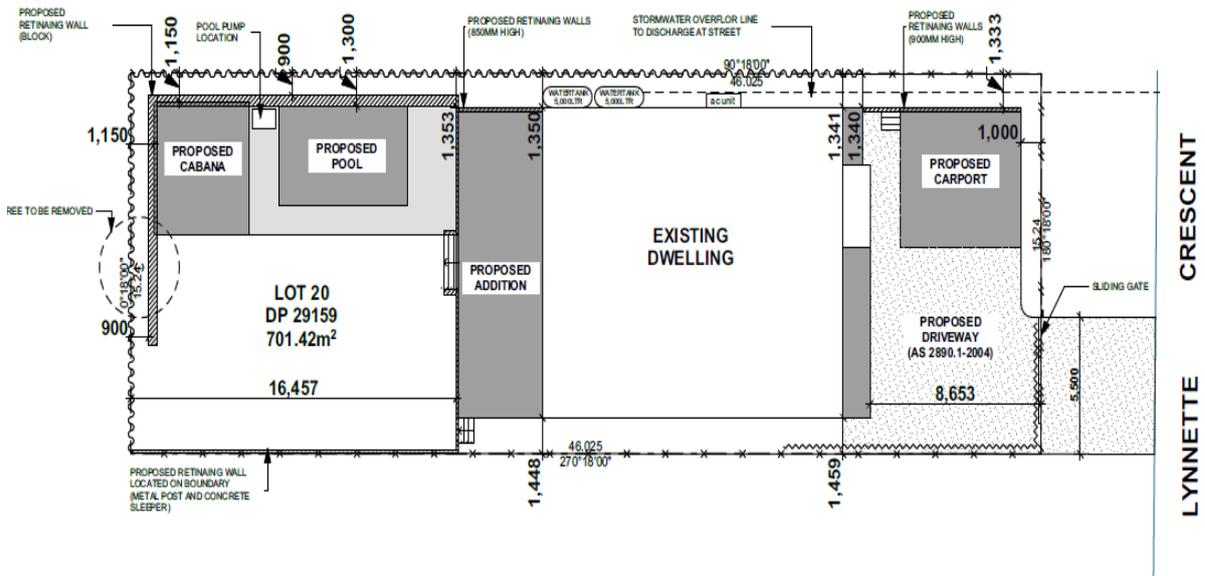
**Surrounding Development**

The subject site is surrounded on all sides by existing R2 – low density zoned residential allotments, generally containing a mixture of older style single storey dwellings interspersed with newer dwellings of single and two storey design and associated ancillary development. Of varying distances to the east, west and south are RE2 Recreation zoned lands comprising sporting fields and bushland remnants. The East Gosford commercial precinct lies approximately 1.0 km to the south west of the allotment.

**The Proposed Development**

The application submitted to Council, proposes the following works;

- Internal alterations within the upper and lower levels of the existing dwelling;
- A carport addition to the front of the existing dwelling to within 1.0 m of the site’s primary road boundary;
- An alfresco addition to the rear of the existing dwelling;
- An inground swimming pool and associated cabana;
- Levelling (cutting and filling) of the rear allotment and provision of retaining wall structures up to a maximum 0.8 m in height.



**Figure 3: The proposed site plan**

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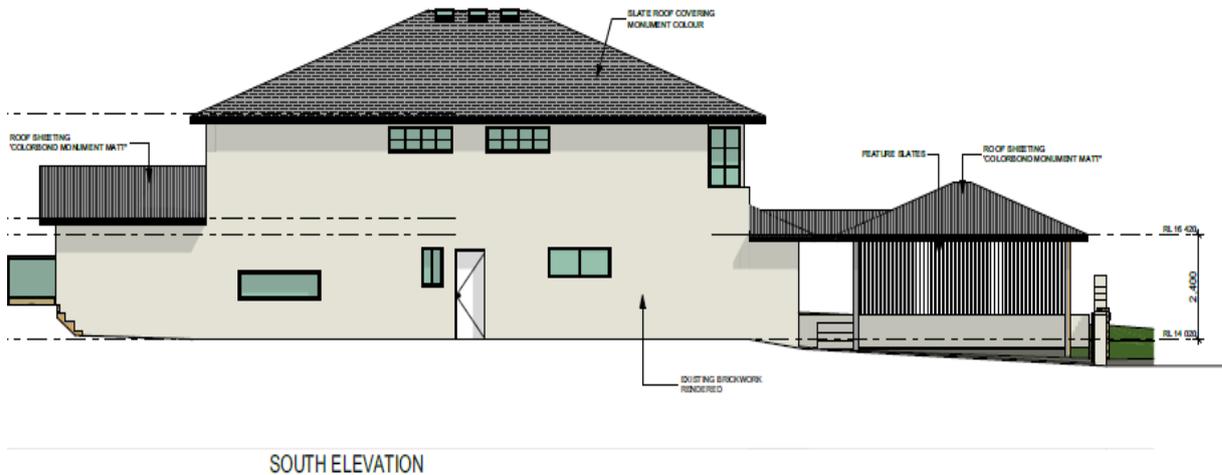
Figure 4: The proposed eastern (street) elevation



Figure 5: The proposed northern elevation

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

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**Figure 6: The proposed southern elevation**

### **History**

There is no history of note in relation to the current development proposal.

### **Assessment:**

Having regard for the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979 and other statutory requirements, Council's policies and Section 10.7 Certificate details, the assessment has identified a number of issues which are elaborated upon within the report. Any tables relating to plans or policies are provided as an attachment.

### **Provisions of Relevant Instruments/Plans/Policies:**

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

A compliant BASIX certificate achieving the State Governments Energy Efficiency targets has been provided in support of the application.

#### **Gosford Local Environmental Plan 2014**

##### Permissibility

The subject site is zoned *R2 - Low Density Residential* under the provisions of *Gosford Local Environmental Plan 2014 (Gosford LEP 2014)*. The development proposal is permissible in the zone with consent however, it is inconsistent with the objectives of the zone which are as follows:

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

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**Zone R2 Low Density Residential - Objectives of zone**

- 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 ensure that development is compatible with the desired future character of the zone.
- To encourage best practice in the design of low-density residential development.
- To promote ecologically, socially and economically sustainable development and the need for, and value of, biodiversity in Gosford.
- To ensure that non-residential land uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for low-density housing.

It is considered that the development proposal, given the positioning of the substantial carport within the primary road setback area, will have significant visual impact upon the existing streetscape in Lynnette Crescent.

Further, the extent of the fill in the rear yard area and subsequent retaining wall structure located upon the southern allotment boundary, may cause amenity impacts to the adjoining dwelling to the south of the site, when considering the overall height of the proposed retaining wall and 1.8m high boundary fencing.

Accordingly, the proposal is considered to be inconsistent with the stated objectives of the R2 residential zone, relating to the development being compatible with the desired future character for the area, impact upon residential amenity and best practice design.

**Draft Central Coast Local Environmental Plan 2018 (Draft CCLEP 2018)**

A review of the Draft Central Coast Local Environmental Plan 2018 (Draft CCLEP 2018) which was exhibited until 27 February 2018, indicates that the subject site retains its low density R2 residential zoning, with dwelling houses remaining permissible with the consent of Council.

Height of Buildings

Clause 4.3(2) applies to the height of buildings on any land. The proposed building is not to exceed the maximum height shown for the land on the Height of Buildings Map in order to achieve the following objectives:

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

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- to establish the maximum height limit for buildings to enable the achievement of appropriate development density,
- to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,
- to ensure that the height of buildings protects the amenity of neighboring properties in terms of visual bulk, access to sunlight, privacy and views.

The subject allotment is mapped as having a maximum building height of 8.5m with the proposed development having a lesser building height of 7.6m therefore being compliant.

Floor Space Ratio

Clause 4.4(2) applies to the maximum floor space ratio for a building on any land. The proposed building is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map in order to achieve the following objectives:

- to ensure that the density, bulk and scale of development is appropriate for a site,
- to ensure that the density, bulk and scale of development integrates with the streetscape and character of the area in which the development is located,
- to facilitate development in certain areas that contributes to economic growth.

The subject allotment is mapped as having a maximum floor space ratio of 0.5:1 with the proposed development proposing a lesser floor space ratio of 0.39:1 therefore being compliant.

Acid Sulphate Soils

Clause 7.1 applies to development that has the potential to disturb, expose or drain acid sulfate soils. In this regard, the allotment is mapped as being potentially affected by Class 5 acid sulfate soils. Class 5 acid sulfate soils are affected as follows: -

<b>Class of land</b>	<b>Works</b>
1	Any works.
2	Works below the natural ground surface. Works by which the water table is likely to be lowered.
3	Works more than 1m below the natural ground surface. Works by which the water table is likely to be lowered more than 1 m below the natural ground surface.
4	Works more than 2m below the natural ground surface. Works by which the water table is likely to be lowered more than 2 m below the natural ground surface.

#### **4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

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- 5 Works within 500m of adjacent Class 1, 2, 3 or 4 land that is below 5m Australian Height Datum and by which the water table is likely to be lowered below 1m Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

In this case, the subject site is located within 500m of an adjacent land that is impacted by potential class 2 acid sulfate soils, with this area being located below R.L 5m Australian Height Datum. The proposal, however, given the relative minor nature of the works, is not considered to impact the water table and accordingly, no further consideration of this issue is warranted.

### **Gosford Development Control Plan 2013**

#### Chapter 2.1 – Character

Chapter 2.1 - Character applies to the development application. The chapter sets out the 'existing' and 'desired' character for each precinct and requires that character be considered in the assessment of any development application.

The subject site is located within the East Gosford Open Parklands character precinct. The existing East Gosford Open Parkland Hillside character statement includes:

- Residential neighbourhoods that are situated on gentle to moderate slopes cleared of their original vegetation, planted with shrubs and small trees creating a leafy but open parkland character.
- A variety of medium sized allotments face streets with narrow pavements that are flanked by wide turfed edges extending across gardens without fences.
- Newer brick and tile buildings of single or double storey construction, which are sited close to the neighbours and have broad street facades that are often dominated by wide garages.

The desired future East Gosford Open Parklands character statement includes the following relevant points:

- Retain existing ground levels along all boundaries.
- Avoid the appearance of a continuous wall of development along any street.
- Locate new buildings behind front setbacks that are similar to their surrounding properties.
- Emphasise a leafy garden character by gardens and street verges planted with taller trees, avoiding wide driveways and tall fences.
- All dwellings should display a traditional street address with verandahs or decks and living rooms or front doors that are visible from the roadway.

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

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- Avoid wide garages that would visually dominate any front façade or block views from the dwelling to the street.



***Figure 7: Detailing a photo montage of the development proposal when viewed from the street frontage.***

As shown in the photomontage in Figure 7 above, and within figures 8-10 below, the proposal creates a significant visual impact when viewed from the street frontage and the adjoining dwelling to the north. In this regard, the development proposal is not considered to meet the relevant desired future character statements relating to the maintenance of existing setbacks displayed by surrounding development, avoidance of wide dominant garages and driveways and provision of a "traditional" street address.

Accordingly, the proposal is not considered to have been designed to reflect the East Gosford Open Parklands desired future character statement and as such, the development proposal is not supported.

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

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***Figure 8: Detailing the existing Lynnette Cr streetscape looking north***



***Figure 9: Detailing the existing Lynnette Cr streetscape looking south***

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**



**Figure 10: Detailing the existing setbacks of adjoining development**

Chapter 3.1 – Dwelling Houses, Secondary Dwellings and Ancillary Development

Clause	Requirement	Proposed	Compliance
3.1.2.1 - Building height	8.5m by virtue of LEP mapping	7.6m	Yes
	Maximum 2 storeys	Two storeys	Yes
3.1.2.2 – Site coverage	Maximum 50%	39%	Yes
3.1.3.1a – Front setback (carport)	1m behind Average setback of adjoining dwellings being – 9.2m	1m	No
3.3.3.1b – Rear setback	0.9m	1.150m	Yes
3.1.3.1c – Side setback	1.075m given building height	1.340m minimum	Yes
3.1.3.3.2 – Garage door articulation	Maximum 60% of building width – 7.5m	5.5m	Yes
3.1.4.3 - Private open space areas	Minimum 24m <sup>2</sup>	Well In excess of 24m <sup>2</sup>	Yes
	Minimum dimension 3m	Well in excess of 3m	Yes

## 4.1

**DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

Clause	Requirement	Proposed	Compliance
	Maximum gradient 1:50	Level	Yes
3.1.5 – Car parking and access	2 spaces if 4 or more bedrooms  Parking to be located behind the primary road setback  Maximum driveway width 4m at the street crossover	4 including the proposed carport structure  Carport forward of the primary road setback  5.5m	Yes  <i>No* see note</i>  <i>No* see note</i>
3.1.6.1 - Earthworks	Maximum 1m fill  No retaining wall for fill is to be less than 1m from boundary  Fill not associated with dwelling to be max 0.6m and setback 1m from boundary	0.8m  On boundary  0.8m/on boundary	Yes  No  No
3.1.6.2 – Retaining walls	To be designed by a structural engineer	Structural plans submitted	Yes
3.1.6.3 - Drainage	To be disposed of to street	To street	Yes
3.1.7.2 - Outbuildings	Maximum area of 75m <sup>2</sup>	23m <sup>2</sup>	Yes
3.1.7.4 – Swimming pools	Be located behind the primary road	In rear yard area	Yes

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

Clause	Requirement	Proposed	Compliance
	setback or rear yard		
	Comply with side and rear setbacks	In excess of 0.9m	Yes
	Pump located to minimise noise	Appropriately located	Yes

*Note: The variations required by Clause 3.1.5 are considered within and in conjunction with Variation 1 relating to the proposed primary road setback for the carport structure.*

**Variation 1**

The proposal seeks a significant variation to the required primary road average setback to permit the development, noting that without the proposed carport structure, the proposal would be compliant with required setback controls. The proposed carport structure seeks a reduced setback of 1.0m in lieu of the required 9.2m (being 1m behind the required average setback of the adjoining dwellings).

In considering this setback variation, assessment of the proposed development against the relevant objectives of Chapter 3.1 is required. Chapter 3.1 objectives relating to setbacks states:

- *To ensure that setbacks are compatible with adjacent development and complements the character, streetscape, public reserve, or coastal foreshore;*
- *To ensure the visual focus of a development is the dwelling, not the garage;*
- *To protect the views, privacy and solar access of adjacent properties;*
- *To maintain view corridors to coastal foreshores and other desirable outlooks;*
- *To maintain the scenic and environmental qualities of natural waterbodies and their foreshores and respond to site attributes such as topography;*
- *To provide deep soil areas sufficient to conserve existing trees or accommodate new landscaping;*
- *To provide appropriate articulation of facades and horizontal elements reduce the appearance of bulk and provides visual interest to the building and subsequent streetscape where they face a street frontage/s.*

In reviewing the proposal against these objectives, the following commentary is provided:

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- The proposed carport, given its minimal setback to the primary road boundary, is considered to be inconsistent with the setback pattern displayed by adjacent development. This inconsistency is considered to have the potential to detrimentally impact the streetscape character within Lynnette Ave as indicated previously within the report.
- The proposed carport structure, given its minimal primary road setback in conjunction with the significant garage door opening of the attached garage, will result in a development that is considered to be visually obtrusive and dominating when viewed from the street frontage.

Staff sought to negotiate an appropriate outcome with the applicant regarding the proposed primary road setback for the carport structure. The applicant agreed to minor changes to the development to address the significant departure from the primary road setback controls. These changes included an increase of 0.36m to the primary road setback (1.36m) and a reduction in roof pitch for the carport structure.

The applicant declined to provide any altered development plans indicating the suggested amendments and accordingly, the assessment of the application has been undertaken utilising the originally submitted plans.

The minor changes proposed by the applicant were considered of little value and failed to address the concerns with the development as raised by staff.



***Figure 11: Detailing a photomontage of the side elevation of the proposed carport structure provided by the applicant***

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

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**Variation 2**

The proposal seeks a variation to permitted fill amounts within the rear yard area. The proposal seeks to extend fill 0.8m in depth to the southern allotment boundary, with this fill to be retained at the boundary line.

In considering this variation, assessment of the proposed development against the relevant objectives of Chapter 3.1 is required. Chapter 3.1 objectives relating to earthworks states:

- *To accommodate development on a site without the need for excessive excavation and fill or construction of high retaining walls adjacent to site boundaries;*
- *To ensure that building designs conform to natural land forms and site constraints;*
- *To manage stormwater discharge in a manner that minimises impacts on adjoining properties or public land;*
- *To ensure that the amenity of adjoining residents and the streetscape is not adversely affected; and*
- *To restrict the siltation of waterways and erosion of land disturbed by the development.*

In reviewing the proposal against these objectives, the following commentary is provided:

- Whilst a detailed engineered stormwater management concept plan has been provided in support of the proposal, which is considered adequate to cater for and prevent the diversion of any surface run-off, the provision of fill to the allotment boundary is not supported;
- The proposed fill amount is excessive when considering that a more balanced cut and fill ratio could easily be provided for in the proposed design, therefore reducing required fill amounts;
- The positioning of the retaining wall on the southern allotment boundary is inconsistent with the objective of minimising the provision of excessive fill amounts and subsequent retaining structures on the allotment boundary;

#### **4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

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- The combined height of the proposed retaining wall in combination with a 1.8m high dividing fence, is considered to impact upon the solar access and general amenity of the adjoining property to the south of the site. It should be further noted that a submission from the adjoining landowner has been received with respect to this issue.

As with the primary road setback variation listed above, staff sought to negotiate the issue of the proposed fill and subsequent retaining wall height and location with the applicant. The applicant agreed to a minor change decreasing fill to a depth of 0.6m (increasing cut by 0.2m). However, the applicant maintained that fill should be retained at the southern allotment boundary, rather than providing a boundary setback of 1.0m as requested by assessing staff.

The applicant declined to provide any altered development plans indicating the suggested amendments and accordingly, the assessment of the application has been undertaken utilising the originally submitted plans.

The minor change proposed by the applicant were considered of little value and failed to address the concerns with the development as raised by staff.

#### Chapter 6.3 - Erosion Sedimentation Control

Appropriate erosion/sedimentation control measures could form condition of consent however, refusal of the development proposal is recommended.

#### Chapter 6.4 - Geotechnical Requirements for Development Applications

The allotment is mapped as being subject to medium landslip risk. In this regard, the allotment is relatively flat and displays no evidence of landslip. Accordingly, it is considered that no further information from a geotechnical perspective is required to support the development proposal at development application stage.

However, given other issues identified within this report, refusal of the application is recommended.

#### Chapter 6.6 - Preservation of Trees or Vegetation

The proposal does not require the removal of any native vegetation.

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Chapter 6.7 – Water Cycle Management

The proposal includes the provision of water tanks for collection and re-use totaling 10,000L capacity. The provisions of these tanks exceed the capacity for on-site storage and re-use as required by the Water Cycle Management Chapter.

Chapter 7.1 Carparking

Chapter 7.1 - Carparking applies to the development application. The purpose of this chapter is to ensure that sufficient and well-designed on-site provisions for carparking are achieved for developments.

The minimum standard for carparking for this development is for two spaces, one of which is to be setback a minimum of 6m from the frontage of the site. This requirement is achieved by the garage associated with the dwelling.

The additional parking area within the proposed carport is beyond the minimum standards of this control and therefore is not necessary to accommodate vehicles on the site. It is considered that the requirements of this chapter have been complied with.

**Likely Impacts of the Development:**

**Built Environment**

The proposed carport structure, given its substantial size and minimal setback to the primary road boundary, is considered to be inconsistent with the existing built environment in proximity to the site and as such, the development is not supported.

**Access and Transport**

The site is well served by the existing roadway and is also well served by public transport.

**Context and Setting**

The subject site lies within a traditional low density residential area, generally comprising allotments containing single dwellings and associated ancillary development. The existing streetscape within Lynnette Ave in proximity to the site, displays development that maintains a consistent setback pattern to the primary road boundary, providing an open streetscape vista.

The design of the development proposal, which incorporates a substantial carport with minimal setback to the primary road boundary, is considered inconsistent with the areas context and setting. Accordingly, the development is not supported.

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

---

**Natural Environment**

The subject site does not contain any threatened species or habitat with the development not requiring the removal of any significant vegetation. Accordingly, the proposal is considered satisfactory in relation to impacts on the natural environment.

**Suitability of the Site for the Development:**

A review of Council's records has identified that the site is impacted by constraints including risk of landslip and potential acid sulphate soils. As has been demonstrated, these constraints are not considered to render the site unsuitable for the proposed development.



**Figure 12: Indicating landslip mapping with the site etched in blue**

**Whether the proposal fits in the locality**

The subject area in proximity to the site, displays a traditional low density residential environment. Given the variations required by the development, with particular emphasis on the proposed carport, it is considered that the proposal is out of character and inconsistent with the nature of the locality.

**Any submission made in accordance with this Act or Regulations**

**The Public Interest: (s4.15(1)(e)):**

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

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**Submissions**

The development application was notified to adjoining landowners from 13 May 2020 to 3 June 2020 in accordance with *Gosford Development Control Plan 2013 Chapter 7.3 - Notification of Development Proposals*. One (1) submission was received during notification period. The issues raised within the public submission are detailed below:

1. Concerns regarding pecuniary interest given that the applicant is a designated staff member.

*Comment:* The development proposal, given that the property owner is a designated employee involved in the assessment of development applications, is required to be determined by the Local Planning Panel.

3.1.6.1 Concerns regarding incompatibility of proposed carport with the existing open streetscape.

*Comment:* Agreed. As has been indicated within the report, the proposed substantial carport structure located within the proposed primary road setback, is considered to be visually obtrusive when considering the existing setback pattern within Lynnette Ave in the proximity of the site. Further, the proposal will require a substantial variation to the primary road setback controls as required by Chapter 3.1 and fails to address the areas desired future character statement.

**Submissions from Public Authorities**

The application was not required to be referred to any public authorities.

**Internal Consultation**

The application was referred internally in relation to the proposed vehicle access crossing. This referral required that a maximum vehicle access crossing width of 5.0m be displayed (in lieu of the indicated 5.5m).

As with other amendments requested by assessing staff, the applicant declined to provide amended development plans indicating the requested change.

The applicant indicated that the proposed driveway width complies with the provisions of AS2890.1-2004 *Parking facilities Off-street car parking*.

**4.1 DA/58327/2020 - 15 Lynnette Crescent East Gosford - Alterations and additions to the Existing Dwelling, Carport, Cabana, Inground swimming pool and retaining structures (contd)**

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**Ecologically Sustainable Principles:**

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles.

The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

**Climate Change**

The potential impacts of climate change on the proposed development have been considered as part of the assessment of the application.

This assessment has included consideration of such matters as potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought and flood as well as how the proposed development may cope / combat / withstand these potential impacts.

The development proposal is not considered to be impacted by potential climate change.

**Other Matters for Consideration:**

There are no other matters for consideration.

**Conclusion:**

This application has been assessed under the heads of consideration of section 4.15 of the Environmental Planning & Assessment Act 1979 and all relevant instruments and policies. Upon completion of this assessment, given that substantial variations are sought by the development, with these variations demonstrating non-compliance with both the stated objectives of Chapter 3.1 and the areas desired future character statement, it is considered that the site is unsuitable for the proposed development, with the application unable to be supported, noting the unwillingness of the applicant to amend the proposal to address the concerns with the development raised by staff.

Accordingly, refusal of the development is recommended.

**Attachments**

- |          |                                           |           |
|----------|-------------------------------------------|-----------|
| <b>1</b> | Draft Reasons for Refusal                 | D14107403 |
| <b>2</b> | Development Plans (Excluding Floor Plans) | D14102330 |

<b>Applicant</b>	Mr CJ Votano
<b>Owner</b>	Mr CJ and Mrs TL Votano
<b>Application No</b>	58327/2020
<b>Description of Land</b>	Lot 20 DP 29159 -15 Lynnette Crescent, EAST GOSFORD
<b>Proposed Development</b>	Alterations and additions to the existing dwelling, carport, cabana, inground swimming pool and retaining structures

### **Reasons for Refusal**

1. The proposed development is inconsistent with the objectives of the R2 Low Density Residential zone in the Gosford Local Environmental Plan 2014 relating to the development being compatible with the desired future character of the zone, impact upon residential amenity and best practice design.
2. The proposed carport and the proposed level of fill in the rear yard area, is inconsistent with the desired future character statement of Gosford Development Control Plan 2013 Chapter 2.1 Character.
3. The proposed carport, is inconsistent with the objectives of Gosford Development Control Plan 2013, Chapter 3.1 Dwelling Houses, Secondary Dwellings and Ancillary Development relating to setback consistency, visual dominance, character of the area and excessive bulk.
4. The minimal primary road setback proposed for the carport, is inconsistent with the setback pattern that exists within proximity to the site.
5. The proposed level of fill to the southern boundary, is inconsistent with the objectives of Gosford Development Control Plan 2013, Chapter 3.1 Dwelling Houses, Secondary Dwellings and Ancillary Development relating to amenity impact, maintaining of the natural landform and excessive earthworks.
6. The proposed development is inconsistent with the context and setting of the locality given the significant variation proposed to the primary road setback and the impact of this upon the streetscape and character of the area. The excessive earthworks are also out of context with the character of the area.
7. The proposed development does not fit within the locality relating to the impact upon the streetscape and amenity of the adjoining property.
8. An objection has been received with respect to the development proposal from the adjoining landowner, in relation to amenity impact, which is considered to have merit.

# DEVELOPMENT APPLICATION

## ALTERATIONS & ADDITIONS

### 15 LYNNETTE CRESCENT, EAST GOSFORD, LOT 20 DP 29159

SUMMARY OF BASIX COMMITMENTS - ALTERATIONS & ADDITIONS BASIX CERTIFICATE #A371415	
<b>Pool &amp; Spa</b>	
Rainwater tank	Min 1295L
Rainwater runoff	At least 160m <sup>2</sup>
Connect to tap	Within 10m
Swimming pool	Outdoor
Capacity	Max 40 kl
Pool pump timer	Yes
Heating system	Not incorporated
<b>Fixtures &amp; Systems</b>	
Lighting	Min 40% LED
Shower Head	9L/m or 3 Star
Toilets	4L/m or 3 Star
Taps	9L/m or 3 Star
<b>Insulation</b>	
Concrete slab on ground	Nil
Suspended floor	Nil
External wall: Brick veneer	R1.16 (R1.70 including construction)
External wall: Cavity brick	Nil
Internal wall: Shared with garage	Nil
Flat ceiling	R2.50 (up), foil sarking Dark (solar absorptance > 0.70)
Raked ceiling	R1.74 (up) foil backed blanket (55mm) Dark (solar absorptance > 0.70)
<b>Windows &amp; Glazed doors</b>	
W1-W26	Standard Aluminium, single clear, (or U-value: 7.63, SHGC: 0.75)
W27-W29	Timber or uPVC, single toned, (or U-value 5.67, SHGC: 0.49)
<b>Skylights</b>	
S1-S5	Timber, low-E internal/ argon fill/ clear external, (or U-value: 2.5, SHGC: 0.456)



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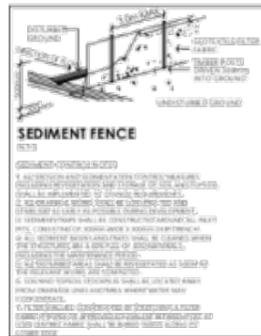
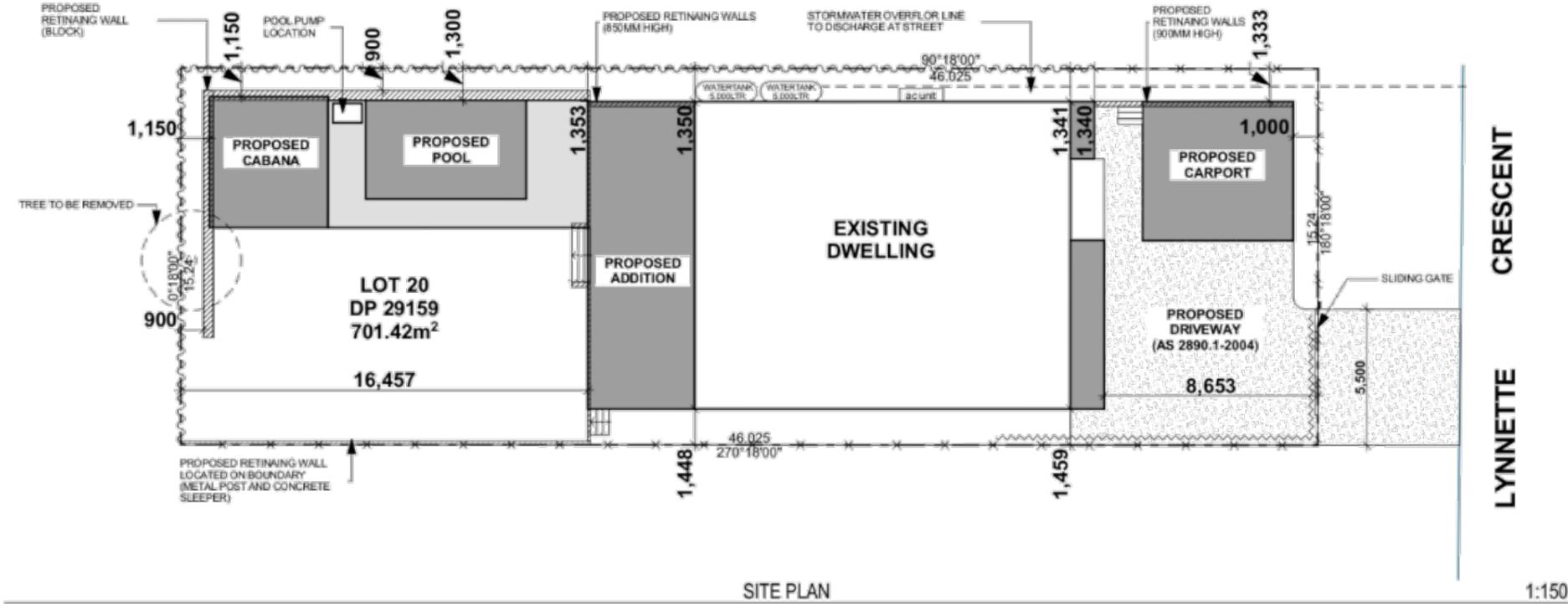
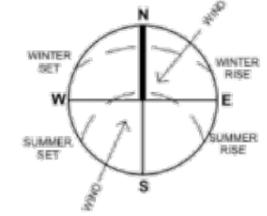
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REVISION	CLIENT	PROJECT	DRAWING TITLE
No. DESCRIPTION DATE	<b>VOTANO</b>	<b>ALTERATIONS &amp; ADDITIONS</b>	<b>COVER SHEET</b>
01 DA ISSUE 6/05/2020		<b>15 LYNNETTE CRESCENT, EAST GOSFORD LOT 20 &amp; DP 29159</b>	<p>SCALE - @A2 1:0.70, 1:430.50</p> <p>DATE -</p> <p>DESIGNED - NAH</p> <p>DRAWING No - DA/CC - 00</p> <p>JOB NO. 19054</p> <p>REVISION- 1</p> <p><small>THESE DRAWINGS ARE UNDER COPYRIGHT &amp; ARE THE PROPERTY OF N A HILL DESIGNS. THEY MAY NOT BE REPRODUCED OR COPIED WITHOUT PERMISSION OF N A HILL DESIGNS. ALL DIMENSIONS ARE TO BE VERIFIED AND CONFIRMED BY THE BUILDER PRIOR TO THE COMMENCEMENT OF WORKS.</small></p>

AREA CALCULATIONS	
SITE AREA	701.42
EXISTING GROUND FLOOR	189.21
FIRST FLOOR AREA	170.71
TOTAL FLOOR AREA	359.92
PROPOSED TOTAL GROUND FLOOR	189.21
FIRST FLOOR	189.21
TOTAL FLOOR AREA	378.42 [(273.82)/FSR 0.39:1]



- LEGEND**
- FRONT FEATURE FENCE. REFER TO TYPICAL DETAIL
  - EXISTING BOUNDARY 'COLORBOND' FENCE (1.8m)
  - PROPOSED BOUNDARY 'COLORBOND' FENCE (1.8m)
  - PROPOSED RETAINING WALL
  - PROPOSED ADDITIONS
  - EXISTING DWELLING
  - PROPOSED DRIVEWAY
  - SEDIMENT CONTROL FENCE



FENCE DETAIL (TYPICAL) 1:20

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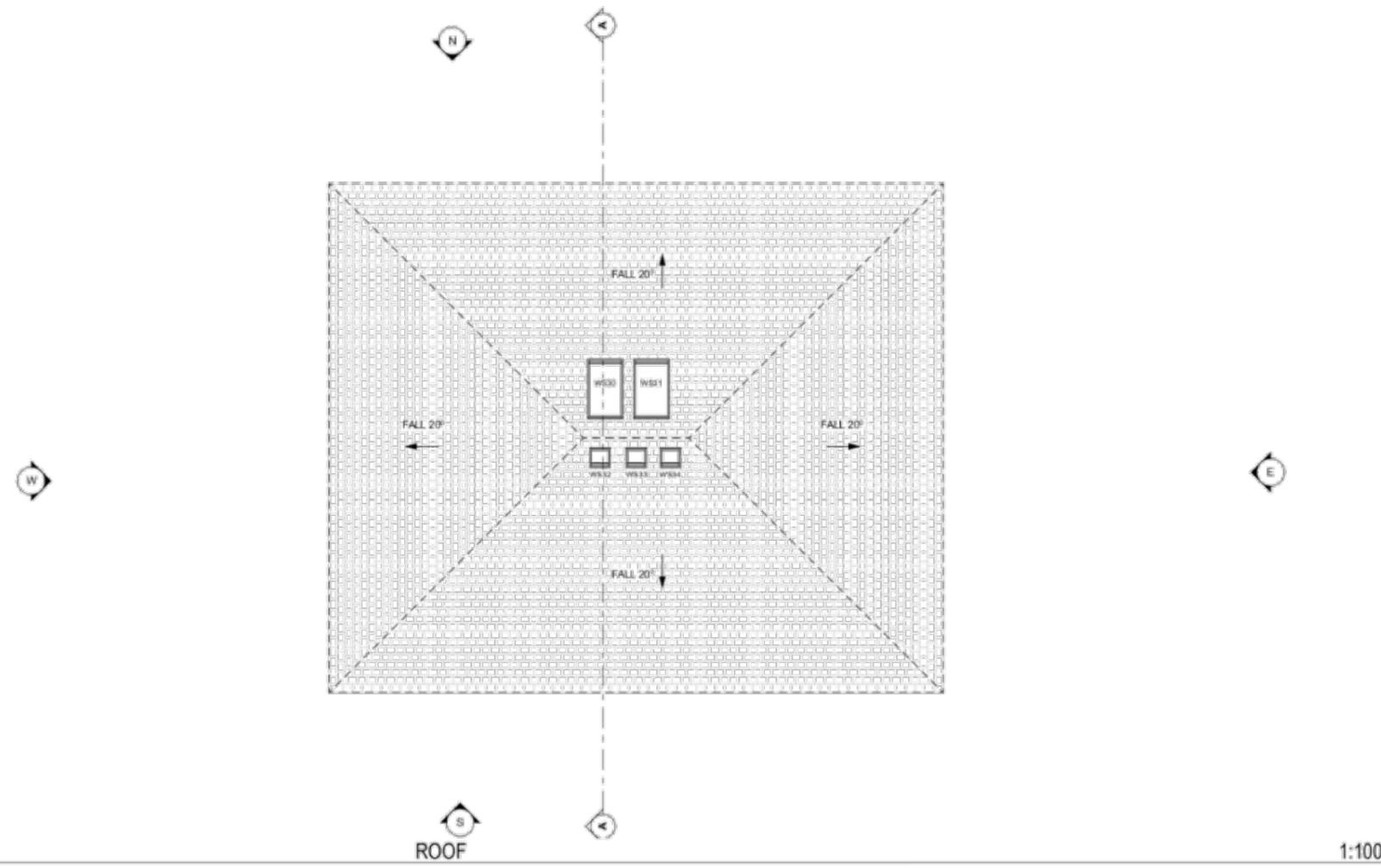


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No. DESCRIPTION DATE	VOTANO	ALTERATIONS & ADDITIONS	SITE PLAN & SITE ANALYSIS
01 DA ISSUE 6/05/2020		15 LYNNETTE CRESCENT, EAST GOSFORD LOT 20 & DP 29159	SCALE - @A2 1:150, 1:20 DATE - DESIGNED - NAH DRAWING No - DA/CC - 01 JOB NO. 19054 REVISION - 1



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No	DESCRIPTION	DATE	VOTANO	ALTERATIONS & ADDITIONS	PROPOSED ROOF PLAN	WRITTEN DIMENSIONS SHALL TAKE PREFERENCE OVER SCALING CONFIRM ALL DIMENSIONS, SETOUTS, LEVELS & ALL ASPECTS OF THE WORKS. ANY CORRECTIONS OR AMBIGUITY IS TO BE RESOLVED BEFORE COMMENCING WORKS OR FABRICATION WINDOW SIZES SHOWN ARE NOMINAL (HEIGHT WIDTH) IE 2124 = 2.1m x 2.4m ADJUST TO THE MANUFACTURERS STANDARD SIZES			
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						DATE -			
						DESIGNED-	NAH		
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Window Schedule							Window Schedule						
Window Number	QTY	Style	Height	Width	3D Front View	SA	Window Number	QTY	Style	Height	Width	3D Front View	SA
W01	1	SLIDING WINDOW	660	1,800		1.19	W19	1	AWNING WINDOW	1,400	900		1.26
W02	1	SLIDING WINDOW	660	1,800		1.19	W20	1	AWNING WINDOW	1,400	900		1.26
W03	1	FIXED WINDOW	500	1,800		0.90	W21	1	AWNING WINDOW	1,400	900		1.26
W04	1	FIXED WINDOW	500	1,800		0.90	W22	1	AWNING WINDOW	1,400	900		1.26
W05	1	AWNING WINDOW	500	1,800		0.90	W23	1	AWNING WINDOW	1,400	900		1.26
W06	1	SLIDING WINDOW	685	1,770		1.21	W24	1	AWNING WINDOW	1,400	900		1.26
W07	1	SLIDING WINDOW	900	600		0.54	W25	1	SLIDING WINDOW	600	1,810		1.09
W08	1	FIXED WINDOW	655	2,321		1.52	W26	1	SLIDING WINDOW	600	1,810		1.09
W09	1	BI-FOLD WINDOW	1,200	2,700		3.24	W27	1	SLIDING WINDOW	700	1,810		1.27
W10	1	STACK SLIDING DOOR	2,100	4,630		9.72	W28	1	SLIDING WINDOW	700	1,810		1.27
W11	1	FIXED WINDOW	2,100	700		1.47	W29	1	SLIDING WINDOW	700	1,810		1.27
W12	1	FIXED WINDOW	2,100	700		1.47	WS30	1	SKYLIGHT	1,600	900		---
W13	1	SLIDING WINDOW	700	1,200		0.84	WS31	1	SKYLIGHT	1,600	900		---
W14	1	SLIDING WINDOW	700	1,810		1.27	WS32	1	SKYLIGHT	500	500		---
W15	1	AWNING WINDOW	1,400	900		1.26	WS33	1	SKYLIGHT	500	500		---
W16	1	AWNING WINDOW	1,400	900		1.26	WS34	1	SKYLIGHT	500	500		---
W17	1	AWNING WINDOW	1,400	900		1.26		<b>34</b>					<b>44.95 m²</b>
W18	1	AWNING WINDOW	1,400	900		1.26							



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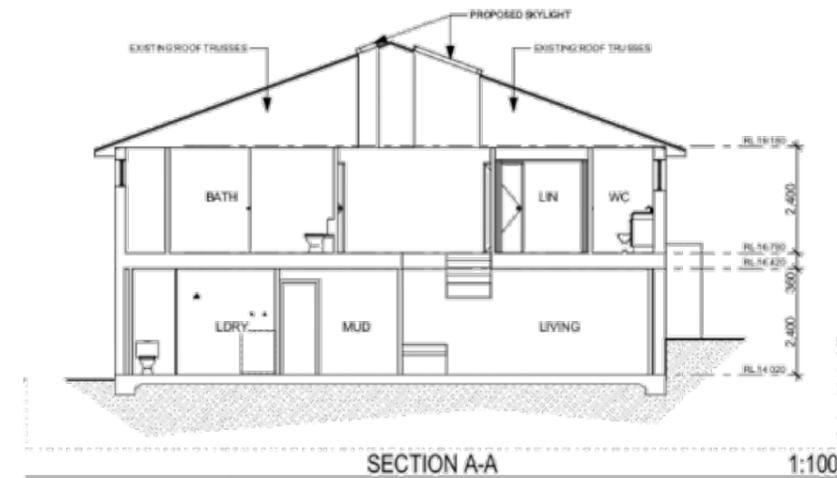
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No	DESCRIPTION	DATE	VOTANO	ALTERATIONS & ADDITIONS	ELEVATIONS	DATE -		
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						DRAWING No -	JOB NO.	REVISION-
						DA/CC - 07	19054	1

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**Item No:** 4.2  
**Title:** DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application)  
**Department:** Environment and Planning

---

17 September 2020 Local Planning Panel Meeting

Reference: DA/349/2019/A - D14126975  
Author: Rebecca Samways, Development Planner  
Manager: Emily Goodworth, Section Manager, Development Assessment  
Approver: Andrew Roach, Unit Manager, Development Assessment

### Summary

A section 4.55(1A) application has been received for **tennis clubhouse ancillary to recreation facility(outdoor) and demolition (amended application)**. The application has been examined having regard to the matters for consideration detailed in section 4.15 and Section 4.55 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

Having regard for the Ministerial Directions of 23 February 2018, 3 November 2019 and 30 June 2020, the application is required to be determined by the Central Coast Local Planning Panel as it is development on Council owned land.

<b>Applicant</b>	Coastline Building Design
<b>Owner</b>	Central Coast Council
<b>Application No</b>	DA/349/2019/A
<b>Description of Land</b>	Lot 1 DP 724871, Lot 191 DP 25586, Charmhaven Park, 35W Parkside Drive, CHARMHAVEN NSW 2263
<b>Proposed Development</b>	Tennis Clubhouse Ancillary to Recreation Facility (Outdoor) & Demolition (Amended Application)
<b>Site Area</b>	20154.20 m <sup>2</sup>
<b>Zoning</b>	RE1 Public Recreation
<b>Existing Use</b>	Recreation facility (outdoor) comprising of tennis courts and tennis clubhouse
<b>Employment Generation</b>	No
<b>Estimated Value</b>	Nil

**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

---

**Recommendation**

- 1 That the Local Planning Panel approve the modifications to Development Application 349/2019 subject to the amendments detailed in the schedule attached to the report and having regard for the matters for consideration detailed in Section 4.15 and Section 4.55 of the Environmental Planning and Assessment Act 1979.**

**Key Issues**

- The land is Council owned land identified as Community Land – therefore the matter of whether the proposal is consistent with the Plan of Management that applies to the land;
- Zone objectives

**Precis:**

<b>Modification</b>	Delete conditions 5.5, 5.7, 5.8, 5.9, amend condition 1.1 and insert a new condition (6.3) to reflect the intention of the use of the proposed clubhouse kitchen for non-commercial purposes.
<b>Permissibility and Zoning</b>	The site is zoned <i>RE1 Public Recreation</i> under the provisions of <i>Wyong Local Environmental Plan 2013</i> .  The amendment is to the tennis clubhouse which is ancillary to the existing ' <i>Recreation Facility (outdoor)</i> ' and is therefore permissible within the <i>RE1 Public Recreation</i> zone.
<b>Relevant Legislation</b>	<ul style="list-style-type: none"> <li>• <i>Environmental Planning and Assessment Act 1979</i></li> <li>• <i>Wyong Local Environmental Plan 2013 (WLEP 2013)</i></li> <li>• <i>Draft Central Coast Local Environmental Plan 2018 (CCLEP 2018)</i></li> </ul>
<b>Current Use</b>	Recreation facility (outdoor) comprising of tennis courts and tennis clubhouse
<b>Integrated Development</b>	No
<b>Submissions</b>	Nil

**The Site**

The subject site is legally described as Lot 1 DP 724871 and Lot 191 DP 25586 and is commonly known as 'Charmhaven Tennis Centre' (35W Parkside Drive, Charmhaven).

The site is generally rectangular in shape, has a site area of approximately 2 hectares and is surrounded by Parkside Drive along the perimeter of the site. The site currently contains 4 tennis courts and a clubhouse in the northern portion of the site and a carpark, playground,

**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

---

cricket pitch and fire station on the remainder of the site. The site is located on Council owned land and is classified as community land.

The site is included in Schedule 1 of Council's *'Plan of Management for Sportsgrounds, Parks and General Community Use'* (as adopted 8 May 1996 and last amended 14 December 2005).

The Plan of Management identifies the site's dominant use a small park noting existing tennis courts. The Plan of management specifically authorises the provision of additional tennis courts where a masterplan has been adopted. Council adopted a masterplan which included the provision of tennis courts and a clubhouse on the site on 22 September 1998. Further, the Plan of management authorises the construction of public buildings for any purpose ancillary to the dominant use of the land or any other activity authorised under the plan.



**Figure 1. Aerial photograph of the site**

**History**

## **4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

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Charmhaven Tennis Centre has been operating under a lease agreement for over 50 years at Charmhaven Park. A number of development applications for alterations and additions to the courts and clubhouse have been approved on the site, including:

- DA/87/427 was approved on 10 December 1987 for tennis courts.
- DA/310/89 was approved on 9 May 1989 for an extension to the tennis courts and clubhouse.
- DA/602/91 was approved on 30 October 1991 for a shelter shed and extension to the existing clubhouse.
- DA/897/98 was approved on 18 September 1998 for a tennis court.

Most recently, Development Application No. DA/349/2019, which is subject to this section 4.55 application, was granted consent on 25 June 2019 for a tennis clubhouse ancillary to a recreation facility (outdoor) and included demolition of the former clubhouse. This application included the redevelopment of a tennis clubhouse on the site, specifically involving the following works:

- The demolition and construction of a new clubhouse containing a multi-purpose room, pro-shop, office, kitchen, storage room and sanitary facilities.
- Removal of 2 trees within the development footprint of the clubhouse.
- Landscaping works around the clubhouse, including the provision of picnic tables and bench seating.

The construction of the clubhouse has been completed and the issue of the Occupation Certificate is currently pending subject to the amended conditions regarding the non-commercial use of the kitchen. During construction, the materials of the verandah were changed from a concrete slab to timber decking. A Building Information Certificate (BC/49/2020) has been lodged with Council to address the change in construction materials. Accordingly, the plans submitted for the modification have been amended in red to take out any reference to the materials of the verandah as this aspect of the development is being dealt with under another provision of the EP&A Act.



**Figure 2. Photograph of the newly built tennis clubhouse subject to the application**

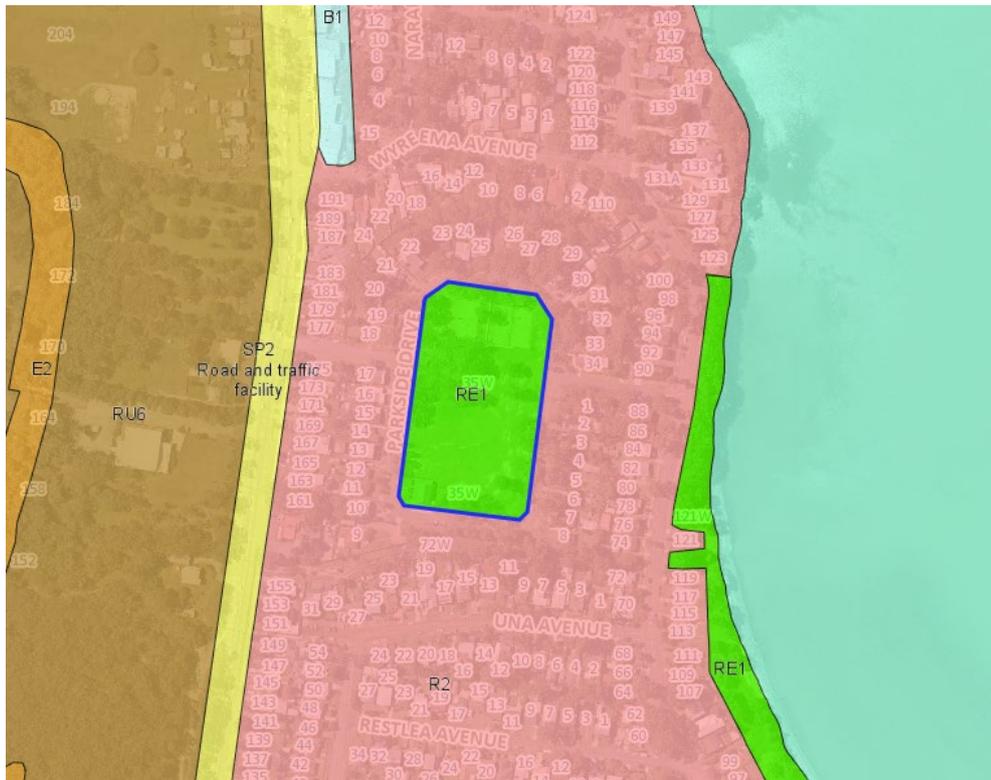
**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

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**Zoning of Subject Land**

The subject site is zoned *RE1 Public Recreation* under the provisions of the *Wyang Local Environmental Plan (Wyang LEP) 2013*. The land is bounded by:

- Land zoned *R2 Low Density Residential* on the opposite side of Parkside Drive to the north, south east and west.
- Land zoned *RE1 Public recreation* further east of the site along the waterfront.
- Land zoned *RU6 Transition* and *SP2 Infrastructure* further to the west of the site.
- Land zoned *B1 Neighbourhood Centre* further north-west of the site.



**Figure 3. Extract of Wyong LEP 2013 zoning map**

**Surrounding Development**

The site is surrounded by low density residential development on the opposite side of Parkside Drive.

Further to the east of the site there is established vegetation along the waterfront.

Further to the west of the site is the Pacific Highway and a mix of cafes, commercial premises and residential uses fronting the Pacific Highway

**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

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**The Proposed Development**

The Section 4.55(1A) application has been received for modifications to the internal layout of the approved tennis clubhouse, specifically the approved kitchen layout (replacing the approved commercial kitchen with a lower standard kitchen, and therefore removing any intention for commercial use/preparation of food for sale).

The proposed modification of conditions are as follows:

1. *The deletion of condition 5.5.*

Original condition 5.5:

- 5.5. No food handling, (as defined by the *NSW Food Act 2003*), is permitted in the food premises prior to the issue of the Occupation Certificate.

2. *The deletion of condition 5.7.*

Original condition 5.7:

- 5.7. Compliance with the requirements of the *New South Wales Food Act 2003*, the *Food Regulation 2015*, and AS4674–2004 – Design, Construction and Fitout of Food Premises, and AS1668, Part 11 – Mechanical Ventilation, for all food preparation and food storage areas, including liquor areas.

3. *The deletion of condition 5.8.*

Original condition 5.8:

- 5.8. The installation of hand wash facilities with a minimum dimension of 500mm x 400mm providing warm running water through a common mixing spout with hands-free tap operation (consisting of elbow or wrist operated tap levers, foot or hip operated tap levers, or electronic sensor tap operation).

4. *The deletion of condition 5.9.*

Original condition 5.9:

- 5.9. The internal walls of the kitchen are to be lined with 9.0mm fibrous cement sheeting and are to be inspected by Council's Environmental Health Officer (Food) prior to covering.

*Comment:* The deletion of the above conditions will reflect the intention of the proposed clubhouse to provide a non-commercial kitchen within the premises for use by patrons only

**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

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and not for commercial food preparation and sales to the public. The kitchen layout has been amended to an L-shaped design and removed the servery, hot plates and oven, dishwasher, hand wash basins and pie warmer. The proposed kitchen will now only contain basic features, including a sink, fridge, microwave and coffee machine reflecting the intention of the kitchen to be used by patrons only at the clubhouse.

In addition to the proposed modifications requested by the applicant (above), the modification warrants an amendment to condition 1.1 relating to the approved plans and the addition of a condition under the heading "ongoing" to ensure the amended kitchen is not operated for commercial purposes.

5. Amend condition 1.1.

Original condition 1.1:

- 1.1. Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.

**Architectural Plans by:** Coastline Building Design

Drawing	Description	Sheets	Issue	Date
8177	Site Plan	A01/3	B	03/06/2019
8177	Floor Plan & Elevations	A02/3	B	03/06/2019
8177	Section AA Safe Design Notes	A03/3	B	03/06/2019

**Landscape Plan by:** Birdwood Landscape Design

Drawing	Description	Issue	Date
L/01	Proposed Landscape Plan	B	28/03/2019

Amend condition 1.1 as follows:

- 1.1. Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.

**Architectural Plans by:** Coastline Building Design

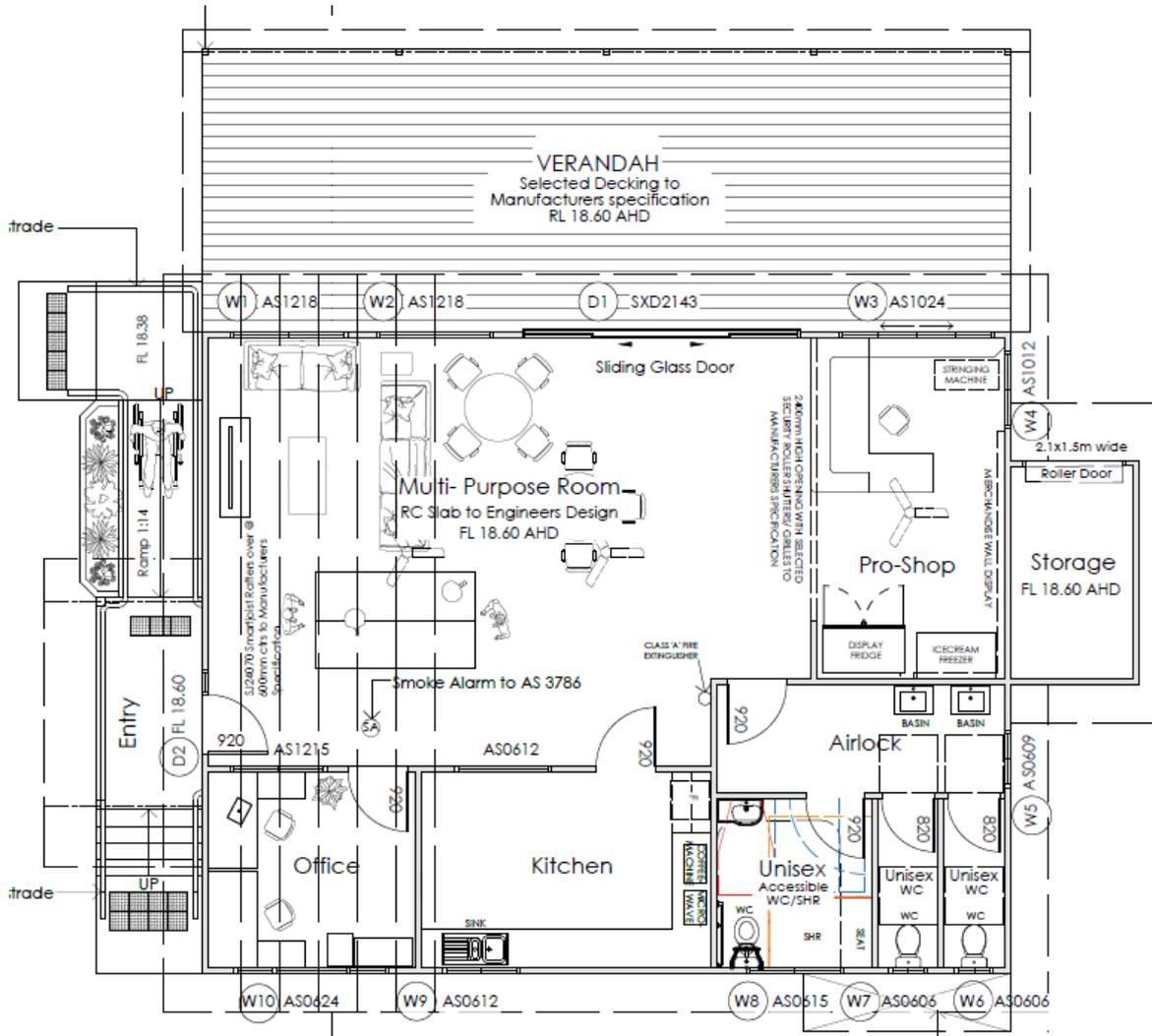
Drawing	Description	Sheets	Issue	Date
8177	Site Plan	A01/3	B	03/06/2019
8177	Floor Plan & Elevations	A02/3	<del>B</del> D	<del>03/06/2019</del>

**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

				05/06/2020
8177	Section AA Safe Design Notes	A03/3	B	03/06/2019

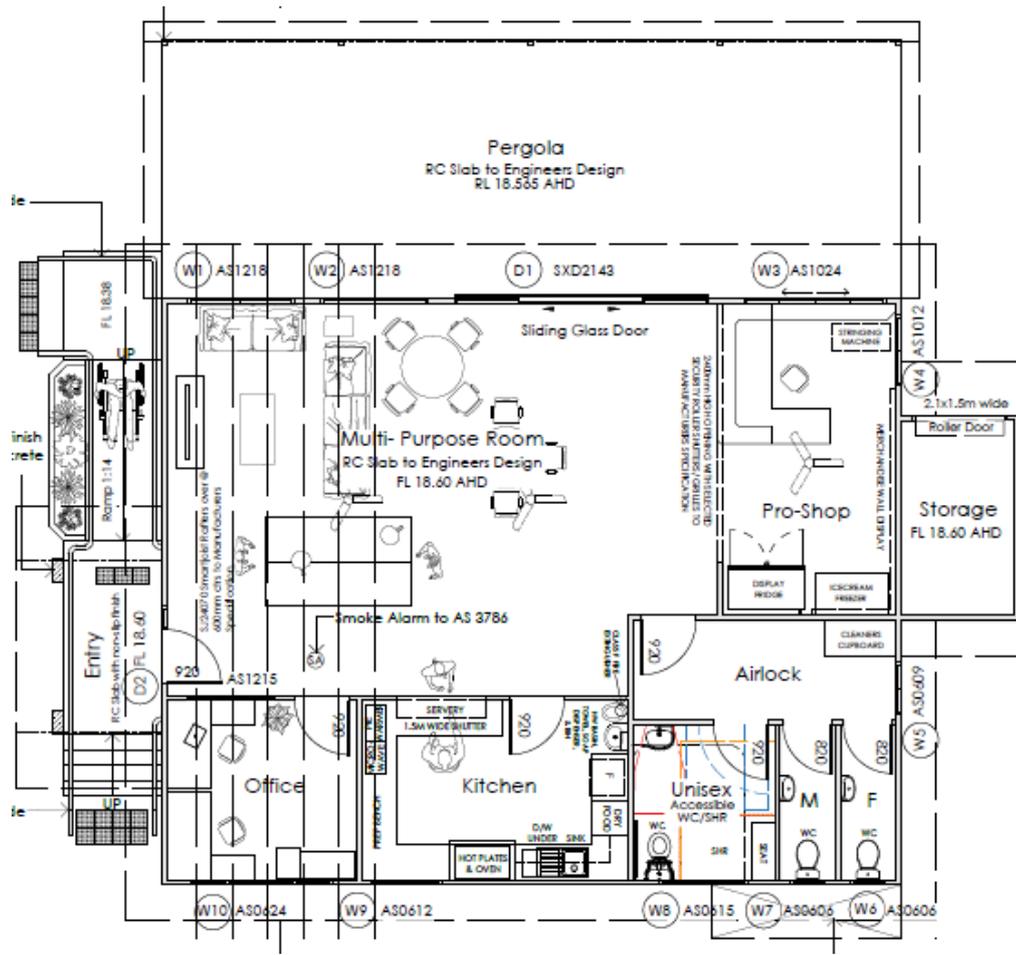
**Landscape Plan by:** Birdwood Landscape Design

Drawing	Description	Issue	Date
L/01	Proposed Landscape Plan	B	28/03/2019



**Figure 4. Floor plan of clubhouse indicating amended kitchen design**

4.2 **DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**



**Figure 5. Previously approved floor plan layout under DA/349/2019**

Comment: The amendment to condition 1.1 will reflect the new floor plan of the kitchen.

6. The addition of condition 6.3

New condition 6.3:

6.3 No handling of food intended for sale, or sale of food (as defined by the *NSW Food Act 2003*), is permitted.

Comment: The proposed condition will ensure the kitchen is not used for commercial purposes as the revised floor plan will not comply with the relevant provisions of the *New South Wales Food Act 2003*, the *Food Regulation 2015*, and *AS4674-2004 – Design, Construction and Fitout of Food Premises*, and *AS1668, Part 11 – Mechanical Ventilation*.

**Assessment**

Having regard for the matters for consideration detailed in Sections 4.15 and 4.55(1A) of the *Environmental Planning and Assessment Act 1979* and other statutory requirements, the assessment has identified the following key issues, which are elaborated upon for consideration of the Local Planning Panel. Any tables relating to plans or policies are provided as an attachment.

***Environmental Planning and Assessment Act 1979 – Section 4.55***

The applicant is seeking amendments to the original development under Section 4.55(1A) of EP&A Act 1979. Having regard to the provisions of Section 4.55(1A), it is considered that the amended proposal is substantially the same development approved by Council. Section 4.55(1A) states:

- (1A) *Modifications involving minimal environmental impact A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:*
- (a) *it is satisfied that the proposed modification is of minimal environmental impact, and*
  - (b) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
  - (c) *it has notified the application in accordance with:*
    - (i) *the regulations, if the regulations so require, or*
    - (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*
  - (d) *it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.*

*Subsections (1), (2) and (5) do not apply to such a modification.*

The modification is of a minor nature and will not result in any external changes to the building, nor the intended use. The modification only involves minor internal changes to the kitchen and restricts the use of the kitchen for non-commercial purposes. There are no

**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

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unreasonable impacts associated with the modification which will allow the use of the kitchen for non-commercial purposes only.

The proposed modification is considered of minimal environmental impact in accordance with Section 4.55(1A) of the *Environmental Planning and Assessment Act 1979*. The modified development is considered substantially the same development for which the consent was originally granted.

Section 4.55(3) requires Council to consider matters referred to in Section 4.15(1) and the reasons for the decision of the original assessment as are relevant to the application for modification of the development consent.

The modification has been assessed against the matters for consideration under Section 4.15 of the Act and found to be satisfactory. The reasons for the decision as recommended in the assessment report for DA/349/2019 were as follows:

1. The proposal is satisfactory having regard for the relevant environmental planning instruments, plans and policies.
2. The proposal has been considered against the objectives of the RE1 Public Recreation zone and has been found to be satisfactory.
3. There are no significant issues or impacts identified with the proposal under s. 4.15 of the EP&A Act.

The proposed modification will not result in any significant changes to the clubhouse as approved under DA/349/2019 and it is considered that it remains satisfactory with regards to the relevant environmental planning instruments, plans and policies. The modifications will remain consistent with the zoning objectives of the RE1 Public Recreation zone and will not result in any significant issues or impacts under section 4.15 of the EP&A Act. The modification will not result in a development that is inconsistent with original reasons for the decision.

**Wyong Local Environmental Plan 2013 - Permissibility**

The subject land is zoned *RE1 Public Recreation* under the provisions of the *Wyong LEP 2013*. The tennis courts were approved on the site on 10 December 1987 under DA/87/427. The tennis courts are best defined as a '*recreation facility (outdoor)*' under the provisions of the *Wyong LEP 2013*.

A '*recreation facility (outdoor)*' is permitted in the zone and is defined in the *Wyong LEP 2013* as:

***recreation facility (outdoor)*** means a building or place (other than a recreation area) used predominantly for outdoor recreation, whether or not operated for the purposes of gain, including a golf course, golf driving range, mini-golf centre, tennis court, paint-ball

**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

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*centre, lawn bowling green, outdoor swimming pool, equestrian centre, skate board ramp, go-kart track, rifle range, water-ski centre or any other building or place of a like character used for outdoor recreation (including any ancillary buildings), but does not include an entertainment facility or recreation facility (major).*

The clubhouse was approved under DA/349/2019 as being ancillary to the tennis courts which would be properly characterized as a recreation facility (outdoor). The proposed modified development will continue to be permissible on the site within the RE1 Public Recreation zone.

**Wyong Local Environmental Plan 2013 Clause 2.3 – Zone Objectives**

Subclause 2.3(2) of the *Wyong LEP 2013* requires the consent authority to have regard for the objectives of development in a zone when determining a development application. The objectives of the *RE1 Public Recreation* zone are as follows:

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the environment for recreational purposes.*
- *To provide linked open space for ecosystem continuity, public access, local community recreation and waterway protection.*
- *To provide space for integrated stormwater treatment devices for flow and water quality management.*
- *To enable ancillary development that complements land zoned for recreational purposes.*

The original assessment found the tennis clubhouse was consistent with the objectives of the zone as it would improve the recreational uses on the site and would provide improved public access to the recreational facility while not impacting on the ecosystem continuity. The modification application is for the amendment to the use of the kitchen and minor internal kitchen works in the clubhouse which is ancillary to the existing tennis courts used for recreational purposes. The proposed modification application is considered to remain consistent with the zone objectives of the RE1 Public Recreation zone.

**Wyong Local Environmental Plan 2013 Clause 7.1 – Acid Sulfate Soils**

The site is identified as containing potentially Class 5 acid sulfate soils. The original assessment identified that the proposed development was not on land below 5m AHD and would not lower the watertable on the adjacent Class 2 and 1 land by more than 1m. The section 4.55 (1A) application does not involve any excavation works and as such will not have any impact on acid sulfate soils.

**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

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**Wyong Local Environmental Plan 2013 Clause 7.9 – Essential services**

Clause 7.9 requires the consent authority to be satisfied that the site has access to all essential services for the development including water, electricity, management of sewage, drainage and suitable vehicular access.

The original assessment identified all essential services were to be suitably provided to the site. The proposed modification does not include any amendments to the servicing arrangements of the development.

**Draft Central Coast Local Environmental Plan (CCLEP) 2018**

The Draft CCLEP 2018 will replace the former Wyong Council and Gosford Council planning instruments. Under the Draft CCLEP 2018 the zoning of the site remains *RE1 Public Recreation* and a *recreation facility (outdoor)* remains permissible and consistent with the objectives of the RE1 Public Recreation zone. There are no changes to, or additional development standards in, the Draft CCLEP 2018 that require further discussion in relation to the proposed amendment.

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

Under the above SEPP the site is identified as being located within a Coastal Environment Area and a Coastal Use area. The proposal was assessed against the provisions of SEPP (Coastal Management) 2018 in the original assessment which found the proposal to be consistent with the provisions of clauses 13 and 14 of the SEPP. The proposed amendment is minor and will not result in any additional impacts to the Coastal Environment Area and the Coastal Use Area.

**Wyong Development Control Plan 2013**

*DCP Chapter 1.2 -Notification of Development Proposals*

Under clause 2.13.2, a s.455(1A) application does not require advertising unless staff with the appropriate delegated authority is of the opinion it may impact on an adjoining property and submissions were received to the original application. This modification application was not advertised as it is considered that the proposed modification will not impact on any adjoining property and no submissions were received for the original application.

*DCP Chapter 2.11 – Parking and Access*

Parking was assessed in the original assessment of the proposal, which identified the site contains 13 car parking spaces which was considered to be suitable for the proposed development. The proposed amendment will not increase the required parking on the site

**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

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under the provisions of Chapter 2.11 or alter the current parking area and as such is considered to be satisfactory.

DCP Chapter 3.1 – Site Waste Management

A suitable site waste management plan was submitted with the original application. The proposed amendment is minor and will not result in any additional demolition works. The waste management plan submitted with the original application is satisfactory and does not require amendment.

**Likely Impacts of the Development**

Built Environment

The original assessment had regard for any potential impacts on the built environment and found the proposal to be satisfactory. The proposed amendment is for minor internal kitchen works and the use of the kitchen and as such the proposed amendments will not result in any additional impacts to the built environment.

Access and Transport

The tennis clubhouse is located adjacent to an existing carpark area which is accessed from Parkside Drive. Access and transport were assessed in the original application development and was found to be satisfactory. There are no proposed amendments to the access or transport arrangements for the proposal.

Context and Setting

The surrounding locality is predominantly low density residential development. In the original assessment the tennis clubhouse was considered to have suitable regard for the context and setting of the site given its location adjoining the existing tennis courts and public recreational area. The proposed amendments to the tennis clubhouse are consistent with the recreational uses on the site.

Natural Environment

Impacts to the natural environment were considered under the original assessment, including the removal and replacement planting of two trees. The proposed modification relates to minor internal works and subsequent use of the facility and will not result in any additional impacts to the natural environment.

**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

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**Suitability of the Site for the Development:**

The proposed modification as discussed above is minor in nature. The modification will not impact on the findings of the original assessment which found the approved development suitable for the site and in keeping with the character of the area.

**Any Submission made in Accordance with this Act or Regulations**

The section 4.55(1A) application was not required to be notified in accordance with clause 2.13.2 of Chapter 1.2 – Notification of Development Proposals.

**Submissions from Public Authorities**

There were no referrals or submissions from any public authorities associated with the modified development.

**Internal Consultation**

*Development Engineer*

The application was referred to Council's Development Engineer who advised there were no proposed amendments to the engineering conditions issued in the original consent and raised no objection to the proposal.

*Environmental Health Officer*

The application was referred to Council's Environmental Health Officer regarding the removal of the conditions relating to the operation of the kitchen for commercial purposes. The officer raised no objection to the removal of conditions 5.5, 5.7, 5.8 and 5.9 given the kitchen is proposed to be used for non-commercial purposes. The officer has recommended the following condition of consent to be incorporated into the consent to ensure the kitchen is not used for commercial purposes:

- *No handling of food intended for sale, or sale of food (as defined by the NSW Food Act 2003), is permitted.*

**Ecologically Sustainable Principles**

The original assessment had regard to ecologically sustainable development principles and was considered to be consistent with the principles. The original assessment considered the proposal to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and was unlikely to have any significant adverse impacts on the environment and would not decrease environmental quality for future

**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

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generations. The proposed modification is minor, and it is considered that the development will remain consistent with the ecologically sustainable development principles.

**Climate Change**

The potential impacts of climate change on the proposed development were considered by Council as part of the original assessment of the application. The assessment included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope / combat / withstand these potential impacts. It is considered that the proposed amendment will not result in any climate change impacts.

**Other Matters for Consideration:**

Contributions

There are no applicable contributions required to be levied for the proposed modification under Council's Section 7.11 Contributions Plan for the Gorokan District.

**The Public Interest**

As previously discussed, the site is included in Schedule 1 of Council's *'Plan of Management for Sportsgrounds, Parks and General Community Use'* (as adopted 8 May 1996 and last amended 14 December 2005). The plan authorises the provision of additional tennis courts where a masterplan has been adopted. Council adopted a masterplan which included the provision of tennis courts and a clubhouse on the site on 22 September 1998. The proposed modification to the tennis clubhouse development consent are consistent with the Plan of Management applying to the site.

The original proposal was in the public interest as it would involve the redevelopment of the tennis clubhouse and improve the recreational tennis facilities in the area. The proposed modification is substantially the same development and contributes to the improved amenity of the area by providing patrons with kitchen facilities within the tennis clubhouse. The general style and location of the proposed development will remain unchanged and will result in no additional impacts to adjoining properties. Having regard to the assessment contained in this report, it is considered that approval of the section 4.55(1A) application is in the public interest.

**Conclusion**

After consideration of the development against Sections 4.55(1A) and 4.15 of the *Environmental Planning and Assessment Act 1979* and the relevant statutory and policy provisions, the proposed modification to development consent 349/2019, involving the

**4.2 DA/349/2019/A - Charmhaven Park, 35W Parkside Drive, Charmhaven - Tennis clubhouse ancillary to recreation facility (outdoor) and demolition (amended application) (contd)**

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deletion of conditions 5.5, 5.7, 5.8, 5.9, amendment to condition 1.1 and insertion of a new condition 6.3, is considered reasonable and warranted in this instance. Accordingly, the proposed Section 4.55(1A) is recommended for approval.

**Recommendation**

That the application for modification of Development Consent DA/349/2019 be modified as follows:

1. Amend condition 1.1.
  - 1.1 Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.

**Architectural Plans by:** Coastline Building Design

<b>Drawing</b>	<b>Description</b>	<b>Sheets</b>	<b>Issue</b>	<b>Date</b>
8177	Site Plan	A01/3	B	03/06/2019
8177	Floor Plan & Elevations	A02/3	D	05/06/2020
8177	Section AA Safe Design Notes	A03/3	B	03/06/2019

**Landscape Plan by:** Birdwood Landscape Design

<b>Drawing</b>	<b>Description</b>	<b>Issue</b>	<b>Date</b>
L/01	Proposed Landscape Plan	B	28/03/2019

2. Deletion of conditions 5.5, 5.7, 5.8 and 5.9.
3. Addition of new condition 6.3.
  - 6.3 No handling of food intended for sale, or sale of food (as defined by the *NSW Food Act 2003*) is permitted.

**Attachments**

- |          |                                            |           |
|----------|--------------------------------------------|-----------|
| <b>1</b> | DA/349/2019/A - Draft Modified Conditions  | D14124379 |
| <b>2</b> | DA/349/2019/A - Modified Plan for Approval | D14135441 |
| <b>3</b> | Original Development Consent DA/349/2019   | D13591424 |
| <b>4</b> | Original Stamped Plans DA/349/2019         | D14135030 |

**Attachment 1 – Draft Modified Conditions**

Development Consent No. DA/349/2019 is recommended to be modified as follows:

**Amend condition 1.1 as follows:**

- 1.1. Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.

**Architectural Plans by:** Coastline Building Design

Drawing	Description	Sheets	Issue	Date
8177	Site Plan	A01/3	B	03/06/2019
8177	Floor Plan & Elevations	A02/3	<del>B</del> D	<del>03/06/2019</del> 05/06/2020
8177	Section AA Safe Design Notes	A03/3	B	03/06/2019

**Landscape Plan by:** Birdwood Landscape Design

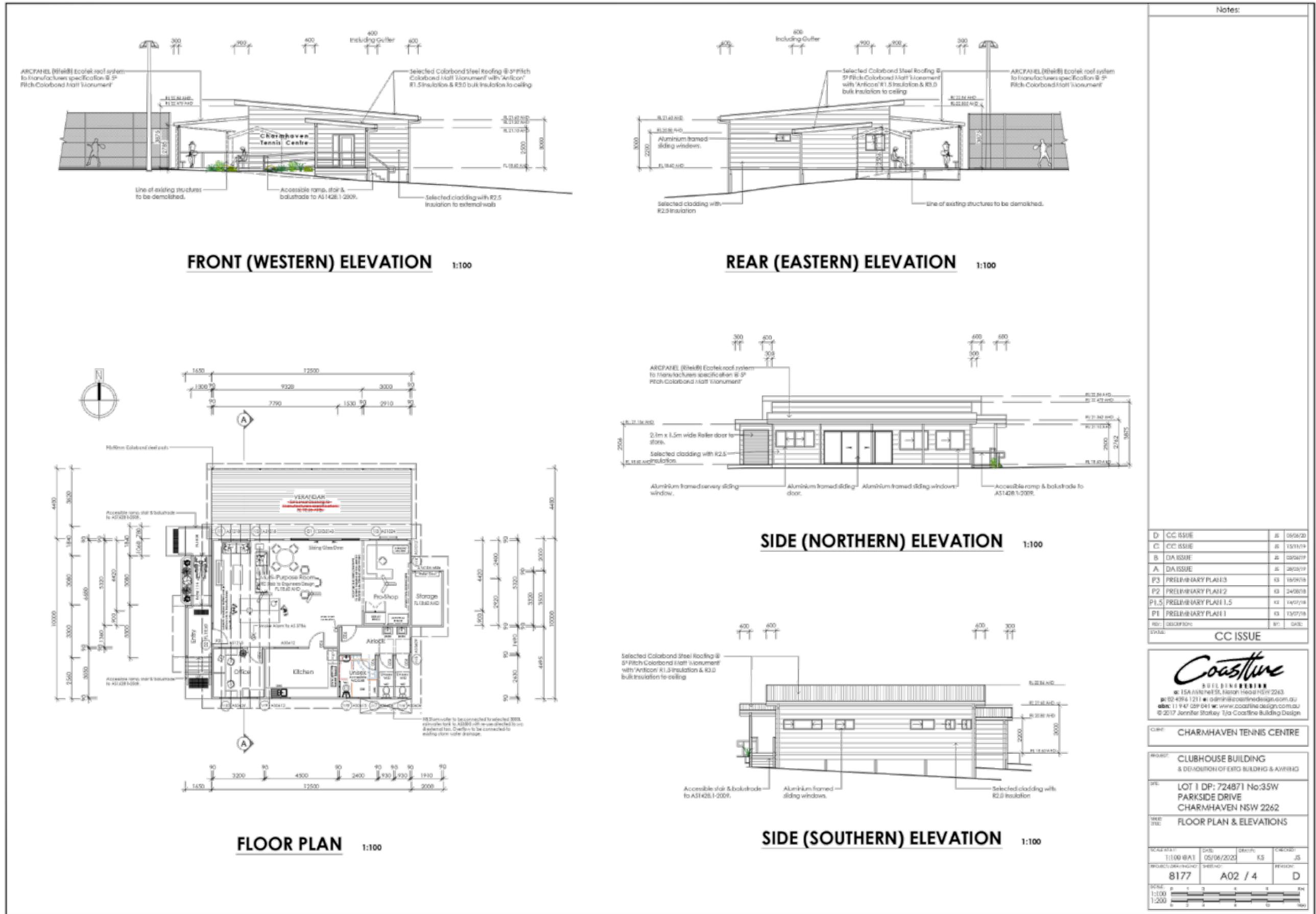
Drawing	Description	Issue	Date
L/01	Proposed Landscape Plan	B	28/03/2019

**Delete the following conditions:**

- 5.5. No food handling, (as defined by the *NSW Food Act 2003*), is permitted in the food premises prior to the issue of the Occupation Certificate.
- 5.7. Compliance with the requirements of the *New South Wales Food Act 2003*, the *Food Regulation 2015*, and AS4674–2004 – Design, Construction and Fitout of Food Premises, and AS1668, Part 11 – Mechanical Ventilation, for all food preparation and food storage areas, including liquor areas.
- 5.8. The installation of hand wash facilities with a minimum dimension of 500mm x 400mm providing warm running water through a common mixing spout with hands-free tap operation (consisting of elbow or wrist operated tap levers, foot or hip operated tap levers, or electronic sensor tap operation).
- 5.9. The internal walls of the kitchen are to be lined with 9.0mm fibrous cement sheeting and are to be inspected by Council's Environmental Health Officer (Food) prior to covering.

**Insert the following ongoing condition:**

- 6.3. No handling of food intended for sale, or sale of food (as defined by the *NSW Food Act 2003*), is permitted.



Telephone: 1300 463 954  
Please Quote: DA/349/2019  
Responsible Officer: Rebecca Samways/JP

Coastline Building Design  
15A Mitchell St  
NORAH HEAD NSW 2263

**Notice of Determination of a Development Application**  
issued under the *Environmental Planning and Assessment Act 1979*  
Sections 4.16, 4.17 and 4.18(1)(a)

**Development Application No:** DA/349/2019  
**Applicant:** Coastline Building Design  
**Property Address:** Lot 1 DP 724871, Lot 191 DP 25586  
Charmhaven Park, 35W Parkside Dr, CHARMHAVEN  
NSW 2263  
**Proposal:** Tennis Clubhouse Ancillary to Recreation Facility  
(Outdoor) & Demolition  
**Determination:** Approved  
**Determination Date:** 25 June 2019

**Date from which this consent operates**

In accordance with Section 4.20 of the *Environmental Planning and Assessment Act 1979*, this consent becomes effective and operates from the date of this notice being 25 June 2019.

**Consent to lapse on**

25 June 2024

**Imposition of conditions**

Subject to the provisions of Section 4.17 of the Act this Consent has been granted subject to conditions annexed to this consent.

**Review of Determination**

Subject to provisions of Sections 8.2, 8.3, 8.4 and 8.5 of the Act the applicant may make an application seeking a review of this determination, providing it is made in time for Council to determine the review within six (6) months of this determination.

**Right of Appeal**

Sections 8.7 and 8.10 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court within six (6) months, from the date of determination.

On behalf of the consent authority

Gary Murphy

**Chief Executive Officer**

Per:



Salli Pendergast

**Principal Development Planner**

**DEVELOPMENT ASSESSMENT**

## 1. PARAMETERS OF THIS CONSENT

- 1.1. Implement the development substantially in accordance with the plans and supporting documents listed below as submitted by the applicant and to which is affixed a Council stamp "Development Consent" unless modified by any following condition.

### Architectural Plans by: Coastline Building Design

Drawing	Description	Sheets	Issue	Date
8177	Site Plan	A01/3	B	03/06/2019
8177	Floor Plan & Elevations	A02/3	B	03/06/2019
8177	Section AA Safe Design Notes	A03/3	B	03/06/2019

### Landscape Plan by: Birdwood Landscape Design

Drawing	Description	Issue	Date
L/01	Proposed Landscape Plan	B	28/03/2019

- 1.2. Carry out all building works in accordance with the Building Code of Australia.
- 1.3. A Construction Certificate is to be issued by the Principal Certifying Authority prior to commencement of any construction works. The application for this Certificate is to satisfy all of the requirements of the *Environmental Planning and Assessment Regulation 2000*.
- 1.4. Submit and have approved, an application for an Occupation Certificate for the development must be submitted to and approved by the Principal Certifying Authority. The Occupation Certificate application is to satisfy all of the requirements of the *Environmental Planning and Assessment Regulation 2000*.

## 2. PRIOR TO ISSUE OF ANY CONSTRUCTION CERTIFICATE

- 2.1. All conditions under this section must be met prior to the issue of any Construction Certificate.
- 2.2. The submission to the Accredited Certifier of a detailed stormwater management plan including onsite stormwater disposal details. The plans must be approved by the Accredited Certifier prior to issue of the Construction Certificate.

- 2.3. The developer must submit an application to Council under Section 305 of the *Water Management Act 2000* for any requirements for the obtaining of a Section 307 Certificate of Compliance. The application must be made prior to the issue of the Construction Certificate. **Note:** The Section 305 Notice may contain requirements associated with the development that must be completed prior to the issue of the Construction Certificate.
- 2.4. The "Proposed Landscape Plan" is to be amended to include replacement planting of a minimum of four *Corymbia maculata* Spotted Gum with minimum pot size of 75L.

### 3. PRIOR TO COMMENCEMENT OF ANY WORKS

- 3.1. All conditions under this section must be met prior to the commencement of any works.
- 3.2. No activity is to be carried out on-site until the Construction Certificate has been issued, other than:
  - a) Site investigation for the preparation of the construction, and / or
  - b) Implementation of environmental protection measures, such as erosion control and the like that are required by this consent
  - c) Demolition approved by this consent.
- 3.3. Appoint a Principal Certifying Authority for the building work:
  - a) The Principal Certifying Authority (if not Council) is to notify Council of their appointment and notify the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work no later than two (2) days before the building work commences.
  - b) Submit to Council a Notice of Commencement of Building Works or Notice of Commencement of Subdivision Works form giving at least two (2) days' notice of the intention to commence building or subdivision work. The forms can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au)
- 3.4. Erect a sign in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:
  - a) The name, address and telephone number of the Principal Certifying Authority for the work; and
  - b) The name of the principal contractor and a telephone number at which that person can be contacted outside of working hours; and
  - c) That unauthorised entry to the work site is prohibited.
  - d) Remove the sign when the work has been completed.
- 3.5. Disconnect, seal and make safe all existing site services prior to the commencement of any demolition on the site. Sewer and water services must be disconnected by a licensed

plumber and drainer with a Start Work Docket submitted to Council's Plumbing and Drainage Inspector as the Water and Sewer Authority.

- 3.6. Erect a temporary hoarding or temporary construction site fence between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works, if the works:
- a) could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
  - b) could cause damage to adjoining lands by falling objects, or
  - c) involve the enclosure of a public place or part of a public place.

**Note 1:** A structure on public land or on or over a public road requires the prior approval of the relevant authority under the *Local Government Act 1993* or the *Roads Act 1993*, respectively.

**Note 2:** The *Work Health and Safety Act 2011* and *Work Health and Safety Regulation 2011* contain provisions relating to scaffolds, hoardings and other temporary structures.

- 3.7. Provide or make available toilet facilities at the work site before works begin and maintain the facilities until the works are completed at a ratio of one toilet plus one additional toilet for every twenty (20) persons employed at the site.

Each toilet must:

- a) be a standard flushing toilet connected to a public sewer, or
  - b) have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
  - c) be a temporary chemical closet approved under the *Local Government Act 1993*.
- 3.8. Work involving bonded asbestos removal work (of an area of more than 10 square metres) or friable asbestos removal work, must be undertaken by a licensed asbestos removalist in accordance with the provisions of Clause 458 of the *Work Health and Safety Regulation 2011*. The transport and disposal of more than 10 square metres of asbestos sheeting or more than 100 kilograms of asbestos waste must be undertaken in accordance with the requirements of *The Protection of the Environment Operations (Waste) Regulation 2014*.

Note: The NSW Environment Protection Authority has introduced "WasteLocate" to gather and record information on the movement and disposal of this waste.

- 3.9. Prior to commencement of any works establish Tree Protection Zones (TPZ) around trees 1 -23 to be retained. In accordance with *Australian Standard AS4970-2009: Protection of Trees on Development Sites* under the supervision of the project arborist (minimum qualification AQF 5). Trees to be retained are to be protected by 1.8 metre high chain mesh fence around Tree Protection Zones.

#### 4. DURING WORKS

- 4.1. All conditions under this section must be met during works.
- 4.2. Carry out construction or demolition works during the construction phase of the development only between the hours as follows:

7.00am and 5.00pm Monday to Saturday

No construction or demolition works associated with the development are permitted to be carried out at any time on a Sunday or a public holiday.

- 4.3. During the construction phase of the development, if any Aboriginal object (including evidence of habitation or remains), is discovered during the course of the work:
- a) All excavation or disturbance of the area must stop immediately in that area, and
  - b) The Office of Environment and Heritage must be advised of the discovery in accordance with section 89A of the *National Parks and Wildlife Act 1974*.

**Note:** If an Aboriginal object is discovered, an Aboriginal heritage impact permit may be required under the *National Parks and Wildlife Act 1974*.

- 4.4. Implement and maintain all erosion and sediment control measures at or above design capacity for the duration of the construction works and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment.
- 4.5. Keep a copy of the stamped approved plans on-site for the duration of site works and make the plans available upon request to either the Principal Certifying Authority or an officer of Council.
- 4.6. The developer is solely responsible for any costs relating to alterations and extensions of existing roads, drainage, water and sewer infrastructure and other utilities for the proposed development.

- 4.7. Place all building materials, plant and equipment on the site of the development during the construction phase of the development so as to ensure that pedestrian and vehicular access within adjoining public roads, footpaths and reserve areas, is not restricted and to prevent damage to public infrastructure. Further, no construction work is permitted to be carried out within the road reserve unless the works are associated with a separate approval issued under the provisions of the *Roads Act 1993*.
- 4.8. The tree protection measures outlined in the "Tree Protection Plan" in Section 6.0 of the "Arboriculture Impact Assessment", prepared by Russell Kingdom dated 11/03/2019 are to be fully implemented. This includes engagement of a project arborist with AQF5 qualifications to supervise works for the duration of construction.
- 4.9. All required tree protection measures are to be maintained for the duration of construction works.
- 4.10. The mitigation measures outlined in Section 9.0 of the "Ecological Assessment", prepared by Clarke, Dowdell and Associates dated April 2019 are to be fully implemented.

## 5. PRIOR TO ISSUE OF ANY OCCUPATION CERTIFICATE

- 5.1. Prior to the issue of an Occupation Certificate, the developer must comply with the requirements (including financial costs) of any relevant utility provider (for electricity, water, sewer, drainage, gas, telecommunications, roads, etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.
- 5.2. The construction of the stormwater management system in accordance with the approved Stormwater Management Plan. Certification of the construction by a suitably qualified consultant shall be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.
- 5.3. The obtaining of a satisfactory final plumbing & drainage inspection advice or Section 307 Certificate of Compliance under the *Water Management Act 2000* for water and sewer requirements for the development from Central Coast Council as the Water Supply Authority, prior to issue of the Occupation Certificate. All works for the development must be approved by Council prior to the issue of a Certificate of Compliance.
- 5.4. All conditions under this section must be met prior to the issue of any Occupation Certificate.
- 5.5. No food handling, (as defined by the *NSW Food Act 2003*), is permitted in the food premises prior to the issue of the Occupation Certificate.
- 5.6. All liquid trade waste is required to pass through a basket arrestor with fixed screens, fitted to all floor wastes and sinks, before being discharged into the sewerage system.

- 5.7. Compliance with the requirements of the *New South Wales Food Act 2003*, the *Food Regulation 2015*, and AS4674–2004 – Design, Construction and Fitout of Food Premises, and AS1668, Part 11 – Mechanical Ventilation, for all food preparation and food storage areas, including liquor areas.
- 5.8. The installation of hand wash facilities with a minimum dimension of 500mm x 400mm providing warm running water through a common mixing spout with hands-free tap operation (consisting of elbow or wrist operated tap levers, foot or hip operated tap levers, or electronic sensor tap operation).
- 5.9. The internal walls of the kitchen are to be lined with 9.0mm fibrous cement sheeting and are to be inspected by Council's Environmental Health Officer (Food) prior to covering.
- 5.10. Complete the landscaping works.

## 6. ONGOING

- 6.1. Maintain all works associated with the approved Landscape Plans for a period of twelve (12) months from the date of the issue of any Occupation Certificate to ensure the survival and establishment of the landscaping.
- 6.2. Replace all damaged, dead or missing areas of lawn and plantings at the completion of the landscaping maintenance period, including adjoining road reserve areas that are in a state of decline, to a healthy and vigorous condition in accordance with the approved detailed Landscape Plans and Development Consent Conditions.

## PENALTIES

Failure to comply with this development consent and any condition of this consent may be a criminal offence. Failure to comply with other environmental laws may also be a criminal offence.

Where there is any breach Council may without any further warning:

- Issue Penalty Infringement Notices (On-the-spot fines);
- Issue notices and orders;
- Prosecute any person breaching this consent, and/or
- Seek injunctions/orders before the courts to retain and remedy any breach.

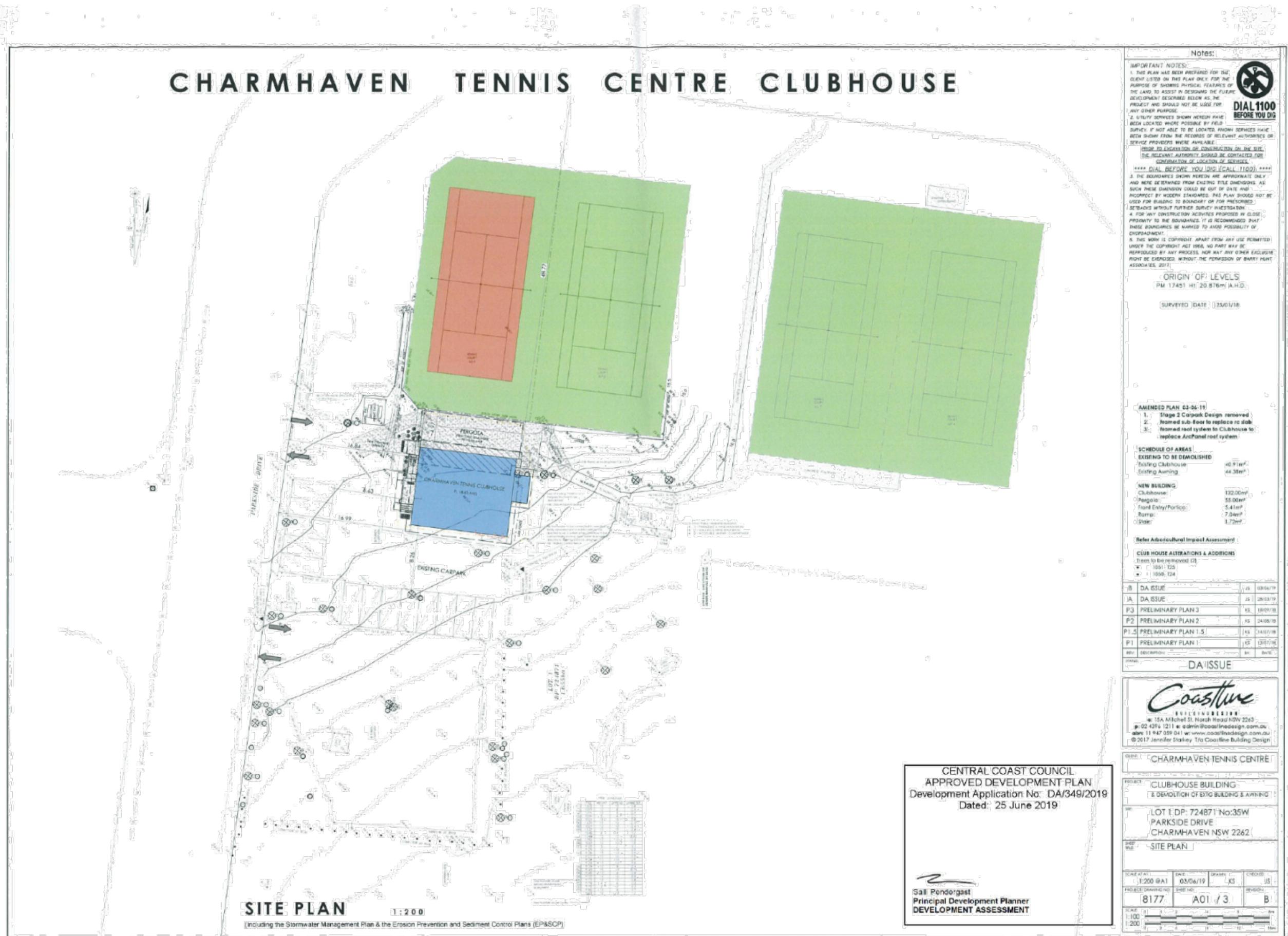
**Warnings as to Potential Maximum Penalties**

Maximum Penalties under NSW Environmental Law include fines up to \$1.1 Million and/or custodial sentences for serious offences.

**ADVISORY NOTES**

- Discharge of sediment from a site may be determined to be a pollution event under provisions of the *Protection of the Environment Operations Act 1997*. Enforcement action may commence where sediment movement produces a pollution event.
- The following public authorities may have separate requirements in the following aspects:
  - a) Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments
  - b) Jemena Asset Management for any change or alteration to the gas line infrastructure
  - c) Ausgrid for any change or alteration to electricity infrastructure or encroachment within transmission line easements
  - d) Telstra, Optus or other telecommunication carriers for access to their telecommunications infrastructure
  - e) Central Coast Council in respect to the location of water, sewerage and drainage services.
- Carry out all work under this Consent in accordance with SafeWork NSW requirements including the *Workplace Health and Safety Act 2011* No 10 and subordinate regulations, codes of practice and guidelines that control and regulate the development industry.
- Dial Before You Dig  
Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial Before You Dig at [www.1100.com.au](http://www.1100.com.au) or telephone 1100 before excavating or erecting structures. (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial Before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial Before You Dig service in advance of any construction or planning activities.

- Telecommunications Act 1997 (Commonwealth)  
Telstra (and its authorised contractors) are the only companies that are permitted to conduct works on Telstra's network and assets. Any person interfering with a facility or installation owned by Telstra is committing an offence under the *Criminal Code Act 1995* (Cth) and is liable for prosecution. Furthermore, damage to Telstra's infrastructure may result in interruption to the provision of essential services and significant costs. If you are aware of any works or proposed works which may affect or impact on Telstra's assets in any way, you are required to contact: Telstra's Network Integrity Team on phone number 1800 810 443.



**SITE PLAN** 1:200  
[Including the Stormwater Management Plan & the Erosion Prevention and Sediment Control Plans (EP&SCP)]

CENTRAL COAST COUNCIL  
APPROVED DEVELOPMENT PLAN  
Development Application No: DA/349/2019  
Dated: 25 June 2019

Sally Pendergast  
Principal Development Planner  
DEVELOPMENT ASSESSMENT

NOTES:

IMPORTANT NOTES:  
1. THIS PLAN HAS BEEN PREPARED FOR THE CLIENT LISTED ON THIS PLAN ONLY FOR THE PURPOSE OF SHOWING PHYSICAL FEATURES OF THE LAND TO ASSIST IN DESIGNING THE FUTURE DEVELOPMENT DESCRIBED BELOW AS THE PROJECT AND SHOULD NOT BE USED FOR ANY OTHER PURPOSE.  
2. UTILITY SERVICES SHOWN HEREON HAVE BEEN LOCATED WHERE POSSIBLE BY FIELD SURVEY. IF NOT ABLE TO BE LOCATED FROM SERVICES HAVE BEEN SHOWN FROM THE RECORDS OF RELEVANT AUTHORITIES OR SERVICE PROVIDERS WHERE AVAILABLE.  
(BEFORE EXCAVATION OR CONSTRUCTION ON THE SITE, THE RELEVANT AUTHORITY SHOULD BE CONTACTED FOR CONFIRMATION OF LOCATION OF SERVICES.)  
\*\*\*\* DIAL BEFORE YOU DIG (CALL 1100) \*\*\*\*  
3. THE BOUNDARIES SHOWN HEREON ARE APPROXIMATE ONLY AND WERE DETERMINED FROM EXISTING TITLE DIMENSIONS AS SUCH THESE DIMENSIONS COULD BE OUT OF DATE AND IN ACCORD WITH MODERN STANDARDS. THIS PLAN SHOULD NOT BE USED FOR BOUNDARY OR FOR PRECISED SETBACKS WITHOUT FURTHER SURVEY INVESTIGATION.  
4. FOR ANY CONSTRUCTION ACTIVITIES PROPOSED IN CLOSE PROXIMITY TO THE BOUNDARIES, IT IS RECOMMENDED THAT THESE BOUNDARIES BE MARKED TO AVOID POSSIBILITY OF ENCROACHMENT.  
5. THIS WORK IS COPYRIGHT APART FROM ANY USE PERMITTED UNDER THE COPYRIGHT ACT 1968, NO PART MAY BE REPRODUCED BY ANY PROCESS, NOR MAY ANY OTHER EXCLUSIVE RIGHT BE EXERCISED WITHOUT THE PERMISSION OF BENTLEY PLANT ASSOCIATES 2017.

ORIGIN OF LEVELS  
PM 17451 HT 20.876m A.H.D.  
SURVEYED DATE 13/01/18

AMENDED PLAN 03-04-19  
1. Stage 2 Carpark Design removed  
2. Framed sub-floor to replace re slab  
3. Framed roof system to Clubhouse to replace ArcPanel roof system

SCHEDULE OF AREAS

EXISTING TO BE DEMOLISHED	
Existing Clubhouse	40.91m <sup>2</sup>
Existing Awning	44.38m <sup>2</sup>
NEW BUILDING	
Clubhouse	132.00m <sup>2</sup>
Pergola	55.00m <sup>2</sup>
Front Entry/Porchoo	5.41m <sup>2</sup>
Ramp	7.04m <sup>2</sup>
Stair	1.72m <sup>2</sup>

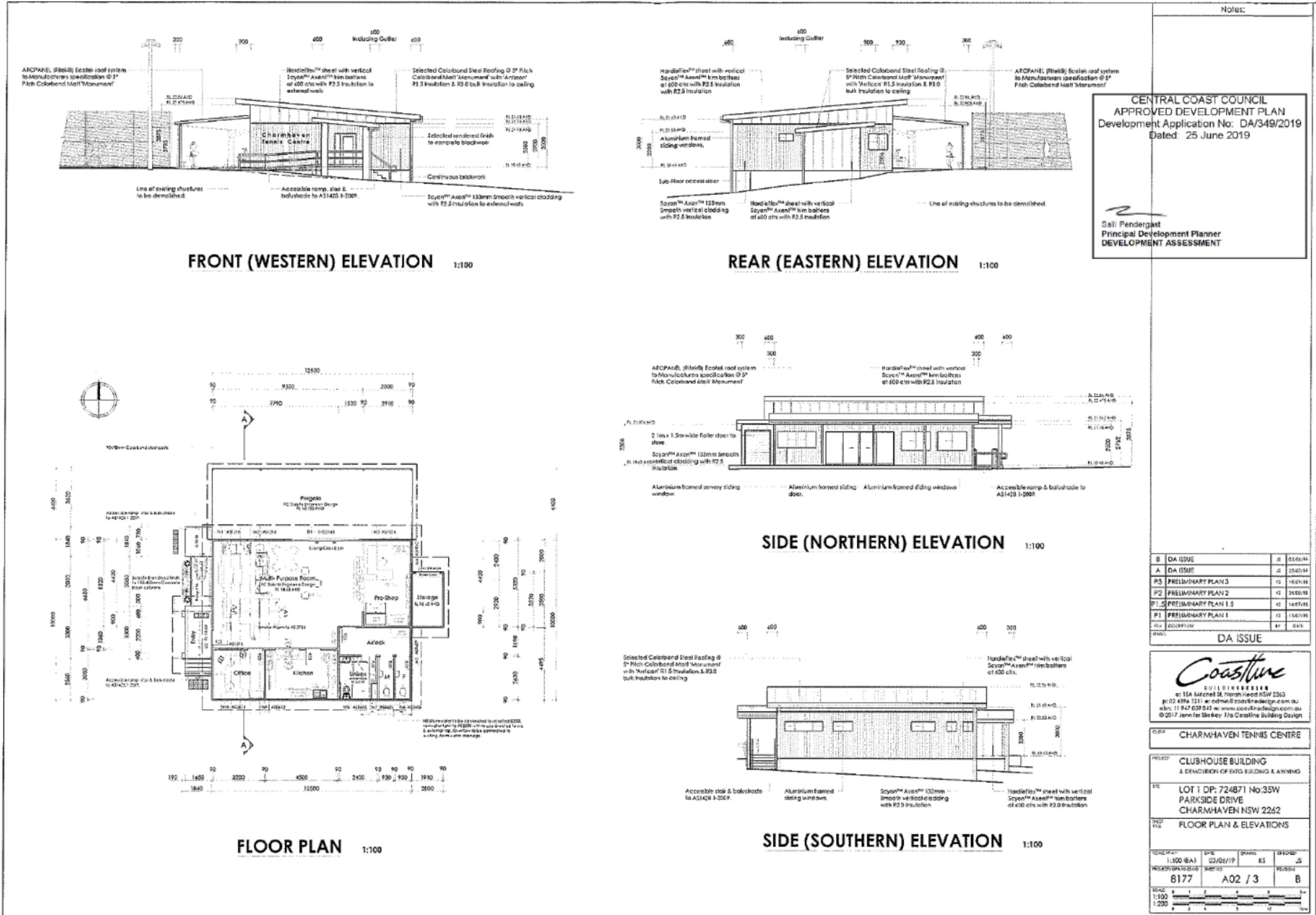
Refer Arborescultural Impact Assessment

CLUB HOUSE ALTERATIONS & ADDITIONS  
Trees to be removed (2)  
\* 1 1001, T25  
\* 1 1009, T24

ISSUE	DA ISSUE	DATE
A	DA ISSUE	25/06/19
P3	PRELIMINARY PLAN 3	05/10/18
P2	PRELIMINARY PLAN 2	24/08/18
P1.5	PRELIMINARY PLAN 1.5	14/07/18
P1	PRELIMINARY PLAN 1	09/17/18

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BUILDING DESIGN  
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p: 02 4391 1211 e: admin@coastlinedesign.com.au  
www: 11 447 059 041 w: www.coastlinedesign.com.au  
© 2017 Jennifer Stokley T/a Coastline Building Design

PROJECT	CHARMHAVEN TENNIS CENTRE
PROJECT	CLUBHOUSE BUILDING & DEMOLITION OF EXISTING BUILDING & AWNING
LOT	LOT 1 DP: 724871 No:35W PARKSIDE DRIVE CHARMHAVEN NSW 2262
SHEET	SITE PLAN
SCALE	1:200 9A1
DATE	03/06/19
DRAWN	KS
CHECKED	JS
PROJECT DRAWING NO	8177
SHEET NO	A01 / 3
REVISION	B



# SAFE DESIGN NOTES

THESE NOTES MUST BE READ IN CONJUNCTION WITH THE SAFE DESIGN REPORT (SEPARATE DOC ATTACHMENT). THIS REPORT CAN BE OBTAINED FROM THE OWNER OR DESIGNER / PLANS.

## I. FALLS, SLIPS, TRIPS

### a) WORKING AT HEIGHTS

#### DURING CONSTRUCTION

Wherever possible, components for this building should be prefabricated off-site or at ground level to minimise the risk of workers falling more than two metres. However, construction of this building will require workers to be working at heights where a fall in excess of two metres is possible and injury is likely to result from such a fall. The builder should provide a suitable barrier wherever a person is required to work in a situation where falling more than two metres is a possibility.

#### DURING OPERATION OR MAINTENANCE

For houses or other low-rise buildings where scaffolding is appropriate, cleaning and maintenance of windows, walls, roof or other components of this building will require persons to be situated where a fall from a height in excess of two metres is possible. Where this type of activity is required, scaffolding, ladders or trestles should be used in accordance with relevant codes of practice, regulations or legislation. For buildings where scaffolding, ladders, trestles are not appropriate, cleaning and maintenance of windows, walls, roof or other components of this building will require persons to be situated where a fall from a height in excess of two metres is possible. Where this type of activity is required, scaffolding, fall barriers or Personal Protective Equipment (PPE) should be used in accordance with relevant codes of practice, regulations or legislation.

### b) SLIPPERY OR UNEVEN SURFACES

#### FLOOR FINISHES

If finishes have been specified by designer, these have been selected to minimise the risk of floors and paved areas becoming slippery when wet or when walked on with wet shoes. Any changes to the specified finish should be made in consultation with the designer or, if this is not practical, surfaces with an equivalent or better slip resistance should be chosen.

#### FLOOR FINISHES By Owner

If designer has not been involved in the selection of surface finishes, the owner is responsible for the selection of surface finishes in the pedestrian trafficable areas of this building. Surfaces should be selected in accordance with AS HB 197:1999 and AS/NZS 4596:2004.

### STEPS, LOOSE OBJECTS AND UNEVEN SURFACES

Due to design restrictions for this building, steps and/or ramps are included in the building which may be a hazard to workers carrying objects or otherwise occupied. Steps should be clearly marked with both visual and tactile warning during construction, maintenance, demolition and at all times when the building operates as a workplace.

Building owners and occupants should monitor the pedestrian access ways and in particular access to areas where maintenance is routinely carried out to ensure that surfaces have not eroded or cracked so that they become uneven and present a slip hazard. Spills, loose material, stray objects or any other matter that may cause a slip or trip hazard should be cleaned or removed from access ways.

Contractors should be required to maintain a tidy work site during construction, maintenance or demolition to reduce the risk of slips and falls in the workplace. Materials for construction or maintenance should be stored in designated areas away from access ways and work areas.

## 2. FALLING OBJECTS

### LOOSE MATERIALS OR SMALL OBJECTS

Construction, maintenance or demolition work on or around this building is likely to involve persons working above ground level or above floor levels. Where this occurs and in more of the following instances should be taken to avoid objects falling from the area where the work is being carried out onto persons below:

1. Prevent or restrict access to areas below where the work is being carried out.
2. Provide toeboards to scaffolding or work platforms.
3. Provide protective structure below the work area.
4. Ensure that all persons below the work area have Personal Protective Equipment (PPE).

### BUILDING COMPONENTS

During construction, renovation or demolition of this building, parts of the structure including fabricated steelwork, heavy panels and many other components will remain standing prior to or after supporting parts are in place. Contractors should ensure that temporary loading or other required support is in place at all times when collapse which may injure persons in the area is a possibility.

Mechanical lifting of materials and components during construction, maintenance or demolition presents a risk of falling objects. Contractors should ensure that appropriate lifting devices are used, that loads are properly secured and that access to areas below the load is prevented or restricted.

## 3. TRAFFIC MANAGEMENT

For building on a major road, narrow road or steeply sloping road, parking of vehicles or loading/unloading of vehicles on this roadway may cause a traffic hazard. During construction, maintenance or demolition of this building designated parking for workers and loading areas should be provided. Trained traffic management personnel should be responsible for the supervision of these areas. For building where on-site loading/unloading is essential:

Construction of this building will require loading and unloading of materials on the roadway. Deliveries should be well planned to avoid congestion of loading areas and trained traffic management personnel should be used to supervise loading/unloading areas.

For all buildings: Busy construction and demolition sites present a risk of collision where deliveries and other traffic are moving within the site. A traffic management plan supervised by trained traffic management personnel should be adopted for the work site.

## 4. SERVICES

### GENERAL

Reports of services during excavation or other activity creates a variety of risks including release of hazardous material. Existing services are located on or around this site. Where known, these are identified on the plans but the exact location and extent of services may vary from that indicated. Services should be located using an appropriate service (such as Dial Before You Dig), appropriate excavation practices should be used and, where necessary, specialist contractors should be used.

Locations with underground power: Underground power lines MAY be located on or around this site. All underground power lines must be disconnected or carefully located and adequate warning signs used prior to any construction, maintenance or demolition commencing.

Locations with overhead power lines: Overhead power lines MAY be near or on this site. These pose a risk of electrocution if struck or approached by lifting devices or other plant and persons working above ground level. Where there is a danger of this occurring, power lines should be, where practical, disconnected or relocated. Where this is not practical adequate warning in the form of bright coloured tape or signage should be used or a protective barrier provided.

## 5. MANUAL TASKS

Components within this design with a mass in excess of 20kg should be lifted by two or more workers or by mechanical lifting devices. Where this is not practical, suppliers or fabricators should be required to limit the component mass. All material packaging, building and maintenance components should clearly show the total mass of packages and where practical all items should be stored on site in a way which minimises bending before lifting. Advice should be provided on safe lifting methods in all areas where lifting may occur. Construction, maintenance and demolition of this building will require the use of portable tools and equipment. These should be fully maintained in accordance with manufacturer's specifications and released where faulty or in the case of electrical equipment not carrying a current electrical safety tag. All safety guards or devices should be regularly checked and Personal Protective Equipment should be used in accordance with manufacturer's specifications.

## 6. HAZARDOUS SUBSTANCES

### ASBESTOS

For alterations to a building constructed prior to 1990: If this existing building was constructed prior to 1990 - it therefore may contain asbestos 1990 - it therefore is likely to contain asbestos either in cladding material or in the retardant insulation material. In either case, the builder should check and, if necessary, take appropriate action before demolishing, cutting, sanding, drilling or otherwise disturbing the existing structure.

### POWDERED MATERIALS

Many materials used in the construction of this building can cause harm if inhaled in powdered form. Persons working on or in the building during construction, operational maintenance or demolition should ensure good ventilation and wear Personal Protective Equipment including protection against inhalation when using powdered material or when sanding, drilling, cutting or otherwise disturbing or creating powdered material.

### TREATED TIMBER

The design of this building may include provision for the inclusion of treated timber within the structure. Dust or fumes from this material can be harmful. Persons working on or in the building during construction, operational maintenance or demolition should ensure good ventilation and wear Personal Protective Equipment including protection against inhalation of harmful material when sanding, drilling, cutting or using treated timber in any way that may cause harmful material to be released. Do not burn treated timber.

## 7. VOLATILE ORGANIC COMPOUNDS

Many types of glues, solvents, spray paints, primers, varnishes and some cleaning materials and disinfectants have dangerous emissions. Areas where these are used should be kept well ventilated while the material is being used and for a period after installation. Personal Protective Equipment may also be required. The manufacturer's recommendations for use must be carefully considered at all times.

## 8. SYNTHETIC MINERAL FIBRE

Fibreglass, rockwool, ceramic and other material used for thermal or sound insulation may contain synthetic mineral fibre which may be harmful if inhaled or if it comes in contact with the skin, eyes or other sensitive parts of the body. Personal Protective Equipment including protection against inhalation of harmful material should be used when installing, removing or working near bulk insulation material.

## 9. TIMBER FLOORS

This building may contain timber floors which have an applied finish. Areas where finishes are applied should be kept well ventilated during sanding and application and for a period after installation. Personal Protective Equipment may also be required. The manufacturer's recommendations for use must be carefully considered at all times.

## 10. 7. CONFINED SPACES

### EXCAVATION

Construction of this building and some maintenance on the building will require excavation and installation of items within excavations. Where practical, installation should be carried out using methods which do not require workers to enter the excavation. Where this is not practical, adequate support for the excavated areas should be provided to prevent collapse. Warning signs and barriers to prevent accidental or unauthorised access to all excavations should be provided.

### ENCLOSED SPACES

For buildings with enclosed spaces where maintenance or other access may be required: Enclosed spaces within this building may present a risk to persons entering for construction, maintenance or any other purpose. The design documentation calls for warning signs and barriers to unauthorised access. These should be maintained throughout the life of the building. Where workers are required to enter enclosed spaces, air testing equipment and Personal Protective Equipment should be provided.

### SMALL SPACES

For buildings with small spaces where maintenance or other access may be required: Some small spaces within this building will require access by construction or maintenance workers. The design documentation calls for warning signs and barriers to unauthorised access. These should be maintained throughout the life of the building. Where workers are required to enter small spaces they should be scheduled so that access is for short periods. Manual lifting and other manual activity should be restricted in small spaces.

## 8. PUBLIC ACCESS

Public access to construction and demolition sites and to areas under maintenance causes risk to workers and public. Warning signs and secure barriers to unauthorised access should be provided. Where electrical installations, excavations, plant or loose materials are present they should be secured when not fully supervised.

## 9. OPERATIONAL USE OF BUILDING RESIDENTIAL BUILDINGS

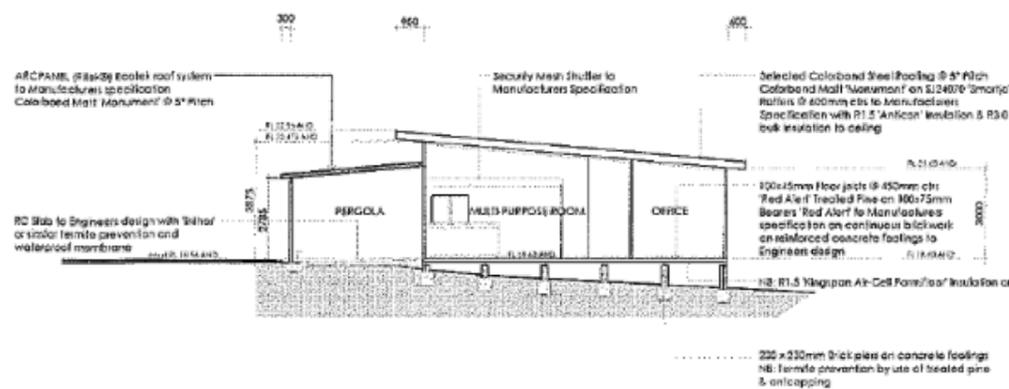
This building has been designed as a residential building. If, at a later date, it is used or intended to be used as a workplace, the provisions of the Work Health and Safety Act 2011 or subsequent replacement Act should be applied to the new use.

## 10. OTHER HIGH RISK ACTIVITY

All electrical work should be carried out in accordance with Code of Practice: Managing Electrical Risks at the Workplace, AS/NZS 5062 and all licensing requirements. All working Plant should be carried out in accordance with Code of Practice: Managing Risks of Plant at the Workplace. All work should be carried out in accordance with Code of Practice: Managing Hoists and Preventing Hoisting Loss at Work. Due to the history of serious incidents it is recommended that particular care be exercised when undertaking work involving steel construction and concrete placement. All the above applies.

## 11. RECOMMENDATIONS

- Felt, polycyte, natural product or fibre-to-voidable insulation is to be used where possible.
- No VOC points is to be used where possible.
- Low VOC adhesives and finishes are to be used, where possible.
- No emission materials for internal journey is to be used.
- Use of a Tank which does not permit or require access.



SECTION AA 1:100

Notes:

B	DA ISSUE	21	03/06/19
A	DA ISSUE	21	20/07/19
P3	PRELIMINARY PLAN 3	11	05/09/18
P2	PRELIMINARY PLAN 2	12	24/09/18
P1.5	PRELIMINARY PLAN 1.5	13	14/07/18
P1	PRELIMINARY PLAN 1	12	13/07/18
REV	DESCRIPTION	REV	DATE
DA ISSUE			

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© 2017 Jennifer Storey T/A Coastline Building Design

CLIENT: CHARMHAVEN TENNIS CENTRE

PROJECT: CLUBHOUSE BUILDING & DEMOLITION OF EXISTING BUILDING 2, A03/3

SITE: LOT 1 DP: 724871 No:35W PARKSIDE DR, CHARMHAVEN NSW 2262

SHEET NO: SECTION AA SAFE DESIGN NOTES

SCALE: 1:100	DATE: 03/06/19	DRAWN: KS	CHECKED: JS
PROJECT NUMBER: 8177	DRAWING: A03/3	REVISION: B	



THESE NOTES & THE SAFE DESIGN REPORT MUST BE READ AND UNDERSTOOD BY ALL INVOLVED IN THE PROJECT. THIS INCLUDES (but is not excluded to): OWNER, BUILDER, SUB-CONTRACTORS, CONSULTANTS, RENOVATORS, OPERATORS, MAINTENORS, DEMOLISHERS.

CENTRAL COAST COUNCIL  
APPROVED DEVELOPMENT PLAN  
Development Application No: DA/349/2019  
Dated: 25 June 2019

Salli Pendergast  
Principal Development Planner  
DEVELOPMENT ASSESSMENT



**Item No:** 4.3  
**Title:** DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works

**Department:** Environment and Planning

17 September 2020 Local Planning Panel Meeting

Reference: DA/162/2020 - D14177306  
 Author: Janice Wheeler, Senior Development Planner  
 Manager: Emily Goodworth, Section Manager, Development Assessment  
 Approver: Andrew Roach, Unit Manager, Development Assessment

### Summary

An application has been received for a mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works. The application has been examined having regard to the matters for consideration detailed in section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements with the issues requiring attention and consideration being addressed in the report.

The application is required to be determined by the Central Coast Local Planning Panel as it is development of four or more stories to which *State Environmental Planning Policy 65 – Design Quality or Residential Flat Development* (SEPP 65) applies. The application was previously referred to the Panel for a site inspection and briefing (9 July 2020). The application is recommended for refusal.

<b>Applicant</b>	Thrum Architects Pty Ltd
<b>Owner</b>	Mr GG Smith and Mrs K Smith
<b>Application No</b>	DA/162/2020
<b>Description of Land</b>	Lot 2 DP 571978, Pt Lot 37 Sec 1 DP 13225, Paradise Tourist Park, 136-136 Tuggerah Parade, LONG JETTY NSW 2261
<b>Proposed Development</b>	A mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking & associated works
<b>Site Area</b>	1510 m <sup>2</sup> (1480 m <sup>2</sup> by survey)
<b>Zoning</b>	B2 Local Centre
<b>Existing Use</b>	Caravan Park (Paradise Tourist Park)
<b>Employment Generation</b>	Unknown
<b>Estimated Value</b>	\$11,611,000

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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**Recommendation**

- 1 That the Local Planning Panel refuse the application subject to reasons for refusal detailed in the schedule attached to the report and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.**

**Key Issues**

- Permissibility and proper characterisation of the development;
- Consistency with zone objectives;
- Variations to height and floor space development standards; and
- Design considerations - including non-compliant building separation, solar access amenity, privacy amenity, safety and security and accessibility.

**Precis:**

<b>Proposed Development</b>	A mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking & associated works.
<b>Permissibility and Zoning</b>	The site is zoned B2 Local Centre under <i>Wyang Local Environmental Plan 2013</i> (WLEP). The following uses are permissible uses within the zone: <ul style="list-style-type: none"> <li>• business premises</li> <li>• commercial premises</li> <li>• function centre</li> <li>• retail premises</li> <li>• shop top housing</li> <li>• tourist and visitor accommodation</li> </ul> The development does not meet the definition of 'shop top housing' and as such it is characterised as 'residential accommodation' that is a prohibited use in the zone.
<b>Relevant Legislation</b>	<ul style="list-style-type: none"> <li>• <i>Environmental Planning &amp; Assessment Act 1979</i> (EP&amp;A Act)</li> <li>• <i>Environmental Planning &amp; Assessment Regulation 2000</i> (EP&amp;A Regulation)</li> <li>• <i>State Environmental Planning Policy No. 65</i> (SEPP 65)</li> <li>• Apartment Design Guide (ADG)</li> <li>• <i>State Environmental Planning Policy (Coastal Management) 2018</i> (SEPP CM)</li> </ul>

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

	<ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX)</i></li> <li>• <i>State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)</i></li> <li>• <i>Wyong Local Environmental Plan (WLEP)</i></li> <li>• <i>Draft Central Coast Local Environmental Plan 2018</i></li> <li>• <i>Wyong Development Control Plan 2013 (WDCP)</i></li> </ul>
<b>Current Use</b>	Caravan Park (Paradise Tourist Park)
<b>Integrated Development</b>	No
<b>Submissions</b>	Nil

**Variations to Policies**

Clause	4.3 Height of Buildings
Standard	Maximum building height – 16m
LEP/DCP	Wyong Local Environmental Plan 2013
Departure basis	Building height variation – 8.69% (17.39m)

Clause	4.4 Floor Space Ratio
Standard	Floor Space Ratio – 1.5:1
LEP/DCP	Wyong Local Environmental Plan 2013
Departure basis	Floor Space Ratio variation – 18.67 % (1.78:1)

**The Site**

The subject site is a corner site that comprises two lots with a combined frontage of 30.3 metres to Tuggerah Parade and a frontage of 52.93 metres to Pacific Street. The site has an average width of 30.48 metres and a combined area of 1,480m<sup>2</sup>. The topography of the site is flat. The site is part of Paradise Tourist Park.

**Surrounding Development**

Surrounding the site the uses are predominantly residential, a mix of low scale one and two storey residential dwellings. Directly adjoining the site to the north at 134 Tuggerah Parade is a three storey residential flat building. To the south on the opposite corner of Tuggerah Parade and Pacific Street is the remainder of the Paradise Tourist Park.

The site is within proximity to the Long Jetty Town Centre and is located directly opposite the Tuggerah Lake foreshore reserve across from one of three public jetties within Tuggerah Lake at Long Jetty. The site is visually prominent from the public reserve and Tuggerah Lake.

### 4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)

The site is zoned *B2 Local Centre* under the provisions of the *Wyong Local Environmental Plan 2013* (Wyong LEP 2013). There is a zone transition to the south of the site on the opposite side of Pacific Street to *R2 Low Density Residential*. *RE1 Public Recreation* zoned land is also located to the west on the opposite side of Tuggerah Parade.



Above: Aerial view of subject site (left) and locality aerial view with land zoning (right)

#### The Proposed Development

The proposed development is for a mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works.

The proposed works include the following:

- Demolition or removal of existing permanent van sites and structures onsite;
- Construction of a 5 storey mixed use development over two buildings containing:
  - Café 69.6m<sup>2</sup>
  - Multi-function tenancy 210m<sup>2</sup>,
  - Commercial tenancies 32.5m<sup>2</sup> and 28.5m<sup>2</sup>
  - 2 x 1 bedroom dwellings
  - 14 x 2 bedroom dwellings
  - 7 x 3 bedroom dwellings
  - 38 parking spaces over one level
  - Basement bike spaces, storage, waste storage room (ground floor)
  - Communal open space is provided at the rooftop.
- Lot consolidation



**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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**History**

The site has a history of use as a caravan park.

**Prior Briefing of the Local Planning Panel**

As is encouraged by the operating frameworks for Local and Regional Planning Panels, the matter was previously forwarded to the Local Planning Panel for a briefing (9 July 2020). This allowed the Panel to undertake a site inspection and review the key aspects of the application as lodged. In summary, the briefing noted that:

*'A preliminary assessment of the application has identified a significant number of issues with the proposed development, including (but not limited to) urban design matters, compliance with the zone objectives, the proper characterisation of the development, significant variation to development standards for which there is no clear justification and engineering matters.*

*It is the view of Council officers that a resolution of these matters is not something that could be accommodated without significant re-design of the proposal that responds more sympathetically to its location, context, planning framework the existing and future character of the area (apart from standard engineering matters).*

*The matter is referred to the Panel at this early stage in order to set out Council officers intended direction with the assessment, and to obtain any comments on the intended approach.'*

In order to inform the briefing and the assessment of the application, the proposal has been referred to an independent urban design consultant to evaluate the proposal against the SEPP 65 design quality principles. The design comments of the independent urban design consultant were included for the consideration of the Panel as part of the briefing.

The advice of the Panel was to endorse the intended approach from Council officers, which was set out in the written briefing as:

- 1. Provide the applicant with an opportunity to withdraw the application, given the identified issues and the extent of complete re-design that would be required; and*
- 2. If the application is not withdrawn, staff will progress to complete the assessment of the application currently before Council, with a view to reporting it back to the Local Planning Panel for determination, noting at this stage officers would be unable to support the development in its current form.*

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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**Assessment:**

Having regard for the matters for consideration detailed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* and other statutory requirements, the assessment has identified the following key issues, which are elaborated upon for the Panel's information. Any tables relating to plans or policies are provided as an attachment.

**Wyong Local Environmental Plan 2013 - Permissibility**

The subject site is zoned B2 – Local Centre under *Wyong Local Environmental Plan (WLEP) 2013*. The relevant uses in the zone are:

- business premises
- commercial premises
- function centre
- residential accommodation
- retail premises
- serviced apartment
- shop top housing
- tourist and visitor accommodation

The following definitions under Wyong LEP are relevant to the proposal and read:

**business premises** means a building or place at or on which—  
(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or  
(b) a service is provided directly to members of the public on a regular basis, and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

*Note: Business premises are a type of commercial premises—see the definition of that term in this Dictionary.*

**commercial premises** means any of the following—  
(a) business premises,  
(b) office premises,  
(c) retail premises.

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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**function centre** means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.

**residential accommodation** means a building or place used predominantly as a place of residence, and includes any of the following:

- (a) attached dwellings,
- (b) boarding houses,
- (c) dual occupancies,
- (d) dwelling houses,
- (e) group homes,
- (f) hostels,
- (g) multi dwelling housing,
- (h) residential flat buildings,
- (i) rural workers' dwellings,
- (j) secondary dwellings,
- (k) semi-detached dwellings,
- (l) seniors housing,
- (m) shop top housing,

but does not include tourist and visitor accommodation or caravan parks.

**retail premises** means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following—

- (a) (Repealed)
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

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*Note: Retail premises are a type of commercial premises—see the definition of that term in this Dictionary.*

**shop top housing** means one or more dwellings located above ground floor retail premises or business premises.

*Note: Shop top housing is a type of residential accommodation—see the definition of that term in this Dictionary.*

**serviced apartment** means a building (or part of a building) providing self-contained accommodation to tourists or visitors on a commercial basis and that is regularly serviced or cleaned by the owner or manager of the building or part of the building or the owner's or manager's agents.

*Note: Serviced apartments are a type of tourist and visitor accommodation—see the definition of that term in this Dictionary.*

**tourist and visitor accommodation** means a building or place that provides temporary or short-term accommodation on a commercial basis, and includes any of the following—

- (a) backpackers' accommodation,
  - (b) bed and breakfast accommodation,
  - (c) farm stay accommodation,
  - (d) hotel or motel accommodation,
  - (e) serviced apartments,
- but does not include—
- (f) camping grounds, or
  - (g) caravan parks, or
  - (h) eco-tourist facilities.

The development as proposed is not permissible within the B2 zone. The development is best characterised as '*residential accommodation*', which is a prohibited use in the zone (noting that '*shop top housing*' is expressly permitted in the zone, and '*residential accommodation*', other than shop top housing, is prohibited).

Having regard for the Land and Environment Court judgement *Hrsto v Canterbury City Council (No 2) [2014]*, in order to satisfy the requirements of '*shop top housing*', residential uses must be located on levels of the building above the ground floor, which contains retail or business premises.

The proposal does not meet the definition of shop top housing because:

- The application proposes ground floor residential apartments
- The application proposes ground floor commercial uses

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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- The application proposes ground floor function centre uses.

This issue is identified in recommended **reason for refusal 1**.

In addition, the application does not provide sufficient detail in order to characterise the residential component of the development as serviced apartments, a form of tourist and visitor accommodation. The Statement of Environmental Effects identifies that the development may incorporate serviced apartments however no detail is provided in relation to which units are proposed as serviced apartments and a plan of management has not been submitted to address the amenity conflicts arising from this use near to permanent residential apartments and neighbouring residential properties (**recommended reason for refusal 2**).

Having regard for Clause 2.3 of WLEP, the B2 zone objectives read as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To permit residential accommodation while maintaining active retail, business and other non-residential uses at street level.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*

The proposal is found to be inconsistent with the stated zone objectives. In particular, the development does not have sufficient regard for ground floor activation and does not sufficiently minimise conflict between land uses within the zone and the adjacent R2 and RE1 zone.

The proposed building is not sufficiently compatible with the character of the surrounding locality and fails to relate to its context. Sheer-sided walls of four to five storeys, insufficient setbacks facing Pacific Street and facades with inappropriate architectural character, result in overbearing visual impact upon the adjoining *R2 Low Density Residential* zone and the lakeside reserve.

With regard to activation of the frontages, the level changes are not appropriately managed between ground floor uses and the street frontage. The proposed function centre use is not considered to be a sufficiently activating use for this important corner site. The design of the ground floor of the development does not encourage the movement of people through the site in a way that supports the function of the non-residential uses as active uses.

The inconsistency of the proposal with the *B2 Local Centre zone* objectives is identified in **recommended reason for refusal 3**.

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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**Wyong Local Environmental Plan 2013 Clause 4.3 - Height of Buildings**

Clause 4.3 specifies the building height for the site shall not exceed that indicated on the applicable map. Building height is defined under WLEP 2013 as follows:

***building height*** (or ***height of building***) means—

- (a) *in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or*
- (b) *in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.*

Council's height maps identify the site with a maximum building height of 16 metres. The proposal has a maximum height of 17.39 metres to the lift overrun. The proposal does not comply with the building height provisions of the Wyong LEP.

The objectives of Clause 4.3 are as follows:

- (a) *to establish the maximum height limit for buildings to enable the achievement of appropriate development density,*
- (b) *to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,*
- (c) *to ensure that the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.*

The proposal does not achieve the objectives of the height of building development standard under Clause 4.3 because the proposal is not compatible with the bulk, height and scale of existing and future character and the development results in poor visual bulk and privacy impacts to neighbouring properties. The breaches of parapet and lift over-run contribute to an unsympathetic development form in the context of development opportunities of directly adjoining and nearby development sites.

The application does not include a Clause 4.6 written request that relates to the variation of building height (**recommended reasons for refusal 4 and 5**).

**Wyong Local Environmental Plan 2013 Clause 4.4 - Floor Space Ratio**

Clause 4.4 specifies the floor space ratio (FSR) for the site shall not exceed that indicated on the applicable map. Council's FSR maps identify the site with a maximum FSR of 1.5:1. The

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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proposal has an FSR of 1.78:1 and does not comply with the FSR provisions of the Wyong LEP.

Although a submissions (pursuant to Clause 4.6 of the Wyong LEP) has been submitted, the arguments advanced in the Clause 4.6 submission are not sufficient. The applicant's justification does not provide that compliance is unreasonable and unnecessary and does not satisfy Clause 4.6 criteria: the development does not achieve the objectives of the standard and it is not demonstrated that there are sufficient environmental planning grounds to justify the variation (**recommended reasons for refusal 6 and 7**). Consideration of the Clause 4.6 Submission are included below.

**Wyong Local Environmental Plan 2013 Clause 4.6 – Exceptions to Development Standards**

Clause 4.6 provides flexibility in applying certain development standards on the following grounds:

- *4.6(3) Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.*

The proposed development breaches the clause 4.3 Height of buildings development standard contained within Wyong LEP 2013. A clause 4.6 written request has not been submitted in relation to the height breach.

Additionally, the proposed development breaches Clause 4.4 Floor Space Ratio (FSR) development standard contained within Wyong LEP 2013. The maximum permitted FSR is 1.5:1. The development proposes an FSR of 1.78:1 which represents an 18.67% variation.

The applicant has provided a Clause 4.6 written request (Attachment 6) that provides the applicant's justification for the variance and contention that strict compliance with the floor space ratio development standard is unnecessary and unreasonable. A summary of the reasons identified by the applicant is provided following (note that this is a summary only, the applicant's full submission is contained in Attachment 6):

- *the variation arising does not manifest itself via physical impact, nor affect on amenity either internal or external to the site.*
- *impacts on amenity do not arise as a consequence of the skilful design adopted providing basement parking.*
- *Site planning, responsive to contextual analysis preserves landscape elements inclusive of deep soil planting particularly to the rear and northern alignment.*
- *there are no negative impacts arising either on-site in terms of building form or character, nor off-site with respect to views, overlooking, privacy or overshadowing attributable to the area of non-compliance.*

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- *strict compliance with the development standard might well have greater and potentially negative impact in terms of amenity. This is particularly so when considered in the context of the footprint of the building in the current arrangements as opposed to an alternative; an alternative which might accommodate setbacks to street frontages as might a “traditional” residential building compromising the sites ability to accommodate viable retail space and consequent employment generating opportunities.*

Further discussion in relation to the objectives of the standard, appropriate density and amenity and compatibility with future character are provided below:

- *4.6(3) Whether there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant has the following grounds/reasons for the proposed variation to the development standard(s):

- *No precedent arises.*
- *No off-site deleterious effects or impacts occur.*
- *Optimum retention of (deep soil) planting opportunities is enabled via the site planning arrangements incorporating sub-basement parking and a superior architectural solution to achieve the desired mix of inclusions to produce a viable development.*

Council’s urban design consultant has considered the impacts of additional bulk that results from the additional FSR. It was particularly noted that the three-dimensional views submitted with the development application confirm that the dimensions of the proposed building have a substantial mass (or volume) that would not be moderated by the narrow alleyway which breaks the development into two pavilion elements. The development would read as a single building mass and in addition, the sections and three-dimensional views confirm that sheer vertical walls of four and five storeys exacerbate the scale of street elevations. The architectural design of the facades further accentuates the scale and contributes to an inappropriately bulky appearance.

The proposed building appears bigger than desirable or necessary for this prominent location due to the mass and scale of the building form and unsatisfactory articulation. The commercial character of the facade, poor articulation of side and rear elevations and insufficient street setbacks do not support landscaping of a suitable scale. This is exacerbated by the double height ceiling of the multi-function tenancy that contributes to the bulk of the building but is not considered in the FSR calculations.

The proposal does not provide opportunities for deep soil planting at the Pacific Street frontage that would assist in providing an appropriate character and transition in scale at a

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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zone interface with the adjacent *R2 Low Density Residential* zoned land. The provision of a basement could be achieved in a compliant design.

The proposal has an FSR that exceeds the maximum FSR stipulated by Clause 4.4 of WLEP by a substantial 420m<sup>2</sup> which is a variation of 20% (equivalent to five two bedroom apartments). The written request has not identified sufficient environmental planning grounds as it has not identified that there are grounds which are particular to the circumstances of the proposed development on the subject site that could not be broadly applied to other sites. The reasons provided have not demonstrated circumstances which relate to the development on the site or that could not be achieved by a complying development.

Compliance with other planning controls is not sufficient environmental planning grounds, as they are requirements to be met in any development. Absence of impact, of itself, is not a sufficient environmental planning ground.

- *4.6(4) Whether the proposed development is consistent with the objectives of the particular standard.*

The objectives of the standard are:

- (a) *to ensure that the density, bulk and scale of development is appropriate for a site,*
- (b) *to ensure that the density, bulk and scale of development integrates with the streetscape and character of the area in which the development is located,*
- (c) *to facilitate development in certain areas that contributes to economic growth.*
- (d) *to promote the provision of affordable housing.*

The applicant's written request has not directly addressed the objectives of the standard; However the following statements are made by the applicant within the written request under the heading titled *"Is the development standard a performance based control? Give details."*

- *Practical compliance with the height control ensures that physical off-site impacts are capable of prediction and control. Given that there are no negative impacts arising as a consequence of the building's height, it is apparent that there is some justification for the additional floor space enclosed which may contribute to the buildings bulk.*
- *In this particular instance, both height and bulk have been skilfully managed as positive contributions to streetscape and amenity and thus, the physical built environment.*

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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- *The inclusion of commercial space as is intended will contribute to the dynamics of the locality consistent with the zone objectives. In that manner, the inclusion of the additional floor space as is contemplated will promote the social and economic welfare of the community via job creation and the provision of local services as is the primary objective of the B2 Local Centre Zone.*
- *In this instance, and when considered in the context of the pattern of subdivision, character, scale and nature of buildings and uses contemplated in the B2 Local Centre Zone when considered in context of the existing and likely future built environment, it is evident that the variation to the FSR control does not give rise to character or amenity impacts that would warrant refusal of the project for the want of variation to the standard.*

In relation to floor space ratio objectives, the proposal does not achieve a compatible bulk that is appropriate for the site and it does not sufficiently integrate with the streetscape and character of the area. The objectives of the standard are as follows:

- (a) *to ensure that the density, bulk and scale of development is appropriate for a site,*
- (b) *to ensure that the density, bulk and scale of development integrates with the streetscape and character of the area in which the development is located,*
- (c) *to facilitate development in certain areas that contributes to economic growth.*

The development fails to meet the objectives of Clause 4.4 as follows:

In relation to Objective (a):

- The proposal results in significant poor amenity outcomes both internal (resident), neighbour and streetscape. Based on the above it is considered that the proposal is of a density, bulk and scale that is inappropriate for the site.
- In considering whether the density, bulk and scale of the proposal is appropriate, the relevant provisions (SEPP 65 and ADG) have been considered, and the development does not achieve these to an acceptable degree (notwithstanding the non-compliance).

In relation to Objective (b):

- The site-specific context and local character are one of multiple “zones”, including the high scenic quality of the lakeshore, and the B2/R2 zone interface of Pacific Street. The western periphery of the commercial strip

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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local centre and a series of nearby small-scale buildings of short to medium term future character.

- The proposed building appears bigger than desirable or necessary for this prominent location due to the mass and scale of the building form and unsatisfactory articulation; the commercial character of the facade, poor articulation of side and rear elevations and insufficient street setbacks do not support landscaping of a suitable scale.

In relation to Objective (c):

- Whilst the development includes uses that contribute to economic growth, the arrangement of the floor plan creates non-residential spaces within the development with poor viability that do not achieve adequate street access and activation, do not achieve the required car parking or meet accessible standards, and do not have a separate and secure lobby to the residential units in the southern building.

Having regard for the floor space ratio objectives, the proposal does not achieve a compatible bulk that is appropriate for the site and it does not sufficiently integrate with the streetscape and character of the area. The inconsistency of the proposal with the Clause 4.4 objectives is identified in reason for refusal 6.

- *4.6(4) Whether the proposed development is consistent with the objectives for development within the zone.*

The B2 zone objectives read as follows:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To permit residential accommodation while maintaining active retail, business and other non-residential uses at street level.*
- *To minimise conflict between land uses within the zone and land uses within adjoining zones.*

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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The applicant's written request has not directly addressed how the development is consistent with the objectives of the zone, however the following statements are made by the applicant within the written request under the heading titled *"Is the development standard a performance based control? Give details."*

- *The inclusion of commercial space as is intended will contribute to the dynamics of the locality consistent with the zone objectives. In that manner, the inclusion of the additional floor space as is contemplated will promote the social and economic welfare of the community via job creation and the provision of local services as is the primary objective of the B2 Local Centre Zone.*

The proposal is found to be inconsistent with the stated zone objectives. In particular, the development does not provide sufficient ground floor activation and does not sufficiently minimise conflict between land uses within the zone and the adjacent R2 zone and the RE1 zone.

The proposed building is not sufficiently compatible with the character of the surrounding locality and fails to relate to its context. Sheer-sided walls of four to five storeys, insufficient setbacks facing Pacific Street, facades with inappropriate architectural character, result in overbearing visual impact upon the adjoining R2 Low Density Residential zone and the lakeside reserve.

With regard to activation of the frontages, the level changes are not appropriately managed between ground floor uses and the street frontage. The ground floor level of the development and the proposed colonnade terrace are a minimum of 1 metre above the existing road reserve levels. These areas have been designed with limited access points (via narrow stairs and ramps) to access the development and do not provide sufficient activation at street level. This does not encourage the movement of people through and around the site to provide sufficient activation and viability of ground floor non-residential uses. The proposed function centre use is not considered to be a sufficiently activating use for this important corner site and is located in a way that limits visual connection of other non-residential uses to the street.

The application has not included sufficient information on the intended use of the function centre and other non-residential uses at the ground floor to demonstrate appropriate activation at street level.

The inconsistency of the proposal with the B2 Local Centre zone objectives is identified in reason for refusal 3.

- *4.6(4) Whether the proposed development is in the public interest.*

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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Council is not satisfied that the variation to the Floor Space Ratio development standard is in the public interest because it is not consistent with the objectives of the development standard and the objectives for the zone. In relation to floor space ratio objectives, the proposal does not achieve a compatible bulk that is appropriate for the site and it does not sufficiently integrate with the streetscape and character of the area.

In relation to zone objectives, the proposal provides residential and non-residential uses at street level that are not consistent with maintaining active uses at the street. Additionally, the proposal does not achieve a harmonious relationship to adjoining land uses both within the B2 zone and the R2 and RE1 zone.

- *4.6(4) Concurrence of the Director General*

The proposed variation to FSR is 18.67% which exceeds the 10% and requires concurrence. In accordance with Clause 64 of the *Environmental Planning and Assessment Regulation 2000*, Council may assume the concurrence of the Secretary of the Department of Planning, for an exception to a development standard under Clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006*, having regard for the matters set out in subclause 4.6(5) and where the variation is greater than 10% or non-numerical. The consideration of those matters set out in subclause 4.6(5) has been addressed below, however the variation is not supported and as such assumed concurrence of the Secretary is not required in this instance.

- *4.6(5) Any State or regional significant planning matters raised by contravening the standard*

There are no state or regional matters that arise as a result of the contravention of the standard.

- *4.6(5) The public benefit of maintaining the standard*

In this instance, and in considering strategic outcomes for the area, there is public benefit in maintaining the standard as the development does not adequately achieve the desired future character and built form anticipated within the site's context.

- *Whether the proposed development is consistent with the objectives of Clause 4.6, being, whether by allowing flexibility in the particular circumstances a better outcome for and from the development is achieved.*

The applicant's written justification does not adequately demonstrate that compliance with the floor space ratio development standard is unreasonable and unnecessary. Additionally, the written request does not demonstrate that the development satisfies all Clause 4.6 criteria. The development does not achieve and is not consistent the objectives of both the standard and the zone and the written request does not demonstrate that there are sufficient environmental planning grounds to justify the variation, nor that it is unreasonable and unnecessary to require compliance. In particular, the proposal requests an inappropriate

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degree of flexibility to the floor space ratio development standard and in considering the applicable development controls does not result in a better strategic outcome for and from the development.

**Wyong Local Environmental Plan 2013 Clause 7.1 - Acid Sulfate Soils**

Clause 7.1 requires consideration to be given to certain development on land being subject to actual or potential acid sulphate soils. The site is identified as Class 2 on the Acid Sulphate Soils (ASS) Planning Map. The clause requires the consideration of the need for an acid sulphate soils management plan.

A geotechnical report prepared by JK Geotechnics was submitted with the development application and included an assessment of acid sulfate soils. The soil assessment indicates that the soils at the site have the potential to be acid sulfate soil and require treatment. Additional testing and reporting to determine classification of fill material leaving the site during treatment for acid sulfate in the excavated soil is recommended.

**Wyong Local Environmental Plan 2013 -Clause 7.2 - Flood Planning**

Clause 7.2 applies to the site as it is identified as flood planning land under Council's maps. Consent must not be granted to land identified by this clause unless the consent authority is satisfied that the development:

- *is compatible with the flood hazard of the land: and*
- *Is not likely to significantly adversely affect flood behaviour resulting in worsened flood hazard to other development or properties, and*
- *Incorporates appropriate measures to manage risk to life from flood and*
- *Is not likely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of riverbanks or watercourses, and*
- *Is not likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

A Flood Assessment Report by Cubo Consulting has been submitted with the development application.

The application documentation has not adequately addressed climate change considerations for the development. As a minimum, the finished floor level should be increased in accordance with the latest available information.

In addition, the report identifies shelter in place as a strategy for this site. Council does not support shelter in place for this proposal. For areas east of the Main Northern Railway line within the Tuggerah Lakes catchment, evacuation should be the primary response strategy.

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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This is a result of the nature of flooding in the area which can see flood levels remain for several days, and longer than a week in peak events. The nature of these events means that infrastructure such as water/sewer services and electricity cannot be guaranteed in such events. Shelter in place strategies are not suited to such locations.

The inadequacies of the development application in relation to flooding have been identified in **recommended reason refusal number 8**.

**Wyong Local Environmental Plan 2013 -Clause 7.9 – Essential Services**

This clause requires Council to ensure that services such as water, sewer, electricity, and stormwater drainage and road access can be adequately provided. The application has not demonstrated that all these services are adequately provided for the development and adjoining properties.

Road and access - A suitable access point to the basement that is least affected by flooding has been identified within the design.

Water supply - Is available from Tuggerah Parade via an existing 100mm AC pipe, however the AC pipe would require replacement for the extent of the frontage.

Sewer - The site is currently connected into Council's sewer network. The existing sewer main along Pacific Street has sufficient capacity exists in Council's sewerage network for the proposed development, however the existing 150mm AC pipe would require replacement for the extent of the frontage.

Stormwater Management -An on-site stormwater detention and drainage system is not required due to the close proximity of the receiving downstream system, however the Applicant has not adequately addressed water quality measures to treat stormwater in accordance with the Engineers Australia publication *Australian Runoff Quality – A Guide to Water Sensitive Urban Design* prior to entering Council's stormwater drainage system.

Accordingly, the proposal is not satisfactory with regard to clause 7.9 of Wyong LEP. The inadequacies of the development application with regard to stormwater management are contained within **recommended reason for refusal 9**.

**State Environmental Planning Policies (SEPP) No.65 (Design Quality of Residential Apartment Development) and the *Apartment Design Guide (ADG)***

*State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development)* (SEPP 65) applies to the development. Clause 30 (1) of SEPP 65 specifies

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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standards that cannot be used as grounds to refuse development consent. Those standards are:

- (a) *if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide*

The proposal does not meet the locational requirements of 3J-1 of the ADG that sets minimum car parking requirements. As such, the minimum requirement for car parking specified by *Guide to Traffic Generating Developments* does not apply. The proposal does not meet the minimum car parking requirements of Councils DCP (40 residential/visitor spaces and 76 spaces in total) as specified by the ADG.

- (b) *if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,*

The proposal meets minimum areas for apartments as per the ADG.

- (c) *if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

The proposal has ground floor ceiling heights that are less the minimum ground floor ceiling heights of 3.3 metres as required by the ADG.

Clause 30(2) of SEPP 65 specifies:

*'development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:*

- (a) *the design quality principles, and*  
(b) *the objectives specified in the Apartment Design Guide for the relevant design criteria.'*

The proposal seeks variation to a number of design considerations under the ADG. These variations are tabulated in **Attachment 2** and discussed within the urban design review comments in **Attachment 4**.

The following table considers the proposal against the SEPP 65 design quality principles and includes relevant design comments of Council's consultant urban designer.

## 4.3

**DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

<b>Principles</b>	<b>Proposal</b>
Context and neighbourhood character	<p><i>The proposed building is not sufficiently compatible with character of the surrounding locality, and fails to contribute to visible elements of context:</i></p> <ul style="list-style-type: none"> <li>- <i>In terms of height and FSR, the proposed building substantially exceeds standards which are specified by the LEP - and which provide a clear indication of future character which is desired according to that instrument.</i></li> <li>- <i>Size and arrangement of the proposed basement prevent canopy landscaping which would contribute to streetscape quality, as well as moderating built form impacts in relation to the lake-shore setting and the low density residential zone R2.</i></li> <li>- <i>Sheer-sided walls with effective heights of four to five storeys, together with insufficient setbacks facing Pacific Street in particular, and facades which display an inappropriate architectural character, would have an overbearing visual impact upon zone R2 as well as the lakeside reserve.</i></li> </ul>
Built form and scale	<p><i>The proposed building would appear bigger than desirable or necessary for this prominent location due to:</i></p> <ul style="list-style-type: none"> <li>- <i>Mass and scale of the proposed building, together with unsatisfactory articulation; and</i></li> <li>- <i>Façade-architecture comprises elements with a distinctly-commercial character and poorly-articulated side or rear elevations;</i></li> <li>- <i>Street setbacks which are insufficient, and which cannot accommodate canopy landscaping that might have moderated visual impacts.</i></li> </ul>
Density	<p><i>In terms of height and FSR, the proposed building substantially exceeds standards which are specified by the LEP - and which provide a clear indication of future character which is desired according to that instrument.</i></p>
Sustainability	<p><i>During midwinter, only 61% of the proposed apartments would receive at least three hours of effective daily sunlight to living rooms and private open spaces – this is significantly less than the 70% required by the ADG.</i></p>
Landscape	<p><i>Due to size and location of the proposed basement, there is no potential for deep soil landscaping along the street frontages. Street setbacks are insufficient and cannot accommodate suitably-scaled canopy landscaping that might moderate visual impacts of building forms in relation to the lakeshore reserve and the low density residential zone which is located immediately to the south.</i></p>
Amenity	<p><i>Layout of the residential component fails to demonstrate satisfactory amenity. Residential floorplans demonstrate pronounced shortcomings in</i></p>

	<p><i>relation to solar access, privacy within the development, neighbours' privacy, and the utility of living spaces.</i></p> <p><i>i Solar access is unsatisfactory:</i></p> <ul style="list-style-type: none"> <li>- <i>During midwinter, only 61% of the proposed apartments would receive at least three hours of effective daily sunlight to living rooms and private open spaces – this amount of sunlight falls significantly short of the ADG's design criteria.</i></li> </ul> <p><i>ii Privacy of neighbouring apartments within the development would be compromised:</i></p> <ul style="list-style-type: none"> <li>- <i>39% of the proposed apartments would be exposed to cross-viewing between windows of habitable rooms and / or balconies;</i></li> <li>- <i>In the absence of design details for communal areas and terraces, a further 17% of proposed apartments could be compromised by exposure to common recreation areas, or to noise from the multi-function commercial tenancy.</i></li> </ul> <p><i>iii Privacy of south-facing bedrooms in the neighbouring apartment building at No. 134 Tuggerah Parade would be compromised:</i></p> <ul style="list-style-type: none"> <li>- <i>Privacy of neighbouring apartments would be compromised by 35% of the proposed apartments;</i></li> <li>- <i>Compromised privacy is indicated primarily by separation distances between neighbours' bedroom windows and windows or balconies of the proposed building which are significantly less than the 12m ADG design criterion;</i></li> <li>- <i>Compromised privacy is further indicated by proposed windows and balconies which have not been screened, oriented or otherwise designed in order to avoid or minimise privacy impacts.</i></li> </ul> <p><i>iv Unsatisfactory internal amenity is indicated by poor space planning of the proposed living areas:</i></p> <ul style="list-style-type: none"> <li>- <i>Open-plan living and dining rooms in approximately 65% of the proposed apartments are insufficient to accommodate typical furniture as well as access, or demonstrate inefficient space-planning.</i></li> <li>- <i>All seven apartments in the southern pavilion have pronounced 'pinch points' in primary circulation paths which pass around sitting or dining furniture settings, and similar concerns apply to at least four apartments in the northern pavilion.</i></li> <li>- <i>For a further four apartments in the northern pavilion, pinch points are not evident, but poor space planning results in dead 'corridor-type' spaces which cannot be allocated to dining or sitting functions.</i></li> </ul>
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## 4.3

**DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

Safety	<p><i>The proposed ground floor does not have separated residential and commercial access and undermine safety and security for residents, as well as compromising the efficient management of common and publicly accessible areas.</i></p> <ul style="list-style-type: none"> <li>- <i>The diagonal alleyway would accommodate both public and private access but, due to unsatisfactory space planning and design, informal surveillance would be insufficient to ensure reasonable safety and security for residents – in particular after-dark when operation of the commercial tenancies would require access via the alleyway;</i></li> <li>- <i>Residents' safety and security would be compromised by open access along the alleyway, in conjunction with elements such as ramp balustrades and fire stair shafts that would obstruct sight lines to and from the residential lobbies;</i></li> <li>- <i>The southern building lobby would be further-compromised by shared access which is proposed for residents and commercial premises (including the major "commercial multi-function tenancy").</i></li> </ul>
Housing diversity and social interaction	<p><i>Location and design of common residential areas are unsatisfactory:</i></p> <ul style="list-style-type: none"> <li><i>i Unsatisfactory safety and security for residential lobbies.</i></li> <li><i>ii Amenity of the proposed ground level communal open space is compromised by:</i> <ul style="list-style-type: none"> <li>- <i>Configuration is a long and narrow area which is partly-hidden behind the eastern elevation;</i></li> <li>- <i>Extensive midwinter overshadowing due to the form and proximity of the northern neighbour;</i></li> <li>- <i>Security concerns of the rear-most portion due to partial concealment 'behind' the proposed building;</i></li> </ul> </li> <li><i>iii Amenity of the roof-top open space above the southern pavilion is compromised by:</i> <ul style="list-style-type: none"> <li>- <i>no indication of 'outdoor rooms' or smaller social spaces that would encourage concurrent use by unrelated individuals and small groups;</i></li> </ul> </li> </ul>
Aesthetics	<p><i>Three-dimensional views confirm that dimensions of the proposed building would present a substantial mass (or volume), and that mass would not be moderated by the narrow alleyway which breaks the development into two pavilion elements: in effect, the development would read as a single building mass;</i></p> <ul style="list-style-type: none"> <li>- <i>Sections and three-dimensional views confirm that scale of street elevations would be highlighted by sheer vertical walls of four and five</i></li> </ul>

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

	<p><i>storeys, and that impacts of the corner pavilion would be accentuated by overhanging upper storeys;</i></p> <p><i>- Architectural design of the proposed facades would further-accentuate scale by contributing to an inappropriately-bulky appearance: The corner pavilion displays a distinctly-commercial character due to curtain wall facades and expressed 'over-scaled' columns, which would present visually-intrusive backdrops to both the lakeshore and zone R2;</i></p> <p><i>In both pavilions, side elevations which would be visible from streets are bland planes without articulation, and would not improve existing streetscape quality.</i></p>
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Having considered both the SEPP 65 design quality principles and the objectives of the Apartment Design Guide, the development has not demonstrated adequate regard for the reasons specified within reasons for refusal 10 and 17.

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

SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection), and Clause 5.5 of the WLEP have been repealed and they have been incorporated within *State Environmental Planning Policy (Coastal Management) 2018*.

The site is identified as land to which this SEPP applies, as it is within the 'coastal zone', which in accordance with Clause 6 is land that includes a coastal environment area and/or a coastal use area. In relation to the SEPP, the submitted Statement of Environmental Effects indicates that

*'... relevant matters have been considered and the proposal is considered to be consistent with the relevant aims and objectives'*

However the Statement of Environmental Effects does not provide information on how the development is consistent.

The site is identified under the SEPP as being located within a coastal use area (CUA). Any development on land identified as a CUA is required to be in accordance with *Clause 14 – Development on land within the coastal use area*. Clause 14(1)(a) includes matters for consideration that the consent authority must take into account in order to grant consent:

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority:*
  - (a) has considered whether the proposed development is likely to cause an adverse impact on the following:*
    - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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- (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
- (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
- (iv) Aboriginal cultural heritage, practices and places,*
- (v) cultural and built environment heritage, ...*

Having considered the above, the proposal would result in an unsatisfactory visual amenity in a highly visible coastal location.

Clause 14(1)(b) includes matters of satisfaction that the consent authority must arrive at in order to grant consent:

- (b) is satisfied that:*
  - (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
  - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
  - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

The proposed development has not minimised visual amenity impacts to the coast. Additionally, having regard for the surrounding coastal and built environment, the bulk, scale and size of the proposed development is unsatisfactory. Further commentary on the incompatibility of the development with its context is discussed under SEPP 65 and likely impacts of the development – locality and streetscape.

The site is also identified under the SEPP as being located within a coastal environment area (CEA). Any development on land identified as a CEA is required to be in accordance with *Clause 13 – Development on land within the coastal environment area* of the above SEPP. Clause 13(1) includes matters of consideration that the consent authority must take into account in order to grant consent:

- 1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:*
  - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
  - (b) coastal environmental values and natural coastal processes,*

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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- (c) *the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
- (d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
- (e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
- (f) *Aboriginal cultural heritage, practices and places,*
- (g) *the use of the surf zone.*

The site is very close to the receiving downstream system (Tuggerah Lake). The applicant has not adequately addressed water quality measures to treat stormwater in accordance with the Engineers Australia publication *Australian Runoff Quality – A Guide to Water Sensitive Urban Design* prior to entering Council's stormwater drainage system. The application has not provided sufficient stormwater quality information to demonstrate that the proposal will not have an adverse impact on the water quality of the lake.

Clause 13(2) includes matters of satisfaction that the consent authority must arrive at in order to grant consent:

- (2) *Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subclause (1), or*
  - (b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
  - (c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Due to insufficient stormwater quality information lodged with the development application, the consent authority cannot be satisfied of the extent of any impact and the extent of any mitigation required therefore the proposed development is not consistent with the requirements of Clause 13.

Matters of satisfaction having regard for Clause 13 and Clause 14 of *SEPP Coastal Management* have been incorporated within **recommended reason for refusal 11**.

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

The proposed residential flat building constitutes 'BASIX affected development' as defined within the Regulations. A valid BASIX Certificate (as required by Schedule 1 of the

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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*Environmental Planning and Assessment Regulation 2000*) has not been submitted with the development application. As such, the application does not adequately demonstrate water conservation and energy efficiency measures to be adopted as part of the proposal in order to ensure the development will be energy and water efficient consistent with the NSW State Governments requirements (reason for refusal number 12).

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

Clause 7(1) of State Environmental Planning Policy No. 55 requires that Council must not consent to the carrying out of any development on land unless it has considered whether the land is contaminated and if contaminated that the land is suitable in its contaminated state (or will be suitable, after remediation) for the development proposed to be carried out.

The submitted geotechnical report prepared by JK Geotechnics included an assessment of acid sulfate soils. The report identified that the soils at the site have the potential to be acid sulfate soil and require treatment. The presence of acid sulfate soils will impact the waste classification of the soil and a classification of at least “general solid waste, containing treated acid sulfate soil” could be expected subject to additional testing and reporting during treatment for acid sulfate in the excavated soil.

There are no other contamination concerns that would prevent the site from being utilised for its intended use, subject to the appropriate management of acid sulfate soils.

**Draft Central Coast Local Environmental Plan 2018**

Draft *Central Coast Local Environmental Plan 2018* (Draft CCLEP) was exhibited from 2 December 2018 until 28 February 2019 and will replace the planning instruments relating to the former Local Government Areas. Under the provisions of Draft CCLEP, the site retains its *B2 Local Centre* zoning. There are no additional or amended clauses or provisions warranting further discussion.

**Wyong Development Control Plan 2013 (WDCP)**

***Chapter 2.4 – Multiple Dwelling Residential Development of WDCP 2013***

Chapter 2.4 of WDCP 2013 applies to the development and a summary of compliance with the relevant controls under the Chapter are outlined under the attached table (Attachment 3). However, there are a number of requirements under the DCP that are relevant to the proposal but overridden by similar controls contained within the ADG. These DCP requirements include:

- communal open space (10m<sup>2</sup> per dwelling with a minimum dimension of 5 metres);

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- private open space (a minimum area of 10m<sup>2</sup> and a minimum dimension of 2 metres);
- deep soil provision (12.5% site area), site coverage (soft landscaping 25%);
- solar access (minimum of 3 hours midwinter between 9am-3pm for 70% dwellings);
- building separation; and
- storage (3m<sup>2</sup> of floor area/1-2 bed dwelling).

The DCP requirements relevant for the proposal that are not provided within the ADG include the following:

- clause 12.1b of the DCP requires the provision of 10% of units (2 units) be designed as suitable for adaption for occupation by aged persons or a person with a disability and the proposal includes 2 adaptable units and complies.
- accessible parking spaces at a rate of 1 per accessible unit are required for the residential component of the development. The basement includes two accessible spaces that could be allocated to residential uses however the proposed accessible parking spaces do not comply with AS/NZS 2890.6 (2009) – “Off-street parking for people with disabilities”. Reconfiguration of spaces would be required in order to achieve compliance.
- bicycle facilities (1 space per 3 dwellings totaling 8 spaces required). The proposal includes 10 spaces within the basement. The proposal complies.
- 25% of the site is to be landscaped, with half of that area being deep soil. The proposal is a mixed use development in a business precinct however is located at a zone interface. Whilst it is generally accepted that the provision of deep soil landscaping can be difficult to achieve in a development that achieves the anticipated outcomes of a B2 zone, in the circumstances of this site at a zone interface it is considered that deep soil planting zones should be provided at the frontage to assist in a transition of landscape and built form. The proposal does not meet the requirement of the DCP and does not provide a suitable alternative degree or location of deep soil landscaping.

***Chapter 2.11 Parking and Access of WDCP 2013***

The proposal includes a total of 38 on site spaces including 4 stacked spaces that are not in accordance with the requirements of Chapter 2.11 of WDCP. Discounting these spaces reduces the provision of onsite parking spaces to a total of 34 spaces.

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The DCP requires 35 spaces for the residential component, 5 Visitor spaces, 6 spaces for the commercial component and 30 spaces for the multi-functional tenancy, a total of 76 spaces are required. The proposed 34 spaces represent a shortfall of 42 spaces or a 45% variation to the DCP requirement which is considered unsatisfactory for a development of this scale and nature. These concerns are contained within reason for refusal 13.

***Chapter 3.1 Site Waste Management of WDCP 2013***

The proposal has been assessed against the provisions of Chapter 3.1 of WDCP 2013 and additionally the Wyong Shire Council Waste Control Guidelines.

The application is deficient in information relating to the design of the waste collection and waste storage areas. Additionally, the waste management plan lodged with the application is inadequate for the scale of the proposed development. An Operational Waste Management Strategy to identify resident, tenant, and caretaker responsibilities has not been provided and the Loading Dock Management Strategy as referred to in the Traffic Impact Assessment report by Seca Solution has not been provided.

The proposed design results in a poor amenity outcome with conflict between waste storage areas and residential apartments, and the location of the waste collection loading area results in a conflict between pedestrians, truck manoeuvring and the driveway entry/exit manoeuvres.

Detailed commentary on waste servicing of the site is provided under the assessment of likely impacts of the development on built environment below. In general, the proposal does not provide sufficient information to address waste management for the proposal. The above concerns in relation to waste management at the site are contained within **reasons for refusal 15 and 16.**

***Chapter 5.3 – The Entrance Peninsula of WDCP 2013***

Wyong DCP Chapter 5.3 – The Entrance Peninsula applies to the development and a summary of compliance with the relevant controls under the Chapter are outlined under the attached table (Attachment 3). The location specific DCP controls that apply to this site are very limited however do take precedent over Chapter 2.4 controls. Largely, the requirements under the DCP are overridden by similar controls contained within the ADG (refer Attachment 2). Having regard for the relevant provisions of Chapter 5.3, the following non-compliances are identified:

The proposal fails to meet the following objectives of Chapter 5.3:

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

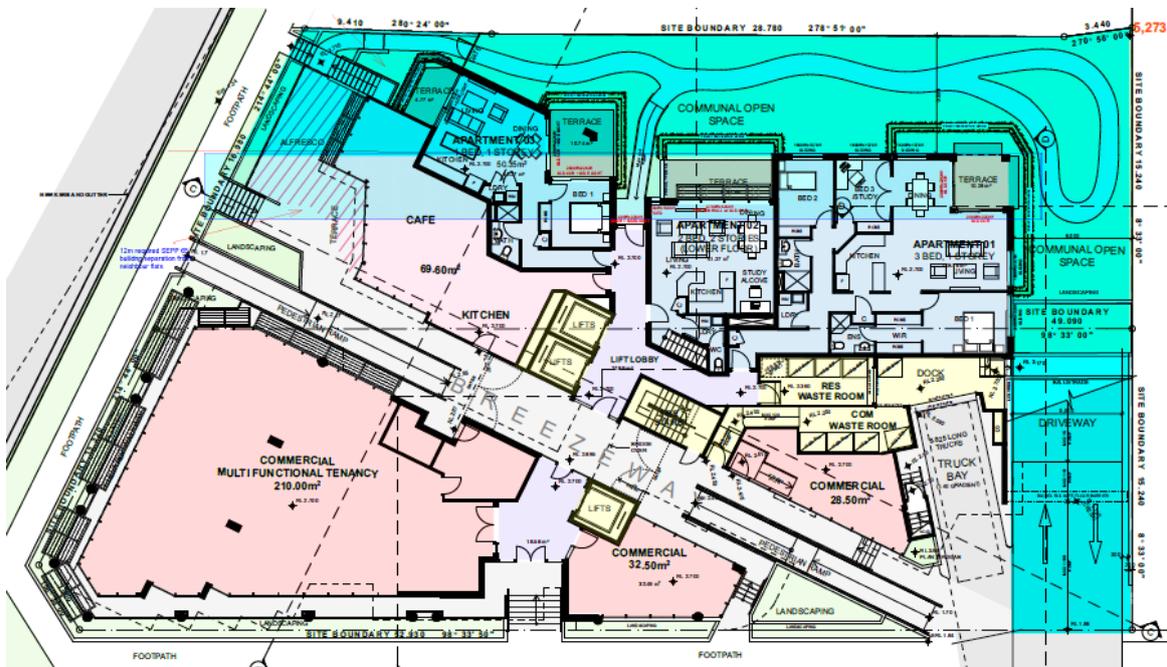
- To provide a high quality and varied residential environment with accessible open space, retail and community facilities
- To provide attractive streetscapes which reinforce the function of a street and enhance the amenity of dwellings

Additionally, the proposal fails to meet the following relevant provisions of Chapter 5.3:

3.2.7 Mixed Development in Zones B2, SP3 and RE2: Facing a Side Boundary or a Rear Lane

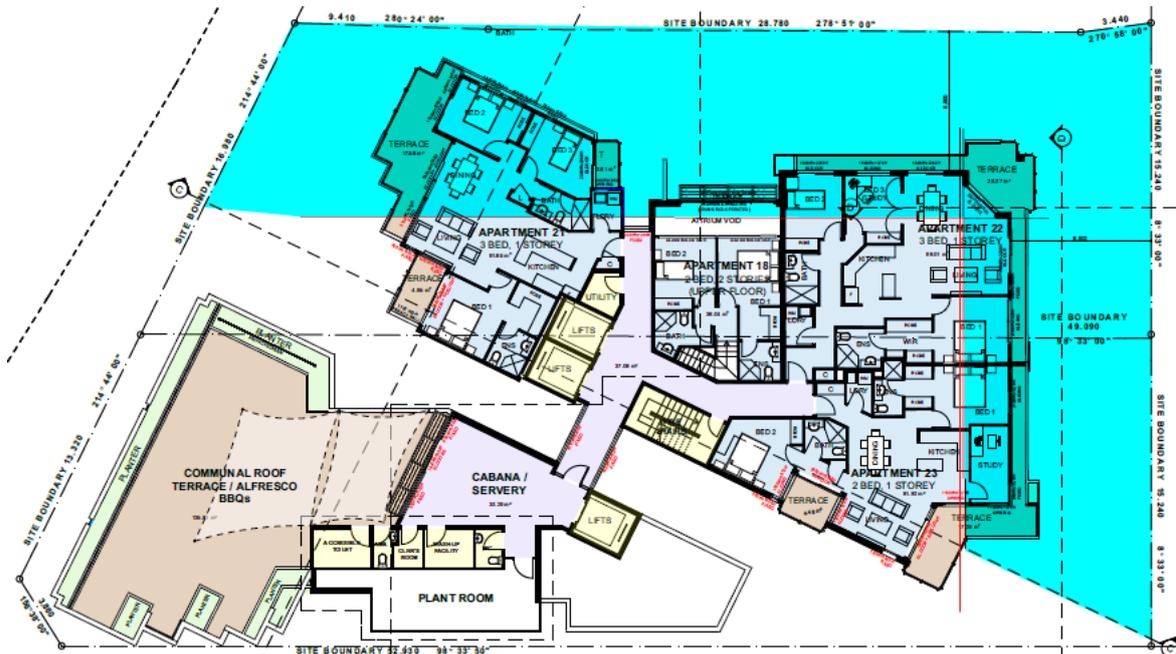
The DCP requires that tower elements are setback from any boundary that faces another mixed development, or an existing rear lane, by half of the "distance separation" that is specified by the SEPP No 65 Residential Flat Design Code.

The proposal fails to meet half of the required building separation (indicated in blue) below:



**Above: Areas on non-compliance with half of ADG building separation levels 1 to 4 (6m)**

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**Above: Areas on non-compliance with half of ADG building separation levels 5 and above (9m)**

The areas of non-compliance include apartments, balconies, terraces, and café. Non-compliance with building separation is increased at level 5 of the northern part of the development. Reason for refusal 10.

**3.2.8 Mixed Development in Zones B2, SP3 and RE2: Boundary Facing Residential Development**

The objective of part 3.2.8.1 'Landscaped Setbacks' of the DCP is to maintain amenity for residents by placing new buildings in a landscaped setback.

The DCP requires a setback that is predominantly deep soil where adjoining any residential property, and that podium and basement elements are to be setback from any boundary that faces a residential property by a minimum of 6m.

The proposal does not achieve this for 50% of the northern boundary and 75% of the eastern boundary. Deep soil on the site is limited to the north east corner.

***Part 4 Design guidelines***

The DCP includes design guidelines for general development at part 4 of the DCP that include objectives that apply to the development. These objectives are:

- *To stimulate the highest-possible levels of outdoor pedestrian activity around all properties where mixed development is permitted*

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- *To contribute to the successful operation of centres and community-based recreation facilities or clubs by stimulating the highest-possible levels of pedestrian activity*
- *To identify civic spaces and public infrastructure that would enhance desired levels of pedestrian activity*
- *To nominate locations for facilities or building elements which have the potential to disrupt or compromise desired levels of pedestrian activity*

As identified in the discussion of zone objectives and SEPP 65 above, the proposal does not provide active frontages that facilitate pedestrian interaction between the site and the public domain (Tuggerah Parade and Pacific Street road reserves and Tuggerah Lake foreshore reserve).

The DCP provides further guidance in relation to the required pedestrian activation for mixed use development at Part 4.2.1 'Pedestrian Networks'. These provisions include the following objectives:

- *To recognise the significant role of pedestrian places in relation to social and business activity within centres on The Entrance Peninsula*
- *To promote an outdoor lifestyle by concentrating pedestrian and business activity along significant pedestrian footpaths and around existing and new public open spaces*

Additionally, the DCP nominates Pacific Street between Tuggerah Parade and Central Coast Highway as an area to maximise pedestrian and business activity and requires an active frontage to Pacific Street. The DCP includes objectives and provisions relating to the provision of active frontages within 4.2.4 of the DCP, and the development proposed does not achieve these specified outcomes in relation to active frontages. Particularly, the frontages of the development do not display a sufficient variety and arrangement of land uses and building elements which are visible and attractive to pedestrians and enhance the safety and amenity of publicly-accessible places.

**Any planning agreement**

There are no planning agreements applicable to the application.

**Relevant Regulations**

There are no specific matters under the Regulation that require further discussion.

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**Likely Impacts of the Development (built environment, natural environment, economic and social impacts)**

**Built environment**

A thorough assessment of the aspects of the proposed development on the built environment has been undertaken in terms of the relevant planning controls.

***Accessibility***

The proposal does not provide off street car parking for the commercial component of the development that achieves the accessibility requirements of AS/NZS 2890.6 (2009) – “Off-street parking for people with disabilities”.

Additionally, the design of the accessible residential parking spaces is not practical and does not comply with AS/NZS 2890.6 (2009) – “Off-street parking for people with disabilities”.

Refer to **recommended reason for refusal 14**.

***Traffic and transport***

In accordance with the RMS *Guide to Traffic Generating Developments* the proposal will generate an additional 247 daily trips or 25 peak hour trips. This number of additional trips can be accommodated by the existing road network. The modelling accompanying the traffic impact assessment by SECA Solution submitted with the development application indicates that right turns onto the Central Coast Highway require significant queue/wait times it is considered that the site benefits from a road network that provides numerous alternatives for drivers to avoid this.

***Internal access and parking***

The development site currently contains an internal circulation roadway accessing multiple caravan sites.

The Applicant has submitted site plans by Thrum Architects and a traffic impact assessment by SECA Solution. These documents indicate the provision of a total of 38 on site spaces including 4 stacked spaces that are not in accordance with the requirements of Chapter 2.11 of the WDCP. Discounting these spaces reduces the provision of onsite parking spaces to a total of 34 spaces.

*Wyong DCP Chapter 2.11 Parking and Access* requires 35 spaces for the residential component, 5 Visitor spaces, 6 spaces for the commercial component and 30 spaces for the

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multi-functional tenancy, a total of 76 spaces are required. The proposed 34 spaces represent a shortfall of 42 spaces or a 45% variation to the DCP requirement.

In addition to the significant shortfall of spaces, the following concerns have been identified:

- Vehicles entering the carpark will not be able to enter the disabled space in a forward direction due to the narrowness of the aisle. Drivers will be forced to reverse into the space which places the shared zone on the wrong side of the vehicle for a disabled driver.
- There is a conflict point at the base of the carpark ramp as the proposed circulation will force exiting vehicles to cross the path of entering vehicles at a point where there is no sight distance.
- The application does not include a longitudinal driveway profile through the internal (shortest) edge demonstrating that the proposed driveway complies with AS/NZS 2890.1 (2004) - "Off-street car parking". The submitted profile details the grades through driveway centreline only.
- The absence of dimensioned plans of the basement to demonstrate compliant dimensions having regard for AS 2890 Parts 1, 2 & 6, clear of any permanent obstructions such as walls and columns.
- The geotechnical report identifies the possible need for piling for the basement. The piles would have a 450mm diameter. Shoring or piling of the basement has not been accounted for in the basement design. The basement will need to be sufficiently set back from boundaries to accommodate the thickness of any piling.

***External works and road infrastructure***

The development site is currently serviced via existing vehicle access crossings fronting Pacific Street. The existing road reserve treatment includes kerb and channel (to part of Pacific Street only), kerb inlet pit, services, grass verge (Tuggerah Parade) and one small street tree (*Callistemon*). The proposal seeks vehicular access via a new driveway crossing fronting Pacific Street.

The development would necessitate the completion of road infrastructure in accordance with the relevant provisions of Council's Civil Works Specification Design Guidelines 2018 including half road construction, new driveway crossing and layback, reinforced concrete footpath for the entire site frontages, road anchors and removal of the redundant driveway crossings and laybacks in the frontage road reserves.

The documentation submitted with the development application does not provide sufficient information including levels at the Tuggerah Parade property boundary. The current plans appear to indicate that steps are necessary in the road reserve in order to meet the levels of 1.7 and 1.75m AHD rather than within the site. This is not supported. Refer to reason for refusal 18.

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***Drainage***

The site falls to Pacific Street. The Applicant has submitted concept stormwater drainage plans by Cubo Consulting that direct stormwater to the existing kerb inlet pit in Pacific Street. A basement pump-out system has been proposed, which requires a duty and standby pump with alternating switches, together with a fuel generator onsite capable of operating when no power is available.

On-site stormwater detention and drainage system is not required due to the close proximity of the receiving downstream system and the Applicant has not adequately addressed water quality measures to treat stormwater in accordance with the Engineers Australia publication *Australian Runoff Quality – A Guide to Water Sensitive Urban Design* prior to entering Council's stormwater drainage system.

It is noted that the submitted basement floor plan details a 10,000 L rainwater tank however the intended stormwater re-use is not provided, and a tank is not indicated on the submitted concept stormwater drainage plans. A valid BASIX Certificate has not been provided. It is unclear whether the rainwater tank is required as a commitment of BASIX.

The inadequacies of the development application regarding stormwater management are contained within reasons for refusal 18.

***Water and sewer***

Water supply is available from Tuggerah Parade via an existing 100mm AC pipe. Council's existing system is adequate to provide water supply to a development on the site, however any re-development of the site would require replacement the existing AC 100mm water main for the extent of the proposed development boundary along Tuggerah Parade due to the higher density and impact from potential construction activities.

The site is currently connected into Council's sewer network. The existing sewer main along Pacific Street has sufficient capacity exists in Council's sewerage network for the proposed development.

The proposed development carpark would impact the existing AC sewer main along the Pacific Street and the applicant would be required to replace the existing 150mm AC sewer main with 150mm PVC pipe, whilst maintaining the existing sewer service to 2 Pacific Street.

***Waste disposal***

The proposal requires the servicing of waste by the reversing of the waste collection vehicle at an angle into the development. Whilst it is possible to service the site in this way, a

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number of fundamental shortfalls in the submitted documentation have been identified in relation to waste servicing.

From a design perspective, the location of the entry to apartment 1 directly adjacent and in very close proximity to the entry to the residential waste room is an extremely poor amenity outcome. Additionally, the location of the waste collection loading area results in a conflict between pedestrians, truck manoeuvring and the driveway entry/exit manoeuvres.

The following concerns have been identified in relation to the waste collection area:

- The area is of insufficient size and does not provide the minimum 4 metres wide x 13.5 metres long waste truck servicing location as per the requirements of the former Wyong Shire Waste Control Guidelines.
- The design does not demonstrate that waste servicing can be undertaken without impacting on other vehicle movements during servicing.
- The application documentation does not include details of the residential waste storage enclosure including fully dimensioned plans, and the provision of ready access for the Council Domestic Waste Contractor. The area has not been designed to allow roll out of bulk waste bins to the rear of the waste truck.
- A minimum 4 metre vertical height clearance is to be indicated in all waste truck manoeuvring area/s.
- Insufficient information to demonstrate swept turning path details to AS 2890.2 for all HRV waste truck manoeuvring. These must be designed and certified by the applicants Traffic Engineer to AS 2890.2. The HRV waste truck must be able to enter and exit the site without crossing the centre line of the road.
- A minimum 3% gradient is to be indicated in the waste storage enclosure, bulk bin roll-out pads and waste truck servicing location.
- No steps, kerbs, sloping kerbs or other obstructions are permitted in the path of travel for roll out of bulk waste bin.

The following concerns have been identified in relation to the waste storage area:

- Insufficient information has been provided including dimensioned plans of the residential waste storage enclosure. A separate, fully dimensioned commercial waste storage enclosure sized to accommodate all mixed and recyclables waste generated by the different commercial tenancies has not been provided.

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- The waste storage area does not indicate that the residential volumes of 140 litres/occupancy/week and residential recyclables at 120 litres /occupancy/week can be accommodated and be stored and serviced with 1.1 cubic metre and/or 0.66 cubic metre bulk waste bins.

The application has not provided sufficient information regarding the provision for commercial waste for the various commercial uses estimated in accordance with the former Wyong Shire Council Waste Control Guidelines and the Better practice guide for resource recovery in residential developments dated April 2019 prepared by EPANSW.

The waste management plan is inadequate for the scale of the proposed development. The following issues are identified:

- Demolition details are inconclusive with some structures on site appearing capable of relocation. The extent of all demolition/site preparation is not clearly indicated on the required Demolition Plan.
- Construction waste estimate details appear underestimated for a development of the scale and nature proposed having regard for former Wyong Shire Council Waste Control Guidelines Part 4.1 Potential for Waste Minimisation.
- Use of premises details are broad and non-specific. Residential mixed waste requires 140 litres/occupancy/week, residential recyclables waste requires 120 litres /occupancy/week.
- Does not reflect that residential mixed and recyclables waste must be managed with 1.1 cubic metre and/or 0.66 cubic metre bulk waste bins.
- The waste management plans should reflect the following servicing frequency: Residential mixed waste will be serviced twice weekly. Residential recyclables waste will be serviced weekly.
- Commercial waste for the different commercial uses is to be estimated in accordance with the former Wyong Shire Council Waste Control Guidelines and the Better practice guide for resource recovery in residential developments dated April 2019 prepared by EPANSW.
- Commercial waste bin sizes, numbers, type and style are not identified.

An Operational Waste Management Strategy to identify resident, tenant and caretaker responsibilities have not been provided.

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The loading Dock Management Strategy - A Loading Dock Management Strategy as referred to in the Traffic Impact Assessment report by Seca Solution has not been provided.

On the basis of the above concerns, the proposal does not provide sufficient information to address waste management for the proposal. The above concerns in relation to waste management at the site are contained within reasons for refusal 15 and 16.

***Locality and streetscape***

The site is within a locality with specific elements that require careful consideration and incorporation into development of the site. The corner site is required to address distinctly different 'places' or zones including:

- The lakeshore backdrop which requires scenic quality considerations.
- The interface between zones B2 and R2 that have pronounced differences in terms of scale and development intensity.
- The location at the western periphery of an established 'strip' local centre and the need for careful 'interconnection' of commercial elements.
- The existing and future character of the locality's streetscapes that include a number of smaller-scaled buildings: many of these buildings are unlikely to change over the short to medium term, for example, the strata-titled apartment building at No. 134 Tuggerah Parade.

Having considered the proposal in the context of the locality as indicated above, the proposal will adversely impact on the character and amenity of the locality and streetscape. Council's urban design consultant has further reviewed having regard for built form and character of the development in line with the requirements of SEPP 65. This assessment has identified the following concerns:

- The proposal has an overbearing visual impact upon the R2 zone and the lake foreshore reserve as a result of sheer-sided walls with effective heights of four to five storeys, insufficient setbacks (particularly those to Pacific Street), and facades which display an inappropriate architectural character.
- The proposed building would appear bigger than desirable or necessary for this prominent location due to the mass and scale of the proposed development, unsatisfactory articulation, the façade-architecture comprises elements with a distinctly-commercial character and poorly-articulated side and rear elevations, and street setbacks which are insufficient, and which cannot accommodate canopy landscaping to provide scale and reduce visual impacts.

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*Above: 3D perspective showing Tuggerah Parade facade*



*Above: 3D perspective showing Pacific Street facade*

The significant difference in levels between the street and the ground floor commercial premises and café are insufficiently managed to provide an appropriate relationship between the ground floor uses and the street. The proposed function centre use is not considered to sufficiently activate the important corner of the site where uses should link the open space of the Tuggerah Lakes foreshore to the Long Jetty town centre.

The design does not provide sufficient engagement between public spaces and ground floor retail/business uses. The site is recognised as having an important relationship with the Tuggerah Lakes foreshore reserve and this has not been captured in the design of the development. Additionally, the building composition and the lack of active frontage results in

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an inconsistency with the zone objectives, as the proposal does not achieve a compatible bulk that is appropriate for the site and it does not sufficiently integrate with the streetscape and character of the area.

The requirement for an active frontage is further reinforced through the provisions contained within *WDCP Chapter 5.3 - The Entrance Peninsula*. The level difference between the ground floor and the street level that is required to meet flooding constraints and the site interferes with the 'active' presentation of the ground floor to the street, the movement of people and the provision of a meaningful and feasible retail space.

The scale, form, character and density of the development is not appropriate within the locality having regard for the B2 zoning of the site. The proposal involves the development of two lots that are located at a zone transition from a business zone to a low density residential zone at the edge of the Long Jetty local centre. The design and appearance of the development is of an architectural appearance that is not satisfactory in the context of the future character of the streetscape. The form and scale of the development is not consistent with that envisaged for the site under the B2 zoning having regard for the site's context. The proposal does not sufficiently activate the ground floor. The articulation and composition of the built form does not give sufficient regard for its relationship to surrounding properties and the visual prominence of the site. These concerns are contained within reasons for refusal numbered 3, 10 and 17.

***Privacy, overlooking and boundary treatments***

The proposal does not provide satisfactory privacy amenity both to existing adjoining development and for dwellings within the proposal.

Adequate privacy to south-facing bedrooms in the neighbouring apartment building at No.134 Tuggerah Parade is not achieved by the development, of which 35% of apartments contribute to privacy impacts onto the neighbor. This is primarily as a result of building separation distances between neighbouring bedroom windows and balconies and windows of the proposal of between 4.5 and 9 metres that are significantly less than the 12 metres prescribed by the ADG. Additionally, windows and balconies within the development have not been designed with incorporated screening devices or appropriate orientation to avoid or minimize privacy impacts.

Moreover, adequate privacy between apartments within the development has not been achieved in the design, as 39% of the proposed apartments would be exposed to cross-viewing between windows of habitable rooms or balconies. Insufficient consideration of communal areas and their relationship to terraces may also result in a further 17% of apartments having direct exposure to common recreation areas or noise from the multi-function tenancy. This is an unacceptable amenity outcome.

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Having regard for the above concerns, the proposal does not achieve adequate privacy to neighbouring properties and additionally within the development. This has been included in reasons for refusal 10.

***Overshadowing***

Shadow diagrams have been prepared for the development between 9:00am and 3:00pm, for 21 June (midwinter) for the proposed development in order to demonstrate a worst-case scenario for solar access and shadow impact on the shortest day of the year.

Due to the orientation of the site, the shadowing created by the development extends over Pacific Street and the south west part of the frontage of the dwelling at number 2 Pacific Street and the remainder of the caravan park on the opposite corner of Pacific Street and Tuggerah Parade. It is noted that properties to the east of the site share the same B2 Local Centre zoning as the subject site, and properties to the south of the site on the opposite side of Pacific Street have an R2 Low Density Residential zoning.

During midwinter in the morning, shadowing from the proposal extends across Pacific Street into the front of the remainder of the caravan park on the opposite corner of Pacific Street.

At midday, the shadowing impacts are limited to the road reserve of Pacific Street.

During midwinter in the afternoon, shadowing from the proposal extends across Pacific Street to the east, and over the front of the properties to the east at No. 2 Pacific Street. The afternoon impact to the adjoining property on Pacific Street is largely to the west side setback and front south facing setback of the dwelling.



***Above: Shadow diagrams for the proposal midwinter at intervals of 9am, midday and 3pm.***

Overall, the extent of shadowing impact to neighbouring properties is not significant and complies with clause 6.3.1 of Chapter 2.4 of Wyong DCP which reads:

*New development shall have due regard for maintaining solar access to adjoining properties and not cause overshadowing. At least 75% of required private open space areas on adjoining*

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*lands shall receive at least three hours unobstructed sunlight between the hours of 9 am and 3 pm on June 21 (winter solstice).*

Within the development, the proposed rooftop communal open space (cabana) is located so as to receive unobstructed solar access between midday and 3pm midwinter in compliance with the DCP, however communal open space at ground level is located at a part of the site that is heavily impacted by the neighbouring residential flat building at 134 Tuggerah Parade at all times between 9am and 3pm during the midwinter solstice. A small area of communal space with an area of approximately 30m<sup>2</sup> within the east side setback of the proposed development receives solar access at 9am and 12 midday.

Council's urban design consultant has further reviewed solar access to the apartments within the development in line with the requirements of SEPP 65. This assessment has identified the following concerns:

- Solar access is unsatisfactory. During midwinter, 61% of the proposed apartments would receive at least three hours of effective daily sunlight to living rooms and private open spaces. This amount of sunlight falls significantly short of the ADG's design criteria (70%).
- The amenity of the proposed ground level communal open space is compromised by extensive midwinter overshadowing due to the form and proximity of the northern neighbour.

Having regard for the above concerns, the proposal does not achieve adequate solar access within the development. This has been included in reasons for refusal 10.

### ***Air quality***

The proposal is not supported however it is usual practice that dust suppression and control during demolition, earthworks and construction could be achieved by requiring the adoption of appropriate measures to minimise emissions into the surrounding environment. There is minimal potential for any uncontrolled or unmanaged air pollution, odour, fumes or other air quality impacts associated with the development on the site.

### ***Noise and vibration***

An acoustic report has not been provided by the applicant to address acoustic impact of the development including the following identified areas of potential conflict:

- Acoustic impacts of rooftop air conditioning plant on the ability to achieve acceptable acoustic amenity for the for the development and adjoining development. The operation of all plant (including rooftop) in combination is

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required to not exceed more than 5dB(A) above the background level during the day when measured at the site's boundaries and shall not exceed the background level at night (10.00pm - 7.00am) when measured at the nearest affected residence and property boundary.

- An assessment of impacts of the mixed-use nature of the building and the potential conflict between ground floor business uses with residential uses above, and tourist and visitor accommodation, particularly where units address the central walkway space, and additionally the use of the loading dock.
- An assessment of the impact of the use of the rooftop cabana onto residential uses within the development and adjoining properties.

The applicant has not identified potential acoustic conflicts arising from the development and has not included details of any acoustic attenuation required (reason for refusal 18).

***Safety, security and crime prevention***

The principles of Crime Prevention Through Environmental Design (CPTED) have been considered under the design of the proposed new development. The applicant has included a brief CPTED assessment within the Statement of Environmental Effects that states:

*“Embedding “Crime Prevention Through Environmental Design”, the buildings opportunity to provide casual and technical surveillance of the site and surrounds and control access, will be further reinforced by the trading arrangements associated with the commercial space within the building.”*

The application does not include sufficient information including operational information in relation to the intended uses within the proposal, particularly in relation to uses such as serviced apartments, function centre, and commercial tenancies. Council has reviewed the proposal having regard for the four CPTED principles and has identified security and surveillance issues that result from the space planning of the development and its relationship to the site and surrounds.

Council's urban design consultant has further reviewed having regard for safety and security in line with SEPP 65. This assessment has identified the following concerns:

- The ground floor does not separate residential and commercial access and reduces safety and security for residents.
- The diagonal alleyway has been designed to accommodate public and private access however does not provide adequate space planning and design to provide

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sufficient informal surveillance that would ensure reasonable safety and security for residents, particularly after-dark when operation of the commercial tenancies would require public access via the diagonal alleyway.

- Sight lines to and from the residential lobbies are obstructed by ramp balustrades and fire stair shafts.
- The security of users of the southern building lobby is further compromised by shared access for residents and commercial premises (including the major "commercial multi-function tenancy").

Having regard for the above concerns, the proposal does not adequately discourage anti-social behaviour and minimise the opportunities for criminal activities and the reasons given above are included in reason for refusal 10.

***Conflicts of proposed land use***

The Statement of Environmental Effects identifies that the development may incorporate "serviced apartments", which are a type of tourist and visitor accommodation as defined by the *Wyong Local Environmental Plan 2013*, however no detail is provided in relation to which units are proposed as tourist and visitor accommodation. A plan of management has not been submitted to address the amenity conflicts arising from tourist and visitor accommodation (serviced apartments) onto permanent residential apartments and neighbouring residential uses (reasons for refusal 2 and 18).

The Statement of Environmental Effects identifies that the development may incorporate a "function space". This would be defined as a function centre in accordance with the *WLEP 2013*. No detail is provided in relation to the intended use or suggested hours of operation have been provided to address any potential amenity conflicts to residential apartments. The applicant has not addressed how the location of and use of the function centre achieves the active frontage requirements of both the *WLEP 2013* and *DCP* (reason for refusal 3 and 18).

***Overall built environment impacts***

The proposal will adversely impact on the character and amenity of the locality and streetscape. The scale, form, character and density of the development are not acceptable within the locality. As a result, the proposed development is unsatisfactory in terms of impacts on the built environment.

A thorough assessment of the proposed development's impact on the built environment has been undertaken having regard for *SEPP 65* and the *ADG* along with the provisions of *WLEP 2013* and *WDCP* and it is considered the potential built environment impacts are unreasonable.

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**Natural Environment**

The proposed development does not demonstrate satisfactory stormwater, drainage and erosion control and that it is unlikely to have significant adverse impacts on the environment and will not decrease environmental quality for future generations. In addition, further consideration in relation to flood affectation of the site is required by the applicant.

***Flooding***

The site is located within the Tuggerah Lakes and Killarney Vale / Long Jetty Catchments and Council's records indicate that the site is significantly affected by flooding and minimum floor level requirements.

The flood characteristics are principally as a result of inundation from Tuggerah Lakes. The particulars are as follows:

- 1% AEP – 2.2 metres to Australian Height Datum (AHD)
- 5% AEP – 1.8 metres AHD
- PMF – 2.7 metres AHD

The degree of impact of the 1% Annual Exceedance Probability (AEP) flood is depicted below.



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As a reference, the February 2020 flood reached a peak of 1.67 metres AHD (measured at the Long Jetty gauge). Inundation of the entire site occurred during this minor storm event.



***Above: Photo of the subject site on 12 February 2020 when floodwaters had receded***

A Flood Assessment Report by Cubo Consulting has been submitted with the development application.

The development as proposed is designed with ground floor residential and commercial buildings at 2.7 metres AHD. This has been determined as the 1% AEP event + 500mm freeboard. The effects of climate change have not been catered for within the design in determining the relevant floor levels. The application documentation has not adequately addressed climate change considerations for the development. As a minimum, the finished floor level would be required to be increased in accordance with the latest available information.

The Flood Assessment Report by Cubo Consulting Council identifies shelter in place for this proposal. For areas east of the Main Northern Railway line, evacuation should be the primary response strategy. The submitted documentation details the lowest point on the subject site as being approximately 1.4 metres AHD, with the frontage kerb inlet pit in Pacific Street as 1.2 metres AHD. The maximum flood depth on-site would be approximately 800mm. Based upon these levels, a safe low hazard evacuation route is available east along Pacific Street. The level at the access driveway is approximately 1.65 metres AHD, a potential flood depth of only 541mm.

Due to the level on site, the development includes a flood gate that has been proposed at the driveway crest of 1.71 metres. A self-activating flood barrier that is activated by floodwater and not by electricity would be required.

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The inadequacies of the development application in relation to flooding have been identified in **recommended reason for refusal number 8**.

***Water quality***

The application documentation has not adequately detailed water quality facilities to treat stormwater in accordance with the Engineers Australia publication *Australian Runoff Quality – A Guide to Water Sensitive Urban Design* prior to entering Council's stormwater drainage system. These concerns are contained within reasons for refusal numbered 18.

***Acid sulfate soils***

As previously discussed the site is identified as class 2 on 'Council's Acid Works Sulphate Soils Planning Map' and the geotechnical report identified that the soils at the site have the potential to be acid sulfate soil, and require treatment. The presence of acid sulfate soils will impact the waste classification of the soil and a classification of at least "general solid waste, containing treated acid sulfate soil" could be expected subject to additional testing and reporting during treatment for acid sulfate in the excavated soil.

Generally, having regard for the flooding and water quality matters raised above, the development application has not included sufficient information to address impacts on the natural environment.

**Economic impacts**

The application is not supported based on likely impacts of the development however the economic impacts of the development are not raised in reasons for refusal.

**Social impacts**

It is acknowledged that permanent caravan sites are utilised as a source of affordable housing accommodation within the community and that there is a need for affordable and low cost housing on the Central Coast. The applicant has not provided a Social Impact Assessment (SIA) that provides information on current tenants and addresses the loss of affordable housing and available alternative housing for tenants.

A Plan of Management relating to the potential amenity conflicts of intended tourist and visitor accommodation and function centre use and operation at the site has not been provided. As such the application does not provide sufficient information to allow assessment of the impacts to the amenity and safety of residents and neighbours as a result of the ongoing use.

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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In the absence of an SIA addressing accommodation for tenants and the lack of a Plan of Management for the intended uses at the site, the application is considered to provide insufficient information to determine the likely social impacts of the development (reason for refusal 18).

**Suitability of the Site for the Development**

For the reasons identified in the above assessment and contained within Council's reasons for refusal, it is considered that the site is not suitable for the proposed development.

**Submissions**

The application was publicly exhibited for a period of 21 days from 11 March 2019 to 1 April 2019. No submissions were received.

**Submissions from Public Authorities**

The Geotechnical Report by JK Geotechnics submitted with the development application identifies that dewatering would need to occur until the completion of the basement. If the proposal was to be approved, a water licence issued by NSW Natural Resources Access Regulator (NRAR) would be required.

**Internal Consultation**

The application has been referred to and reviewed by the following experts in council:

- Environmental Health
- Urban Design
- Engineering
- Engineering - Traffic and Transport
- Water and Sewer
- Waste Services

The concerns raised by the officers have been included within the recommended reasons for refusal.

**Ecologically Sustainable Principles**

The proposal has been assessed having regard to ecologically sustainable development principles and it is considered that the development does not adequately demonstrate that it is consistent with the principles.

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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The proposed development does not demonstrate satisfactory stormwater, drainage and erosion control and that the proposal is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations.

**Climate Change**

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the development application. This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope, combat, withstand these potential impacts.

The proposed development is unacceptable in that it has not considered the effects of climate change in relation to flooding impacts at the site. The proposal does not allow for the impacts of a rise in sea level or more intense or more extreme weather conditions. The site is identified as subject to significant inundation (flooding) from Tuggerah Lake. The development as proposed is designed with ground floor residential and commercial buildings at 2.7 metres AHD. This has been determined as the 1% AEP event + 500mm freeboard.

The effects of climate change have not been catered for within the design in determining the relevant floor levels. The application documentation has not adequately addressed climate change considerations for the development. As a minimum, the finished floor level would be required to be increased in accordance with the latest available information. On this basis it is considered that the proposed development is unsatisfactory in relation to climate change (reason for refusal 8).

**Other Matters for Consideration**

***Development Contribution Plan***

Development contributions would be applicable if the proposal was supported.

***Water and Sewer Contributions***

Water and sewer contributions are applicable to the development and a Section 306 issued under the *Water Management Act 2000* would be required if the proposal was supported.

***Planning Agreements***

The proposed development is not subject to a planning agreement / draft planning agreement.

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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### **The Public Interest**

For the reasons identified in the assessment and contained within Council's reasons for refusal, the proposal is not considered to be in the public interest (**recommended reason for refusal 20**).

### **Conclusion**

This application has been assessed having regard for the matters for consideration under the *Section 4.15* of the *Environmental Planning and Assessment Act 1979* and all relevant instruments, plans and policies.

The potential constraints of the site have been assessed and it is considered that the site is not suitable for the proposed development, in its current form.

The site is zoned *B2 Local Centre*. Having regard for the context and the visual prominence of the site at the zone interface with *R2* and *RE1* zoned land, the scale, form, character and density of the development is not acceptable.

The proposal is not consistent with the objectives of the *B2 Local Centre* zoning of the site. The proposal does not sufficiently minimise conflict between land uses within the zone and the adjacent *R2* zone and the *RE1* zone. The proposed building is not sufficiently compatible with the character of the surrounding locality and fails to relate to its context. Sheer-sided walls of four to five storeys, insufficient setbacks facing Pacific Street, facades with inappropriate architectural character, all result in an overbearing visual impact upon the adjoining *R2 Low Density Residential* zone and the lakeside reserve.

The development does not have sufficient regard for ground floor activation. The level changes are not appropriately managed between ground floor uses and the street frontage. The proposed function centre use is not a sufficiently activating use for the corner. The design of the ground floor of the development does not encourage the movement of people through the site in a way that supports the function of the non-residential uses as active uses.

The development is not a permissible use within the *B2 Local Centre* zone of the *Wyong Local Environmental Plan 2013*. The development is best characterised as residential accommodation, which is a prohibited use in the zone. The proposal does not meet the definition of shop top housing.

The proposal does not meet the objectives of *Clause 4.3, 4.4 or 4.6* of the *Wyong Local Environmental Plan 2013* in relation to built form. The proposal does not achieve a compatible bulk that is appropriate for the site and it does not sufficiently integrate with the streetscape and character of the area. The proposed mass and scale of the building form is

**4.3 DA/182/2020 125-135 Tuggerah Parade, Long Jetty - mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works (contd)**

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inappropriate for the corner location, does not adequately respond to the RE1 and R2 zone interface, and results in poor amenity outcomes.

The proposal fails to meet fundamental design quality that is required by *State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development)*

The proposal does not satisfactorily address likely impacts to the coastal environment as required by the provisions of *State Environmental Planning Policy (Coastal Management) 2018*

The development application has insufficient information and detail to adequately assess the impacts of the proposed development application.

The proposal is not in the public interest.

Accordingly, the application is recommended for refusal pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

**Attachments**

<b>1</b>	Attachment 1 Reasons for Refusal		D14177502
<b>2</b>	Attachment 2 Apartment Design Guide Compliance Table		D14178352
<b>3</b>	Attachment 3 - DCP & ADG compliance tables		D14179043
<b>4</b>	Attachment 4 Urban Design Advisory Panel review advice prepared by Brett Newbold Urban Planning Pty Ltd dated 3 June 2020	Provided Under Separate Cover	D14153140
<b>5</b>	Attachment 5 Architectural Plans prepared by Thrum Architects	Provided Under Separate Cover	D13848986
<b>6</b>	Attachment 6 Clause 4.6 written request prepared by SJH Planning and Design		D13848954

<b>Applicant</b>	Thrum Architects Pty Ltd
<b>Owner</b>	Mr GG Smith and Mrs K Smith
<b>Application No</b>	DA/162/2020
<b>Description of Land</b>	Lot 2 DP 571978, Pt Lot 37 Sec 1 DP 13225, Paradise Tourist Park, 136-136 Tuggerah Parade, LONG JETTY NSW 2261
<b>Proposed Development</b>	A mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking & associated works

- 1 The development does not meet the definition of shop top housing. The development is more properly characterised as residential accommodation, which is a prohibited use in the B2 Local Centre zone under *Wyong Local Environmental Plan 2013*. The proposal does not meet the definition of shop top housing because:
  - a) The application proposes ground floor residential apartments
  - b) The application proposes ground floor commercial uses
  - c) The application proposes ground floor function centre uses.
  
- 2 The development application does not include sufficient information to properly characterise the residential component of the development as serviced apartments (tourist and visitor accommodation) as defined by *Wyong Local Environmental Plan 2013*.
  
- 3 The development does not achieve the zone objectives of the B2 Local Centre zoning of *Wyong Local Environmental Plan 2013*.
  - a) The proposal does not sufficiently minimise conflict between land uses within the zone and the adjacent R2 zone and the RE1 zone. The proposed development is not sufficiently compatible with character of the surrounding locality and fails to relate to its context. Sheer-sided walls of four to five storeys, insufficient setbacks facing Pacific Street, and facades with inappropriate architectural character, result in overbearing visual impact upon the adjoining R2 Low Density Residential zone and the lakeside reserve.
  
  - b) The development does not have sufficient regard for ground floor activation. The level changes are not appropriately managed between ground floor uses and the street frontage. The proposed function centre use is not a sufficiently activating use for the corner. The design of the ground floor of the development does not encourage the movement of people through and around the site in a way that supports the function of the non-residential uses as active uses.
  
- 4 The proposal does not comply with the maximum 16 metres Height of Building provisions of Clause 4.3 of the *Wyong Local Environmental Plan 2013*. The height of the building of 17.39 metres to the lift overrun contributes to an unsympathetic development form that is not appropriate in the context of directly adjoining and nearby development sites. The proposal does not achieve the objectives of the height of building development standard of Clause 4.3 because the proposal is not compatible

with the bulk, height and scale of existing and future character and the development results in poor visual bulk and privacy impacts to neighbouring properties.

- 5 A written request under Clause 4.6 of the *Wyong Local Environmental Plan 2013* has not been submitted in relation to the non-compliance with Clause 4.3 to adequately demonstrate why compliance with the development standard is unreasonable or unnecessary and why there are sufficient environmental planning grounds to justify contravening the development standard.
- 6 The proposal does not comply with the maximum 1.5:1 Floor Space Ratio provision of Clause 4.4 of the *Wyong Local Environmental Plan 2013*. The floor space ratio of the proposal is 1.78:1. The proposal does not achieve the objectives of the floor space ratio development standard of Clause 4.4 because the proposal does not achieve a compatible bulk that is appropriate for the site and it does not sufficiently integrate with the streetscape and character of the area. The proposed mass and scale of the building form is inappropriate for the corner location, does not adequately respond to the RE1 and R2 zone interface, and results in poor amenity outcomes.
- 7 The written request that has been submitted with the development application under the provisions of Clause 4.6 of the *Wyong Local Environmental Plan 2013* does not adequately demonstrate that:
  - compliance with the development standard is unreasonable and unnecessary in the circumstances of the case (4.6(3)(a)).
    - in the circumstances of this application the objectives of the development standard are achieved despite non-compliance with the standard
    - achievement of the objectives of the zone having regard for the fact that adequate active retail and business uses are not achieved, and the development does not minimise conflict with adjoining land uses.
  - there are sufficient environmental planning grounds to justify contravening the standard (4.6(3)(b)).

The variation to the Floor Space Ratio development standard of Clause 4.4 is not in the public interest because it is not consistent with the objectives of the development standard and the objectives for the zone (4.6(4)(ii)).

- 8 The proposal does not adequately address the provisions of Clause 7.2 of the *Wyong Local Environmental Plan 2013* because:
  - a) the flood assessment submitted with the development application does not adequately address climate change considerations for the development
  - b) shelter in place as identified within the submitted flood assessment is not an appropriate strategy for the site.
- 9 The proposal does not adequately address the provisions of Clause 7.9 of the *Wyong Local Environmental Plan 2013*. The application does not include sufficient detail to

adequately address water quality measures to treat stormwater prior to entering Council's stormwater drainage system.

- 10 The proposal does not adequately address the provisions of *State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development)*. Adequate regard to the design quality principles and the objectives of the design criteria specified by the apartment design guide has not been given as required by Clause 30(2):
  - a) The proposal fails to achieve fundamental design quality as identified in the design quality principles, primarily: context, neighbourhood character, built form and character, density, amenity and safety.
  - b) The proposal does not satisfactorily achieve the objectives and design criteria of the apartment design guide.
    - Insufficient solar access that does not comply with the ADG minimum of 70% as only 61% of apartments receive adequate solar access.
    - Ground floor communal open space is extensively shadowed at midwinter.
    - Inadequate building separation that results in unacceptable privacy impacts to neighbouring properties and privacy conflict between apartments within the development.
    - Compromised safety and security as a result of the narrow diagonal alley with limited sight lines and shared public and commercial access to lobbies that service residential apartments.
    - Insufficient deep soil landscaping at the frontages to provide appropriate streetscape for the context.
    - Unarticulated facades and a commercial character result in overbearing visual bulk for the context.
    - Unit layouts have poor space planning that do not achieve efficient usable spaces that can be furnished.
    - Car parking is inadequate for the intended uses.
- 11 The proposal does not adequately address the provisions of *State Environmental Planning Policy (Coastal Management) 2018*:
  - a) The proposal would result in an unsatisfactory visual amenity in a highly visible coastal location (14)(1)(a).
  - b) Having regard for the surrounding coastal and built environment, the bulk, scale and size of the proposed development is unsatisfactory (14)(1)(b).
  - c) The application has not provided sufficient storm water quality information to demonstrate that the proposal will not have an adverse impact on the water quality of the lake (13)(1).
  - d) the consent authority cannot be satisfied of the extent of any impact and the extent of any mitigation required and is therefore not consistent with the requirements of Clause 13(2).
- 12 A valid BASIX Certificate has not been submitted with the development application as required by Schedule 1 of the *Environmental Planning and Assessment Regulation 2000*.

- 13 The development application does not provide adequate car parking for the proposal in accordance with the requirements of Chapter 2.11 of *Wyong Development Control Plan 2013*.
- 14 The proposal does not provide accessible off street car parking for the commercial component of the development and does not provide appropriately designed accessible off street parking for the residential component of the development that achieves the accessibility requirements of AS/NZS 2890.6 (2009) – “Off-street parking for people with disabilities”.
- 15 The development application does not adequately address waste management for the proposal in accordance with the requirements of Chapter 3.1 of *Wyong Development Control Plan 2013* and the former *Wyong Shire Council Waste Control Guidelines*:
  - a) The waste collection area:
    - Is of insufficient size and does not provide the minimum 4 metres wide x 13.5 metres long waste truck servicing location as per the requirements of the former Wyong Shire Waste Control Guidelines.
    - Impacts on other vehicle movements during servicing.
    - Does not include ready access to allow roll-out of bulk waste bins to the rear of the waste truck.
    - Does not include a minimum 4 metre vertical height clearance has not been detailed in all waste truck manoeuvring area/s.
    - Has not demonstrated swept turning path details to AS 2890.2 for all HRV waste truck manoeuvring, to be designed and certified by the applicants Traffic Engineer to AS 2890.2. The HRV waste truck must be able to enter and exit the site without crossing the centre line of the road.
  - b) The waste storage area:
    - Does not indicate that a separate, fully dimensioned Commercial waste storage enclosure sized to accommodate all mixed and recyclables waste generated by the different commercial tenancies is provided.
    - Does not indicate that the residential volumes of 140 litres/occupancy/week and residential recyclables at 120 litres /occupancy/week can be accommodated and be stored and serviced with 1.1 cubic metre and/or 0.66 cubic metre bulk waste bins.
- 16 The application has not included sufficient information to enable an assessment of the waste management strategy for the development. The waste management plan is inadequate for the scale of the proposed development:
  - Demolition details are inconclusive with some structures on site appearing capable of relocation. The extent of all a demolition/site preparation is not clearly indicated on the required Demolition Plan.
  - Construction waste estimate details appear underestimated for a development of the scale and nature proposed.
  - Use of Premises details are broad and non-specific. Residential mixed waste requires 140 litres/occupancy/week, residential recyclables waste requires 120 litres /occupancy/week.

- Does not reflect that residential mixed and recyclables waste must be managed with 1.1 cubic metre and/or 0.66 cubic metre bulk waste bins.
  - The waste management plans do not reflect the required servicing frequency: Residential mixed waste serviced twice weekly and residential recyclables waste serviced weekly.
  - Commercial waste for the different commercial uses estimated in accordance with the former Wyong Shire Council Waste Control Guidelines and the EPA Better practice guide for resource recovery in residential developments.
  - Commercial waste bin sizes, numbers, type and style are not identified.
  - An Operational Waste Management Strategy to identify resident, tenant, caretaker responsibilities has not been provided.
  - Loading Dock Management Strategy as referred to in the Traffic Impact Assessment report by Seca Solution has not been provided.
- 17 The proposal will adversely impact on the character and amenity of the locality and streetscape. The scale, form, character and density of the development is not acceptable within the immediate context having regard for the zoning of adjoining properties and the B2 Local Centre zoning of the site. The development is of an architectural appearance which is unsatisfactory having regard for the future character of the streetscape. The proposal includes sheer unarticulated facades with a commercial character and large building bulk that do not have sufficient regard for the existing context or zone interface.
- 18 The application contains insufficient information to accurately represent the proposed development or to properly assess the likely impacts of the development:
- a) Insufficient information including levels at the Tuggerah Parade property boundary. The current plans require steps within the road reserve in order to meet the levels of 1.7 and 1.75m AHD that would not be supported.
  - b) There is no acoustic report to address acoustic impact of the development including air conditioning plant, conflicts between uses and the rooftop cabana, both within and to neighbouring properties.
  - c) Insufficient detail in relation to the proposed serviced apartments (tourist and visitor accommodation). A plan of management has not been submitted to address the amenity conflicts arising from tourist and visitor accommodation onto permanent residential apartments.
  - d) Insufficient detail in relation to the intended use or operation of the proposed "function space" and has not addressed how the location of and use of the function centre achieves the active frontage requirements *the WLEP 2013*
  - e) Insufficient detail of water quality facilities to treat stormwater prior to entering Council's stormwater drainage system.
  - f) No information has been provided in relation to a Social Impact Assessment (SIA) that addresses current tenant accommodation and the loss of affordable housing and available alternative housing for tenants.
  - g) No longitudinal driveway profile through the internal (shortest) edge demonstrating that the proposed driveway complies with AS/NZS 2890.1 (2004) - "Off-street car parking". The submitted profile details the grades through driveway centreline only.

- h) No dimensioned plans of the basement to demonstrate compliant dimensions having regard for AS 2890 Parts 1, 2 & 6, clear of any permanent obstructions such as walls and columns.
- 19 The site is not suitable for the proposed development having regard for the provisions of Section 4.15(1)(c) of the *Environmental Planning and Assessment Act 1979*.
- 20 The proposal is not in the public interest because:
- a) It relies upon variations to the height of building and floor space ratio development standards of the *Wyang Local Environmental Plan 2013* and the development is not consistent with the objectives of the zone and the objectives of the development standards as required by Clause 4.6(4)(ii) of *Wyang Local Environmental Plan 2013*.
  - b) The proposal does not achieve a compatible bulk that is appropriate for the site and it does not sufficiently integrate with the streetscape and character of the area.
  - c) The proposal provides residential and non-residential uses at street level that are not consistent with maintaining active uses at the street. Additionally, the proposal does not achieve a harmonious relationship that is compatible with adjoining land at the zone interface to land within the B2 zone and the R2 and RE1 zone.

## ATTACHMENT 2

## Apartment Design Guide

Pursuant to Clause 30(2) of SEPP 65 in determining a development application for a residential flat building the consent authority is to take into consideration the Apartment Design Guide (ADG). The following table is an assessment of the proposal against the guidelines provided in the ADG.

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<b>3A Site analysis</b>		
<p><i>Objective 3A-1</i></p> <p>Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context</p>	NO	<p>The proposed building is not sufficiently compatible with character of the surrounding locality and fails to contribute to visible elements of context.</p> <p>Sheer-sided walls of 4 – 5 storeys, insufficient setbacks (Pacific Street), facades with inappropriate architectural character, would have an overbearing visual impact upon zone R2 as well as the lakeside reserve and do not make a positive contribution to streetscape quality, the lake-shore setting and the low density residential zone R2.</p>
<b>3B Orientation</b>		
<p><i>Objective 3B-1</i></p> <p>Building types and layouts respond to the streetscape and site while optimising solar access within the development</p>	NO	<p>The proposal does not respond to the lakefront and R2 low density residential zones to which the development has frontage. The development does not provide sufficient activating uses at the ground floor and does not adequately manage the level change from the street to the ground floor.</p>
<p><i>Objective 3B-2</i></p> <p>Overshadowing of neighbouring properties is minimised during mid-winter</p>	YES	<p>The proposal has acceptable outcomes having regard for neighbouring properties, existing shadows and likely future development of adjoining and nearby lots.</p>

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<b>3C Public domain interface</b>		
<p><i>Objective 3C-1</i></p> <p>Transition between private and public domain is achieved without compromising safety and security</p>	NO	The management of level changes between the development and the street, along with the narrow diagonal alley and obscured sight lines, combine with shared lobbies for commercial and residential uses result in safety and security concerns.
<p><i>Objective 3C-2</i></p> <p>Amenity of the public domain is retained and enhanced</p>	NO	The proposal does not provide an appropriate active character at street level. The built form is incongruous with the Pacific Street R2 character and lakefront reserve.
<b>3D Communal and public open space</b>		
<p><i>Objective 3D-1</i></p> <p>An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.</p>	NO	The ground floor communal open space area has poor amenity as it does not receive adequate solar access.
<p><b>Design criteria</b></p> <ol style="list-style-type: none"> <li>Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)</li> <li>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)</li> </ol>	NO	<p>370m<sup>2</sup> is required. The proposal provides 300m<sup>2</sup> at ground level. The proposal does not achieve &gt;2hrs solar access to 50% of the ground floor space (150 m<sup>2</sup>).</p> <p>The proposal includes a hard paved rooftop terrace (140m<sup>2</sup>) which receives sun to the entire area throughout the 9am-3pm time period @midwinter, however the space is accessed through a cabana and the use of the cabana space is unclear (commercial?) additionally, utilising this space requires residents of the northern building to have access to the southern lift core.</p>

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<p><i>Objective 3D-2</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>	YES	The proposal includes two bench seats and a pathway. Given the proximity to the generous public recreation opportunities adjoining Tuggerah Parade, further embellishment of communal open space is not necessary. The roof top terrace does not contain shade elements or areas conducive to small gatherings.
<p><i>Objective 3D-3</i></p> <p>Communal open space is designed to maximise safety</p>	YES	The proposal includes sufficient passive surveillance and lighting.
<p><i>Objective 3D-4</i></p> <p>Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood</p>	N/A	-
<b>3E Deep soil zones</b>		
<p><i>Objective 3E-1</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>	N/A	The limited area on site of approximately 5m along the north boundary includes proposed tree species within the communal open space area that are limited to small garden trees such as crepe myrtle, which are small for a building of 5 storeys. Council's urban designer has identified that opportunity for deep soil planting should be explored on the Pacific Street frontage to assist in achieving an appropriate zone interface.

ADG COMPLIANCE TABLE				
Guideline			Y/N	Comment
<b>Design criteria</b>			YES	The ADG requires 7% (103.6m <sup>2</sup> ) of deep soil. The proposal provides 173m <sup>2</sup> of deep soil planting on the north boundary.
Deep soil zones are to meet the following minimum requirements:				
<b>Site area</b>	<b>Minimum dimensions</b>	<b>Deep soil zone (% of site area)</b>		
less than 650m <sup>2</sup>	Nil	7%		
650m <sup>2</sup> - 1,500m <sup>2</sup>	3m	Minimum 7% with recommended 10%		
greater than 1,500m <sup>2</sup>	6m	-		
greater than 1,500m <sup>2</sup> with significant existing tree cover	6m	-		
<b>3F Visual privacy</b>				
<b>Objective 3F-1</b>			NO	The adjoining site (134 Tuggerah) is strata title flat building 3m to the b'dy with the site. The proposal has 5 storeys at a splayed angle that is 1.6m setback from the b'dy and an elevated terrace that is 1.2m setback.
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy				
<b>Design criteria</b>			NO	Does not comply for half of required separation to north side b'dy and east side boundary (6m/12m L1 – L4) (9m/18m L4 and above)
Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:				
<b>Building height</b>	<b>Habitable rooms and balconies</b>	<b>Non-habitable rooms</b>	<b>Proposal</b>	
up to 12m (4 storeys)	6m	3m	6m	
up to 25m (5-8 storeys)	9m	4.5m	9m	
over 25m (9+ storeys)	12m	6m	-	
<b>Note:</b> Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)				
Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties				

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<p><i>Objective 3F-2</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>	NO	<p>Separation distances between neighbours' bedroom windows and windows or balconies of the proposed building &lt; 12m ADG requirement</p> <p>Proposed windows and balconies are not screened, oriented or designed to avoid or minimise privacy impacts.</p> <p>39% of apartments are exposed to cross-viewing between windows of habitable rooms and / or balconies.</p>
<b>3G Pedestrian access and entries</b>		
<p><i>Objective 3G-1</i></p> <p>Building entries and pedestrian access connects to and addresses the public domain</p>	YES	<p>The building entry addresses the public domain however the level change to the street is not sufficiently managed. Building entries off the internal diagonal alley within the site are problematic due to the dimension and sight obstructions and function of the alley.</p>
<p><i>Objective 3G-2</i></p> <p>Access, entries and pathways are accessible and easy to identify</p>	YES	<p>Entries are accessible by virtue of the ramps within the diagonal alley. The entry to the north building is difficult to identify from the public domain however does include a suitable lobby within the site.</p>
<p><i>Objective 3G-3</i></p> <p>Large sites provide pedestrian links for access to streets and connection to destinations</p>	YES	<p>The diagonal alley provides multiple pedestrian links to the street.</p>
<b>3H Vehicle access</b>		
<p><i>Objective 3H-1</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>	NO	<p>There is conflict between the diagonal alley (pedestrians) and the basement ramp, and additionally the loading dock area.</p>

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<p><b>Design guidance</b></p> <p>Car park access should be integrated with the building's overall facade. Design solutions may include:</p> <ul style="list-style-type: none"> <li>the materials and colour palette to minimise visibility from the street</li> <li>security doors or gates at entries that minimise voids in the facade</li> <li>where doors are not provided, the visible interior reflects the facade design and the building services, pipes and ducts are concealed</li> </ul>	YES	The car parking is provided largely within a basement.
<b>3J Bicycle and car parking</b>		
<p><b>Objective 3J-1</b></p> <p>1. Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas</p>	NO	The proposal does not comply with DCP requirements for car parking and has a shortfall of 42 spaces or a 45% variation to the DCP requirement.
<p><b>Design criteria</b></p> <p>1 For development in the following locations:</p> <ul style="list-style-type: none"> <li>on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or</li> <li>on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre</li> </ul> <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less</p> <p>The car parking needs for a development must be provided off street</p>	NO	The proposal does not comply with DCP requirements for car parking and has a shortfall of 42 spaces or a 45% variation to the DCP requirement.
<p><b>Objective 3J-2</b></p> <p>Parking and facilities are provided for other modes of transport</p>	YES	Bicycle parking is provided, along with service vehicles.
<p><b>Objective 3J-3</b></p> <p>Car park design and access is safe and secure</p>	YES	Car parking is contained within a basement.
<p><b>Objective 3J-4</b></p> <p>Visual and environmental impacts of underground car parking are minimised</p>	NO	The application does not detail the method of ventilation of the basement on architectural plans.
<p><b>Objective 3J-5</b></p> <p>Visual and environmental impacts of on-grade car parking are minimised</p>	YES	No on grade car parking is proposed.

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<p><i>Objective 3J-6</i></p> <p>Visual and environmental impacts of above ground enclosed car parking are minimised</p>	N/A	-
<b>4A Solar and daylight access</b>		
<p><i>Objective 4A-1</i></p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space</p>	YES	To the extent practical (having regard for visual and acoustic privacy of the light courtyard) dwellings are orientated to receive sunlight.
<p><b>Design criteria</b></p> <p>1 Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas</p> <p>2 In all other 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</p> <p>3 A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	NO	During midwinter, only 61% of the proposed apartments would receive at least three hours of effective daily sunlight to living rooms and private open spaces.
<p><i>Objective 4A-2</i></p> <p>Daylight access is maximised where sunlight is limited</p>	NO	Insufficient.
<p><i>Objective 4A-3</i></p> <p>Design incorporates shading and glare control, particularly for warmer months</p>	NO	Openings are unshaded.
<b>4B Natural ventilation</b>		
<p><i>Objective 4B-1</i></p> <p>All habitable rooms are naturally ventilated</p>	YES	All habitable rooms have opening windows.
<p><i>Objective 4B-2</i></p> <p>The layout and design of single aspect apartments maximises natural ventilation</p>	YES	Units 18, 15, 13, 11, 08, 02 are single aspect that have been designed to maximising opportunities for natural ventilation.
<p><i>Objective 4B-3</i></p> <p>The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents</p>	YES	All above single aspect apartments are two storey apartments that can benefit from through ventilation except for 08.

ADG COMPLIANCE TABLE			
Guideline		Y/N	Comment
<b>Design criteria</b>		YES	73% (17 units) comply.
1	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed		
2	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line		
<b>4C Ceiling heights</b>			
<b>Objective 4C-1</b>		NO	Ceiling heights are adequate in levels above ground level however do not meet the minimum for the ground floor. Compliant ceiling height would lead to further overall building height non-compliance.
Ceiling height achieves sufficient natural ventilation and daylight access			
<b>Design criteria</b>		NO	The applicant has provided 3.0m floor to floor heights on Level 1 and above. This can achieve the required 2.7m ceiling heights, subject to correct engineering of the floor slabs.
Measured from finished floor level to finished ceiling level, minimum ceiling heights are:			
<b>Minimum ceiling height for apartment and mixed use buildings</b>		<b>Proposal</b>	
Habitable rooms	2.7m	2.7m	The proposal does not meet the minimum 3.3m floor to ceiling for the ground floor. This is required for non-residential uses. Compliant ceiling height would lead to further overall building height non-compliance.
Non-habitable	2.4m	2.7m	
For 2 storey apartments	2.7m for main living area floor	-	
	2.4m for second floor, where its area does not exceed 50% of the apartment area		
Attic spaces	1.8m at edge of room with a 30 degree minimum ceiling slope	-	
If located in mixed used areas	3.3m for ground and first floor to promote future flexibility of use	3.3m	
<b>Objective 4C-2</b>		YES	Ceiling height is adequate for levels above ground level.
Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms			
<b>Objective 4C-3</b>		NO	Ground floor ceiling heights are 3.0m and do not allow for flexibility of use.
Ceiling heights contribute to the flexibility of building use over the life of the building			
<b>4D Apartment size and layout</b>			

ADG COMPLIANCE TABLE																	
Guideline	Y/N	Comment															
<p><b>Objective 4D-1</b></p> <p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity</p>	NO	Amenity is poor.															
<p><b>Design criteria</b></p> <p>Apartments are required to have the following minimum internal areas:</p> <table border="1"> <thead> <tr> <th>Apartment type</th> <th>Minimum internal area</th> <th>Proposal</th> </tr> </thead> <tbody> <tr> <td>Studio</td> <td>35m<sup>2</sup></td> <td>-</td> </tr> <tr> <td>1 bedroom</td> <td>50m<sup>2</sup></td> <td>51m<sup>2</sup></td> </tr> <tr> <td>2 bedroom</td> <td>70m<sup>2</sup> + 5m<sup>2</sup></td> <td>72.31m<sup>2</sup></td> </tr> <tr> <td>3 bedroom</td> <td>90m<sup>2</sup> + 5m<sup>2</sup></td> <td>91.65m<sup>2</sup></td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each</p> <p>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>	Apartment type	Minimum internal area	Proposal	Studio	35m <sup>2</sup>	-	1 bedroom	50m <sup>2</sup>	51m <sup>2</sup>	2 bedroom	70m <sup>2</sup> + 5m <sup>2</sup>	72.31m <sup>2</sup>	3 bedroom	90m <sup>2</sup> + 5m <sup>2</sup>	91.65m <sup>2</sup>	NO	<p>Open-plan living and dining rooms in approximately 65% of the proposed apartments are insufficient to accommodate typical furniture as well as access, (inefficient space-planning).</p> <p>All seven apartments in the southern pavilion have pronounced 'pinch points' in primary circulation paths which pass around sitting or dining furniture settings, and similar concerns apply to at least four apartments in the northern pavilion.</p> <p>Another four apartments in the northern pavilion have poor space planning that results in dead 'corridor-type' spaces which cannot be allocated to dining or sitting functions.</p> <p>The proposal does not meet minimum areas for 1 x 2 bedroom and 4 x 3 bedroom units due to additional bathrooms.</p>
Apartment type	Minimum internal area	Proposal															
Studio	35m <sup>2</sup>	-															
1 bedroom	50m <sup>2</sup>	51m <sup>2</sup>															
2 bedroom	70m <sup>2</sup> + 5m <sup>2</sup>	72.31m <sup>2</sup>															
3 bedroom	90m <sup>2</sup> + 5m <sup>2</sup>	91.65m <sup>2</sup>															
<p><b>Objective 4D-2</b></p> <p>Environmental performance of the apartment is maximised</p>	YES	Environmental performance is adequate.															
<p><b>Design criteria</b></p> <p>1 Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>2 In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</p>	NO	Combined habitable depth of 8.4m. This non-compliance occurs for east facing units.															
<p><b>Objective 4D-3</b></p> <p>Apartment layouts are designed to accommodate a variety of household activities and needs</p>	YES	Varied layouts are proposed throughout the development, including two storey apartments.															

ADG COMPLIANCE TABLE			
Guideline		Y/N	Comment
<b>Design criteria</b>		YES	Rooms are adequately sized throughout the development.
1	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space)		
2	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)		
3	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> <li>• 3.6m for studio and 1 bedroom apartments</li> <li>• 4m for 2 and 3 bedroom apartments</li> </ul>		
4	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts		
<b>4E Private open space and balconies</b>			
<i>Objective 4E-1</i>		NO	Some apartments have POS with a minimum dimension of less than 2m.
Apartments provide appropriately sized private open space and balconies to enhance residential amenity			
<b>Design criteria</b>		NO	A number of units have non-compliant balcony sizes where they rely upon areas of balcony that are less than 1m in depth.  Units 07, 11, 12, 13, 14, 15, 17 and 22 have balconies that do not meet the required Dimension of 2m (areas less than 2m depth are areas that are additional to the minimum areas of the ADG).
All apartments are required to have primary balconies as follows:			
<b>Dwelling type</b>	<b>Minimum area</b>	<b>Minimum depth</b>	
Studio apartments	4m <sup>2</sup>	-	
1 bedroom apartments	8m <sup>2</sup>	2m	
2 bedroom apartments	10m <sup>2</sup>	2m	
3+ bedroom apartments	12m <sup>2</sup>	2.4m	
<i>The minimum Balcony depth to be counted as contributing to the balcony area is 1m</i>			
For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m <sup>2</sup> and a minimum depth of 3m			

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<p><i>Objective 4E-2</i></p> <p>Primary private open space and balconies are appropriately located to enhance liveability for residents</p>	NO	Balconies are placed where there is cross-viewing, unscreened balconies in close proximity to neighbours and balconies facing into the narrow diagonal alley that do not meet required building separation or provide adequate visual and acoustic privacy.
<p><i>Objective 4E-3</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>	NO	The building has sheer walls and an inappropriate character that does not respond to its context.
<p><i>Objective 4E-4</i></p> <p>Private open space and balcony design maximises safety</p>	YES	Balconies are located on upper levels of the building providing natural security and passive surveillance.
<b>4F Common circulation and spaces</b>		
<p><i>Objective 4F-1</i></p> <p>Common circulation spaces achieve good amenity and properly service the number of apartments</p>	NO	The diagonal alley results in safety and security concerns for lobbies, and does not result in a good amenity outcome.
<p><b>Design criteria</b></p> <ol style="list-style-type: none"> <li>The maximum number of apartments off a circulation core on a single level is eight</li> <li>For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40</li> </ol>	YES	Maximum of 6 units serviced by a core on any level of the building.
<p><i>Objective 4F-2</i></p> <p>Common circulation spaces promote safety and provide for social interaction between residents</p>	NO	The diagonal alleyway has public and private access, unsatisfactory space planning and design, informal surveillance is insufficient for safety and security for residents.
<b>4G Storage</b>		
<p><i>Objective 4G-1</i></p> <p>Adequate, well designed storage is provided in each apartment</p>	YES	Storage is provided in wardrobes and laundries. Additional storage is located in the basement.

ADG COMPLIANCE TABLE			
Guideline		Y/N	Comment
<b>Design criteria</b>		YES	The proposal includes dedicated storage cupboard within the apartments.
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:			
<b>Dwelling type</b>	<b>Storage size volume m<sup>3</sup></b>	<b>Proposal m<sup>3</sup></b>	
Studio apartments	4 m <sup>3</sup>	-	
1 bedroom apartments	6 m <sup>3</sup>	6 m <sup>3</sup>	
2 bedroom apartments	8 m <sup>3</sup>	8 m <sup>3</sup>	
3+ bedroom apartments	10 m <sup>3</sup>	10 m <sup>3</sup>	
At least 50% of the required storage is to be located within the apartment			
<b>Objective 4G-2</b>		YES	Additional storage areas are located in the basement.
Additional storage is conveniently located, accessible and nominated for individual apartments			
<b>4H Acoustic privacy</b>			
<b>Objective 4H-1</b>		NO	Habitable rooms and POS are located facing bedrooms within the diagonal alley.
Noise transfer is minimised through the siting of buildings and building layout			
<b>Objective 4H-2</b>		NO	Apartments have openings and balconies onto the narrow diagonal alley, which is a shared space with non-residential uses and potential noise impacts. Insufficient information to assess impacts between "serviced apartments" and residential apartments.
Noise impacts are mitigated within apartments through layout and acoustic treatments			
<b>4J Noise and pollution</b>			
<b>Objective 4J-1</b>		N/A	The site is not located in a noisy or hostile environment.
In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings			
<b>Objective 4J-2</b>		N/A	The site is not located in a noisy or hostile environment.
Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission			
<b>4K Apartment mix</b>			

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<p><i>Objective 4K-1</i></p> <p>A range of apartment types and sizes is provided to cater for different household types now and into the future</p>	YES	Apartments range from 1 bed to 3 bed. 8 double storey apartments are included.
<p><i>Objective 4K-2</i></p> <p>The apartment mix is distributed to suitable locations within the building</p>	YES	Various apartment sizes are located on each level of the building.
<b>4L Ground floor apartments</b>		
<p><i>Objective 4L-1</i></p> <p>Street frontage activity is maximised where ground floor apartments are located</p>	N/A	Ground floor apartments are not supported as they do not meet the definition of “shop top housing”.
<p><i>Objective 4L-2</i></p> <p>Design of ground floor apartments delivers amenity and safety for residents</p>	NO	Insufficient detail to address the relationship between ground floor apartments and communal open space.
<b>4M Facades</b>		
<p><i>Objective 4M-1</i></p> <p>Building facades provide visual interest along the street while respecting the character of the local area</p>	NO	The building façade has a distinctly commercial feel that is incongruous within the R2 and RE1 context of nearby land.
<p><i>Objective 4M-2</i></p> <p>Building functions are expressed by the façade</p>	NO	The building façade and the relationship of building entries to the street is not supported.
<b>4 N Roof design</b>		
<p><i>Objective 4N-1</i></p> <p>Roof treatments are integrated into the building design and positively respond to the street</p>	YES	The roof treatment is acceptable.
<p><i>Objective 4N-2</i></p> <p>Opportunities to use roof space for residential accommodation and open space are maximised</p>	YES	The top storey includes large balcony spaces and rooftop cabana with communal open space.
<p><i>Objective 4N-3</i></p> <p>Roof design incorporates sustainability features</p>	NO	The roof does not have overhangs.
<b>4O Landscape design</b>		

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<p><i>Objective 4O-1</i></p> <p>Landscape design is viable and sustainable</p>	YES	Planting to the north of the building within the communal open space is small scale trees a larger tree would be beneficial but is limited due to limited available deep soil.
<p><i>Objective 4O-2</i></p> <p>Landscape design contributes to the streetscape and amenity</p>	NO	Landscaping to the streetscape consists largely of groundcovers and four palm trees, and relies heavily on street tree planting.
<b>4P Planting on structures</b>		
<p><i>Objective 4P-1</i></p> <p>Appropriate soil profiles are provided</p>	YES	Appropriate.
<p><i>Objective 4P-2</i></p> <p>Plant growth is optimised with appropriate selection and maintenance</p>	YES	The cabbage tree palms are species identified for public spaces (Greening Central Coast, Appendix B) however some interspersed planting of a lower height at maturity would be appropriate.
<p><i>Objective 4P-3</i></p> <p>Planting on structures contributes to the quality and amenity of communal and public open spaces</p>	YES	-
<b>4Q Universal design</b>		
<p><i>Objective 4Q-1</i></p> <p>Universal design features are included in apartment design to promote flexible housing for all community members (20% silver level).</p>	NO	Two accessible apartments have been indicated but the plans to not identify Liveable Housing Guideline's silver level universal design features
<p><i>Objective 4Q-2</i></p> <p>A variety of apartments with adaptable designs are provided</p>	NO	The adaptable designs have the same layout, however are located on different floors of the building.
<p><i>Objective 4Q-3</i></p> <p>Apartment layouts are flexible and accommodate a range of lifestyle needs</p>	NO	Apartment layouts are inadequate and inefficient and do not accommodate furnishings.
<b>4R Adaptive reuse</b>		

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<p><i>Objective 4R-1</i></p> <p>New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place</p>	N/A	-
<p><i>Objective 4R-2</i></p> <p>Adapted buildings provide residential amenity while not precluding future adaptive reuse</p>	N/A	-
<b>4S Mixed use</b>		
<p><i>Objective 4S-1</i></p> <p>Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement</p>	NO	The proposal does not provide a sufficiently active frontage.
<p><i>Objective 4S-2</i></p> <p>Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents</p>	NO	The residential entry to the south is a shared entry with non-residential ground floor uses. This is a poor safety outcome. There is no separation of residential and non-residential car parking..
<b>4T Awnings and signage</b>		
<p><i>Objective 4T-1</i></p> <p>Awnings are well located and complement and integrate with the building design</p>	N/A	Awnings are not proposed, although a narrow colonnade within the boundary at the corner of Pacific Street and Tuggerah Parade is proposed.
<p><i>Objective 4T-2</i></p> <p>Signage responds to the context and desired streetscape character</p>	N/A	Signage has not been proposed within this application.
<b>4U Energy efficiency</b>		
<p><i>Objective 4U-3</i></p> <p>Development incorporates passive environmental design</p>	NO	The proposal does not comply with solar access provisions of ADG. Some solid balcony balustrading has been incorporated but not all balconies include sufficient space for clothes drying.
<p><i>Objective 4U-2</i></p> <p>Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer</p> <p>Adequate natural ventilation minimises the need for mechanical ventilation</p>	NO	The proposal includes use of masonry and glazing without shading that will result in poor passive solar outcomes.

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<b>4V Water management and conservation</b>		
<i>Objective 4V-1</i> Potable water use is minimised	NO	A valid BASIX certificate has not been provided.
<i>Objective 4V-2</i> Urban stormwater is treated on site before being discharged to receiving waters	NO	Water quality has not been addressed within the application.
<i>Objective 4V-3</i> Flood management systems are integrated into site design	YES	Flood mitigation has been incorporated via floor levels and a flood gate to the basement, however the flood mitigation strategy is inadequate (see flood comments of the report).
<b>4W Waste management</b>		
<i>Objective 4W-1</i> Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	NO	The waste storage and collection area conflicts with pedestrian movement and vehicular movement from the basement.
<i>Objective 4W-2</i> Domestic waste is minimised by providing safe and convenient source separation and recycling	NO	The waste storage area does not cater to required volumes identified in the Wyong Shire Council Waste Control Guidelines
<b>4X Building maintenance</b>		
<i>Objective 4X-1</i> Building design detail provides protection from weathering	NO	The proposal does not include roof overhangs or window hoods.
<i>Objective 4X-2</i> Systems and access enable ease of maintenance	NO	The proposal includes large unarticulated sheer facades that are difficult to maintain.
<i>Objective 4X-3</i> Material selection reduces ongoing maintenance costs	NO	The proposal relies heavily upon painted render, which is not a material that withstands harsh environments (west facing, lake facing).

## ATTACHMENT 3

## Table of numerical compliance (WLEP, WDCP and ADG)

The following table is an assessment of the proposal against the guidelines provided in the WLEP, WDCP Ch 2.4, 2.11, 3.1, 5.3 and ADG.

Control	Proposed	Required	Compliance
<b>Site Area</b>	1480m <sup>2</sup>	-	-
<b>Site frontage</b> (Tuggerah/Pacific)	30.3m/52.93m width		
<b>Site Depth</b>	Corner site		
<b>Height</b> (WLEP 2013)	17.39m	16m	No
<b>FSR</b> (WLEP 2013)	1:5:1	1:78:1	No
<b>Setbacks</b> (DCP Ch 5.3)			
- <b>West (Tuggerah Pde)</b> 1 <sup>st</sup> -4 <sup>th</sup> storey	Up to 7m/building, 4.8m/balc	Not specified	N/A
5 <sup>th</sup> and above	Up to 8m/building, 4.8m balc	Not specified	N/A
- <b>South (Pacific St)</b> 1 <sup>st</sup> -4 <sup>th</sup> storey	Nil	Not specified	N/A
5 <sup>th</sup> and above	-	-	-
- <b>North and East (side)</b> All storeys	1.7m	6 to 9m	No
<b>Parking</b> (DCP Ch 2.11)			
1 space per 1 bed		2 spaces	
1.2 space per 2 bed		13.2 spaces	
1.5 space per 3 bed		13.5 spaces	
1 visitor per 5 units		5 spaces	
-		TOTAL =34	Yes*
Business 1 space per 40m <sup>2</sup>	TOTAL = 34	2 spaces (61m <sup>2</sup> )	No
Restaurant and Function		30 spaces (280m <sup>2</sup> )	No
Centre 15 spaces per 100m <sup>2</sup>			
- <b>Accessible</b>	2 spaces	1/accessible unit (2 units)	Yes*
- <b>Bicycle</b>	10 bike lockers	1 per 3 dwellings (8)	Yes
- <b>Motorcycle spaces</b>	1 spaces	1/50 spaces	Yes
- <b>Washbay</b> (can be visitor space)	1	1 space	Yes
<b>Communal Open Space</b> (DCP Ch 2.4)			
- Min per dwelling	340m <sup>2</sup> (14.7m <sup>2</sup> /dwelling)	460m <sup>2</sup> (20m <sup>2</sup> /dwelling)	No
- Min dimension	Min 5m	Min 5m	Yes
- Min 3hrs solar access 9am-3pm @ midwinter	61.7% of area (210m <sup>2</sup> )	75% of area (255m <sup>2</sup> )	No
(ADG)	-	-	-
- 25% site area	22% (340m <sup>2</sup> )	25% of site (370m <sup>2</sup> )	No
- Min dimension 3m	Min dimension 5m	3m	Yes
- minimum of 50% direct sunlight to the principal usable part for min 2 hours 9am-3pm @ midwinter	Min 50% solar access midwinter	50%	Yes
<b>Private open space</b>			
<b>Balconies</b> (ADG/DCP):			
- Min area	10.9 <sup>2</sup>	8 m <sup>2</sup> /1 bed	Yes

<ul style="list-style-type: none"> <li>- Min dimension</li> <li>- Directly accessible from living area</li> <li>- Grade 1:14</li> </ul> <p>Solar access POS (DCP Ch 2.4) (ADG) – rec 3hrs</p>	<p>9.66m<sup>2</sup> 10.2m<sup>2</sup> &lt;2m Adjoining living area - &lt;1:14 - 61% (14 units) receive 3 hours 9am-3pm midwinter</p>	<p>10m<sup>2</sup>/2 bed 12m<sup>2</sup>/3 bed 2m Adjoining living area - &lt;1:14 - 70% receive 3 hrs 9am-3pm mid-winter 70%</p>	<p>No No No Yes - Yes - Yes</p>
<b>Cross ventilation</b> (ADG)	75% (9 units) comply	60% of units to be naturally cross ventilated	Yes
<b>Solar access (subject site)</b> (ADG) (DCP Ch 2.4)	61% (14 units) 61% (14 units)	70% (16 units) 75% (17 units)	No No
<b>Solar access (surrounding site)</b> (DCP Ch 2.4)  (ADG) As per requirements for the site to POS and COS 9am – 3pm @ midwinter	Complies.	75% POS receive 3 hrs 9am-3pm @ mid-winter Where an adjoining property does not currently receive the required solar access, the new building to ensure solar access to neighbouring properties is not reduced by more than 20%	Yes - Yes
<b>Accessible dwellings</b> (DCP Ch 2.4) Adaptable (ADG) Universal housing	8% (2 units - 201,301) - Not identified	10% adaptable (2.3 units) 20% silver level	No - Unknown
<b>Landscaping</b> (DCP Ch.2.4) Landscaping (25%)	15% of site (222m <sup>2</sup> )	25% of site (370m <sup>2</sup> )	No
<b>Deep soil</b> (DCP Ch 2.4) - 50% of required 25% (ADG) - 7% - Min dimension Nil - Not required in town centre locations	173m <sup>2</sup> - 173m <sup>2</sup> Nil N/A	12.5% (185m <sup>2</sup> ) - 7% (151m <sup>2</sup> ) Nil N/A	No - Yes - -
<b>Apartment size</b> (ADG)	51m <sup>2</sup> 72.31m <sup>2</sup> 91.65m <sup>2</sup>	50m <sup>2</sup> for 1 bedroom 70m <sup>2</sup> for 2 bedroom 90m <sup>2</sup> for 3 bedroom	Yes Yes Yes
<b>Building Separation</b> (ADG and DCP Ch 2.4)	The adjoining site (134 Tuggerah) is strata title flat building 3m to the b'dy with the site. The proposal has 5 storeys at a splayed angle that is 1.6m setback from the b'dy and an elevated terrace that is 1.2m setback.	For Levels 1 – 4: • 12m between habitable rooms/balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms For levels above 4: 18m between habitable rooms/balconies	No

	Does not comply for half of required separation to north side b'dy and east side boundary (6m/12m L1 – L4) (9m/18m L4 and above)		
<b>Building depth</b> (ADG)	16.6m @ deepest	12-18m depth from glass to glass	Yes
<b>Units accessed from a single core</b> (ADG)	6 units	Max 8 units at each level	Yes
<b>Storage</b> (DCP Ch 2.4) 1-2 bedrooms 3 or more bedrooms (ADG)	6m <sup>2</sup> 8m <sup>2</sup> 6m <sup>3</sup> 8m <sup>3</sup> 10m <sup>3</sup>	3m <sup>2</sup> 6m <sup>2</sup> 6m <sup>3</sup> (1 bed) 8m <sup>3</sup> (2 bed) 10m <sup>3</sup> (3 bed)	Yes
<b>Basix Certificate</b>	Certificate NOT provided	BASIX Certificate required	No
<b>Dwelling mix</b> (ADG and DCP Ch 2.4) 1 Bed 2 Bed 3 Bed	2 12 9	Mix required	Yes
<b>Waste storage</b> (ADG and DCP Ch 2.4, 3.1)	The waste storage area does not cater to required volumes identified in the Wyong Shire Council Waste Control Guidelines	Garbage chute (if over 3 storeys) & a recycling room at each level. Central storage room in basement. Over 12 dwellings requires off street collection for bulk bins	No
<b>Desired character mixed use</b> (DCP Ch 5.3) - Outdoor lifestyle/Pedestrian activity - Pedestrian and business activity - Scenic quality and outdoor lifestyle	The proposal does not provide active frontages that facilitate pedestrian interaction between the site and the public domain (Tuggerah Parade and Pacific Street road reserves and Tuggerah Lake foreshore reserve).	- Active frontages, maintain views and sunlight, human scale frontages. - Avoid blank walls, prioritise business activity at the frontage. - Two storey street walls - Co-ordinated signage	No



11<sup>th</sup> February, 2020.

## APPLICATION TO VARY A DEVELOPMENT STANDARD FLOOR SPACE RATIO

Proposed Mixed Use Development – Shop Top Housing  
Lot 2 DP 571978 & Lot 37 Section 1 DP 13225 No. 135 Tuggerah Parade, Long Jetty.

### **PREAMBLE**

This Application is made to vary development standards in relation to FSR; standards contained within Wyong Local Environmental Plan 2013.

Prepared responsive to the NSW Planning & Infrastructure Guidelines to assist Council and Proponents in the discrete application and variation of development standards as and where appropriate, we acknowledge that many LGA's have adopted a "form" for Objection to Development Standards.

This submission contains all relevant information required consistent with that requirement as published by NSW Department of Planning & Infrastructure.

**1. What is the name of the environmental planning instrument that applies to the land?**

Wyong Local Environmental Plan 2013.

**2. What is the zoning of the land?**

B2 – Local Centre.

**3. What are the objectives of the zone?**

**Zone B2 Local Centre**

**1 Objectives of zone**

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To permit residential accommodation while maintaining active retail, business and other non-residential uses at street level.
- To minimise conflict between land uses within the zone and land uses within adjoining zones.

**2 Permitted without consent**

Nil

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**3 Permitted with consent**

Boarding houses; Centre-based child care facilities; Commercial premises; Community facilities; Educational establishments; Entertainment facilities; Function centres; Information and education facilities; Medical centres; Oyster aquaculture; Passenger transport facilities; Recreation facilities (indoor); Registered clubs; Respite day care centres; Restricted premises; Roads; Service stations; Sewage reticulation systems; Shop top housing; Tank-based aquaculture; Tourist and visitor accommodation; Water reticulation systems; Water storage facilities; Any other development not specified in item 2 or 4

**4 Prohibited**

Agriculture; Air transport facilities; Airstrips; Animal boarding or training establishments; Boat building and repair facilities; Camping grounds; Caravan parks; Cemeteries; Correctional centres; Crematoria; Depots; Eco-tourist facilities; Electricity generating works; Exhibition homes; Exhibition villages; Extractive industries; Farm buildings; Forestry; Freight transport facilities; Heavy industrial storage establishments; Industrial retail outlets; Industrial training facilities; Industries; Marinas; Mortuaries; Open cut mining; Pond-based aquaculture; Recreation facilities (outdoor); Research stations; Residential accommodation; Resource recovery facilities; Rural industries; Sewerage systems; Storage premises; Transport depots; Truck depots; Vehicle body repair workshops; Vehicle repair stations; Warehouse or distribution centres; Waste disposal facilities; Water supply systems; Wharf or boating facilities; Wholesale supplies

**4. What is the development standard being varied? e.g. FSR, height, lot size**

Floor space ratio.

**5. Under what clause is the development standard listed in the environmental planning instrument?**

Clause 4.4 of the Wyong Local Environmental Plan 2013 and accompanying maps.

**6. What are the objectives of the development standard?**

The objectives of the FSR as contained within Clause 4.4 FSR of the Wyong Local Environmental Plan 2013 are recited below:-

- (a) to ensure that the density, bulk and scale of development is appropriate for a site,
- (b) to ensure that the density, bulk and scale of development integrates with the streetscape and character of the area in which the development is located,
- (c) to facilitate development in certain areas that contributes to economic growth.
- (ca) in relation to land at Kanwal that is within Zone B6 Enterprise Corridor and is identified as "Area 3" on the Floor Space Ratio Map—
  - (i) to provide incentives for the development of health-related facilities in this locality, and
  - (ii) to encourage consolidation of smaller lots to reduce the possibility of fragmented development, encourage shared facilities and manage traffic movements,
  - (d) to promote the provision of affordable housing.

**7. What is the numeric value of the development standard in the environmental planning instrument?**

1.5:1

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**8. What is proposed numeric value of the development standard in your development application?**

1.78:1

**9. What is the percentage variation (between your proposal and the environmental planning instrument)?**

18.66%.

**10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

Strict compliance with the FSR is unnecessary because the variation arising does not manifest itself via physical impact, nor affect on amenity either internal or external to the site.

Strict compliance is unnecessary because impacts on amenity do not arise as a consequence of the skilful design adopted providing basement parking.

Site planning, responsive to contextual analysis preserves landscape elements inclusive of deep soil planting particularly to the rear and northern alignment.

Strict compliance would thus be unreasonable in this particular case as there are no negative impacts arising either on-site in terms of building form or character, nor off-site with respect to views, overlooking, privacy or overshadowing attributable to the area of non-compliance.

Similarly, strict compliance (for "compliance sake") is unnecessary because of the absence of any manifestation or negative impact arising from the non-compliance.

Indeed, strict compliance with the development standard might well have greater and potentially negative impact in terms of amenity. This is particularly so when considered in the context of the footprint of the building in the current arrangements as opposed to an alternative; an alternative which might accommodate setbacks to street frontages as might a "traditional" residential building compromising the sites ability to accommodate viable retail space and consequent employment generating opportunities.

**11. How would strict compliance hinder the attainment of the objects specified in Section 5(a)(i) and (ii) of the Act?**

The objects of the Act are:-

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

(c) to promote the orderly and economic use and development of land,

(d) to promote the delivery and maintenance of affordable housing,

(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,

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- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),
- (g) to promote good design and amenity of the built environment,
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,
- (j) to provide increased opportunity for community participation in environmental planning and assessment.

Comment

- (a) At the local scale, the variation contemplated epitomises the proper utility of the provision to provide for flexibility in the application of development standards where the design of a project capably demonstrates design features without compromising privacy or amenity of adjoining properties. In that manner, the variation is consistent with the objects of the Act to promote the social and economic welfare of the community.
- (b) Variation to the development standard as is sought arises as a consequence of the building design incorporating employment generating opportunities which in turn enhance the sustainability of the development by integrating economic environmental and social considerations.
- (c) The orderly and economic use of the land is satisfied in a practical fashion by permitting the variation as is sought; a variation of inconsequential proportions in terms of off-site impacts but of significant benefit in terms of land use mix consistent with the aims and objectives of the B2 zone.
- (d) The proposal incorporates compliant, accessible and secure space for its intended market comprising both permanent householders/residents and serviced apartment accommodation. The provision of 23 additional housing opportunities at Long Jetty must contribute to the availability of housing stock and thus assist in the delivery and maintenance of affordable housing.
- (e) No impact to the natural environment arises as a consequence of Council permitting variation to the FSR control.
- (f) No impact arises as a consequence of the Council permitting variation in terms of the built environment or cultural heritage including Aboriginal cultural heritage.
- (g) Good design and amenity in this instance reflecting the capable interpolation of biophysical and topographical constraints and opportunities of the site satisfactorily manage the interrelationship of the proposal with adjoining properties.
- (h) Promoting health and safety is achieved by compliance with relevant and specific standards and by the skilful articulation of space providing good solar access and ventilation to all suites.
- (i) It is the local Council's responsibility to objectively consider and accept the justification to the finite variation to development standards on a merit and site by site basis and seek the imprimatur of the relevant State Agency as may be required.
- (j) Community participation and environmental planning assessment is to be managed by Council consistent with the Development Control provisions.

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**12. Is the development standard a performance based control? Give details.**

Height and FSR are the two applicable statutory standards that apply to the site and reflect the aims and objectives (and range of uses to be encouraged) in the applicable B2 Local Centre Zone.

Being numerical standards, both height and FSR are performance based controls. In some circumstances, compliance with either or both may not achieve or result in a satisfactory development proposal.

Similarly, occasions may arise when variation to either or both of the statutory controls might result in a quality and justifiable proposal as is the case in this instance.

Practical compliance with the height control ensures that physical off-site impacts are capable of prediction and control. Given that there are no negative impacts arising as a consequence of the buildings height, it is apparent that there is some justification for the additional floor space enclosed which may contribute to the buildings bulk.

In this particular instance, both height and bulk have been skilfully managed as positive contributions to streetscape and amenity and thus, the physical built environment.

The inclusion of commercial space as is intended will contribute to the dynamics of the locality consistent with the zone objectives. In that manner, the inclusion of the additional floor space as is contemplated will promote the social and economic welfare of the community via job creation and the provision of local services as is the primary objective of the B2 Local Centre Zone.

In this instance, and when considered in the context of the pattern of subdivision, character, scale and nature of buildings and uses contemplated in the B2 Local Centre Zone when considered in context of the existing and likely future built environment, it is evident that the variation to the FSR control does not give rise to character or amenity impacts that would warrant refusal of the project for the want of variation to the standard.

It is clear that from time to time exceptions to or variation from development standards including FSR controls will be necessary where justified; justified in this instance in part because of the skilful design of the building.

The author(s) of the standard template Local Environmental Plan and the SEPP together with those supporting publications makes specific provision for exceptions to or in this case variation from development standards (in this case FSR) via the operation of Clause 4.6 of the standard template Local Environmental Plan.

**13. Would strict compliance with the standard, in your particular case, would be unreasonable or unnecessary? Why?**

Yes. Strict compliance is both unreasonable and unnecessary for the reasons outlined above.

No benefit is derived by strict compliance. No impacts are manifested off-site by acceptance of the variation.

The proposal and the variation satisfy the objectives of the zone and the FSR control as is evidenced by the demonstrable satisfaction of relevant aims and objectives, both statutory and policy.

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- 14. Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.**

Yes.

No precedent arises.

No off-site deleterious effects or impacts occur.

Optimum retention of (deep soil) planting opportunities is enabled via the site planning arrangements incorporating sub-basement parking and a superior architectural solution to achieve the desired mix of inclusions to produce a viable development.