

Central Coast Local Planning Panel

Central Coast
LOCAL PLANNING PANEL MEETING
Business Paper
22 April 2021



Meeting Notice

**The LOCAL PLANNING PANEL MEETING
of Central Coast
will be held remotely - online,
THURSDAY 22 APRIL 2021 at 2.00 pm,
for the transaction of the business listed below:**

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Donna Rygate
Chairperson

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

Central Coast
Local Planning Panel

22 April 2021 Local Planning Panel Meeting

Reference: F2020/02502 - D14205789

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: Environment and Planning

22 April 2021 Local Planning Panel Meeting

Reference: F2020/02502 - D14585846
Author: Rachel Callachor, Administration Officer

Summary

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

- ***Local Planning Panel Meeting held on 8 April 2021***

Recommendation

That the minutes of the previous Local Planning Panel Meeting held on 8 April 2021.

Attachments

- 1 MINUTES - Local Planning Panel - 8 April 2021 D14575126



Local Planning Panel

Minutes of the **LOCAL PLANNING PANEL MEETING**

Held remotely - online
on 08 April 2021

Panel Members

Chairperson	Jason Perica
Panel Experts	Greg Flynn Linda McClure
Community Representative/s	Paul Dignam

Central Coast Council Staff Attendance

Ailsa Prendergast Section Manager Development Assessment South
Robert Eyre Principal Development Planner Development Assessment South
Karen Hanratty Senior Development Planner Development Assessment South
Rachel Callachor Administration Officer Business Support South
Belinda Jennett Administration Officer Business Support South
Kathryn Williams Administration Officer Business Support South

The Chairperson, Jason Perica, declared the meeting open at 2.06pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

The Chair, Jason Perica read an acknowledgement of country statement.

Apologies

That the Panel noted that no apologies have been received.

1.1 Disclosures of Interest

The Panel noted that no disclosures have been identified and forms had been submitted by members.

The Chair advised that Item 4.2 is to be considered publicly to allow interested parties (received late and prior to the meeting) to attend and address the Panel, as well as the applicant and their Planning representative, to answer questions from the Panel.

2.1 Confirmation of Minutes of Previous Meeting

Attachment 1

The Minutes of the previous meeting of the Local Planning Panel held on 25 February 2021, which have been previously endorsed by the Chair of that meeting, were submitted for noting.

Public Forum**Item 3.1**

Rod Wall (on behalf of adjoining owners), Paul Anderson and Neil Kennard all spoke against recommendation and provided responses to enquiries from the Panel.

The following representatives spoke on behalf of the applicant and provided responses to enquiries from the Panel:

Sam Yasseen – Skylife – Applicant/Owner
Mark Girgis – Skylife – Applicant/Owner
Matt Cooper – GLN – Town Planner
Fu Siong Hie – Acouras – Acoustic Engineer
Greg Baird – Architect

Item 4.2

Francis Wiffen spoke against the recommendation.

The following representatives provided responses to enquiries from the Panel:

Janet Matthews – applicant
Michael Leavey – Michael Leavey Consulting

The Local Planning Panel public meeting closed at 3:27pm for Item 3.1.
A further public meeting to discuss Item 4.2 opened at 4:00pm and closed at 4:48pm.

3.1 DA 59244/2020 - 83 Gindurra Road, Somersby - Warehouse and Distribution Centre

Relevant Considerations	As per Council assessment report
Material Considered	<ul style="list-style-type: none"> • Documentation with application • Council assessment report • Submissions • Supplementary memo, 7 April 2021 • Speakers
Council Recommendation	Approval
Panel Decision	1 That the Local Planning Panel grant consent to DA59244/2020 - 83 Gindurra Road, Somersby - Warehouse and Distribution

Centre subject to the conditions detailed in the schedule attached to the report, with changes to recommended conditions as below, and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act 1979.

Condition 2.13 be amended to state:

2.13. Submit amendments and associated details to the Council for written approval prior to the issue of any Construction Certificate. The amendments must provide for:

- a) Deletion of all the car parking spaces (29 spaces) to the north of the site and proposed building, including deleting the proposed access from Debenham Road South and the access to this area from the remainder of the site. The area of this carparking is to be retained in its natural state, with possible additional planting to mitigate impacts from the retaining wall adjoining this space (Reason: to reduce parking to meet Council requirements, appropriately respond to the site constraints and qualities, the Plan of Management considerations and to reduce ecological impacts on a sensitive site);*
- b) Deletion of a further 6 car spaces adjoining the western accessway, where this best achieves enhanced ecological outcomes and reduces potential car/pedestrian/truck conflicts Reason: to reduce parking to meet Council requirements, appropriately respond to the site constraints and qualities, the Plan of Management considerations, to reduce ecological impacts on a sensitive site and reasonably reduce potential vehicular/car/pedestrian conflicts and safety;*
- c) Deletion of the wall sign on the western elevation (Reason: non-compliance with the DCP controls, visual impacts, excessive scale, and unnecessary signage given the proposed use).*
- d) A reduction in size of wall signs on the southern and eastern elevations to a maximum size of 3m x 12.5m (Reason: significant non-compliance with the DCP controls, visual impacts, excessive scale, and unnecessary signage given the proposed use).*
- e) No illumination of wall signs (Reason: due to being a sensitive ecological site, the nature of the use and building being known to users and to reduce visual impacts on an interface site).*
- f) A reduction in size of pylon signs to a maximum of 6m high and 2m wide (Reason: to meet DCP controls, avoid adverse precedent and as the size is sufficient for the proposed use).*

- g) *Amend the landscape plan to reflect the approved development plans as amended above. Where possible existing native vegetation is to be retained. The landscape plan shall also include street trees at 15m intervals within the road reserve (in the made portions) adjoining the proposed building works to the east and south, to mitigate loss of trees, visual impacts of the building, consider interface issues and contribute towards biodiversity and habitat.*

A revised Condition 6.15 to state:

6.15. Minimise external lighting

Use external lighting that minimises overspill into retained vegetated areas and does not impact adjoining properties

A new Condition to state:

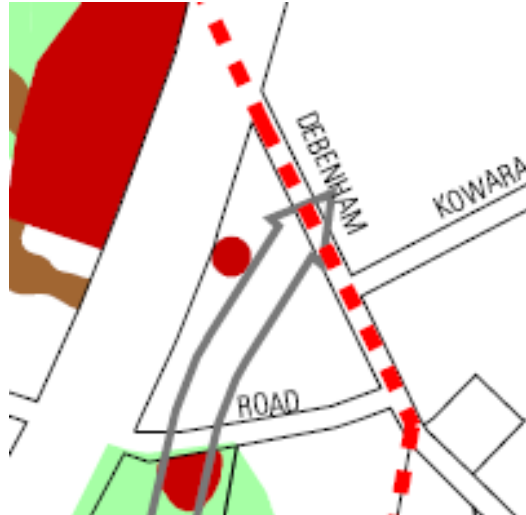
6.19 Use and Approval

This approval does not authorise the use of the site as a Waste Transfer Station

- 2** That Council advise those who made written submissions and relevant external authorities of the Panel's decision.

Reasons:

- 1 The Panel generally agreed with the environmental assessment of the proposal, as outlined in the Council report, and had regard to additional information provided within a Council staff memorandum.
- 2 The proposal is permissible with consent and does not breach any development standards.
- 3 The development is generally consistent with the Plan of Management for the site. However, the considerations of that Plan emphasise the environmental sensitivity (biodiversity and aboriginal) and this favours a reduction in parking to meet the parking controls. In turn this will provide further retention of habitat on a sensitive site, which will also be more consistent with diagrams in the Plan of Management (extract below). This is not expected to compromise bushfire safety given access to the northern part of the site is still available from the south and the truck circulation area provides a greater buffer than to the western side, even with reduction in the northern parking area required by a condition in the decision above.



- 4 The zone interface issues identified as a concern in submissions and presentations to the Panel have been acceptably addressed by the design (including staggered height and setbacks from the street and landscaping), conditions (including amendments to those conditions) and is also aided by a wide intervening road to the east, and large adjoining lots.
- 5 Proposed signage is not consistent with the DCP. Some excess in size above DCP controls was warranted given the size and scale of the building, although not to the degree sought. This was addressed by a revised condition. The nature of the use is such that building signage should not be necessary for wayfinding considerations.
- 6 Environmental impacts, where they existed, were reasonably managed and mitigated by conditions of consent, including amendments made by the Panel

Votes The decision was unanimous

4.1 DA 59362/2020 - 114 Oceano Street, Copacabana - Alterations and Additions to the existing dwelling, removal of three trees on the site and a proposed attached garage.

Relevant Considerations As per Council assessment report

Material Considered

- Documentation with application
- Council assessment report

- Supplementary Memo, 7 April 2021

**Council
Recommendation**

Approval

Panel Decision

- 1 That the Local Planning Panel assume the concurrence of the Secretary of the Department of Planning to permit the non-compliance with the development standard under Clause 4.6 of the Gosford Local Environmental Plan 2014, in accordance with the provisions of Clause 64 of the Environmental Planning and Assessment Regulation 2000.
- 2 That the Local Planning Panel grant development consent to DA59362/2020 – 114 Oceano Street, Copacabana – Alterations and Additions to the existing dwelling, removal of three trees on the site and a proposed attached garage subject to the conditions in the schedule attached to the Council staff report to the Panel, with insertion of a new condition detailed below, and having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act and other relevant issues.

Include a new condition to state:

Plant a minimum of three (3) replacement trees (advanced specimens min 25lt pot size). Replacement trees must be native species capable of achieving a minimum height of 5m. One of the three (3) replacement trees is to be planted within the front setback area, that is between the area within the front road boundary and front alignment of the dwelling. New trees are not to be located within an authority's service easement, or within 3m of an approved building. Where the replacement tree dies or is substantially damaged within five (5) years of planting, it must be replaced and maintained to maturity.

Reasons

- 1 The Panel agreed with the environmental assessment of the proposal, as outlined in the Council report to the Panel and had regard to additional information provided by memorandum.
- 2 The Panel had regard to the applicant's Clause 4.6 request regarding contravention of the Building Height development standard within Clause 4.3 of Gosford LEP 2014 and formed the view that the applicant's written request satisfactorily

addressed required matters within Clause 4.6(3) of the LEP. The Panel was satisfied the proposal was consistent with the zone objectives and the objectives of the development standard, notwithstanding the non-compliance, and granting consent was in the public interest.

- 3 Environmental impacts, where they existed, were reasonably managed and mitigated by conditions of consent, including amendments made by the Panel.
- 4 In terms of considering community submissions, the Panel noted no submissions were made.

Votes The decision was unanimous

4.2 DA 59637/2020 - 68 Railway Street Woy Woy - Stratum Torrens Subdivision

Relevant Considerations As per Council assessment report

Material Considered

- Documentation with application
- Council assessment report
- Supplementary Memo, 8 April 2021
- Speakers

Council Recommendation Approval

Panel Decision That the Local Planning Panel defers determination of the application and invites the applicant to submit an amended proposal involving Torrens title subdivision of the heritage item and strata titling of the remaining two dwellings, with associated supporting information (including revised Clause 4.6 written requests). This should be received by Council within 21 days of publishing the decision and advising the applicant. Upon receipt of this information, the matter shall be subject of a further report by Council staff as soon as practicable, which may be determined by the Panel through electronic means.

Reasons There was common ground amongst the Panel that the proposal should be accompanied by a Clause 4.6 variation request regarding FSR. This was provided by the applicant and provided

late to the Panel prior to the meeting, although not subject to analysis in the Council report (due to a different conclusion by Council staff to the Panel regarding its necessity) and without sufficient time for the Panel to properly assess the request. The Panel was of the view this required further analysis prior to being able to determine the application (if it is to be approved).

However. In regard to subdivision (being the other aspect subject to a Clause 4.6 variation request), there was a difference in view amongst the Panel about whether the proposal, and specifically the form of subdivision sought, should be supported. The majority of the Panel (all but Jason Perica) were of the view that the proposal should be refused in the form put forward. Mr Perica generally agreed with the Council staff assessment report and the conclusions therein.

The key issue of concern for the majority of the Panel related to the very significant size of the variation requests to lot sizes and the potential precedent, as well as the applicant's core objectives being able to be facilitated in an alternative way. The applicant's stated objectives for favouring a Torrens Title subdivision were that this would facilitate accurate identification of the heritage item (being part of the site and not the whole site), and that the dwelling(s) and commercial heritage lot would have different funding needs and this may cause unfair distributed costs in a shared strata scheme. Both arguments had some merit, although legally a heritage item is as defined and described in Schedule 5 of the LEP, not the map. Despite this, separate Torrens titling of the heritage item would reduce potential confusion. It is agreed the heritage and other lots are likely to have likely different ongoing maintenance needs and thereby associated costs. Having regard to this and balancing the precedential issues, the majority of the Panel were of the view that a Torrens title of the heritage item and strata subdivision of the two dwellings was preferable, meeting key applicant objectives, with less adverse precedential outcomes. This could be facilitated by deferral and amendment, inviting the applicant to submit amended plans and supporting documents.

Mr Perica understood this rationale, although also saw the Torrens titling of the two remaining dwellings as being consistent in principle to strategic directions in the draft LEP, as argued in the Clause 4.6 variation request. However, on reflection and balanced consideration, Mr Perica accepted the position to protect the adverse potential precedent was a reasonable concern (given the potential Torrens subdivision of dual occupancies contemplated by the draft LEP would ordinarily be on larger lots) and supported the position of the majority of the Panel, as a reasonable compromise.

The amendments would not fundamentally change the proposal, although would require amendment of the proposal and some associated documents, for further consideration and determination, which may be by electronic means.

There were late submissions claiming a procedural problem with availability of documents on-line during exhibition back in November 2020. Advice was received from Council staff, in summary to the effect that the proposal was notified in accordance with Council's policies, no advice about any problems was received by Council previously and that documents have, and continue to be, available on the website. The Panel was satisfied with the Council's position and it could not be certain if the claims made were due to any problem on the Council's or receivers part. The Panel also gave opportunity to late submitters (received on the day of the meeting) to address the Panel, which occurred for one submitter, albeit with ironic technical difficulties.

Votes The decision unanimous.

4.3 Request to Prepare a Planning Proposal for land between Bakali Road and Central Coast Highway, Forresters Beach

The Panel considered the report on the matter and a subsequent memo. The Panel supports in principle the strategic merit regarding potential rezoning of the site, and offers the following advice:

- The current zonings on the site/precinct warrant review and there is strategic merit in such rezoning including R2 lots for existing smaller residential lots around the perimeter of the site, an E2 zoning for environmentally significant land to the north-west, and open space zone for a local park and review of the large lots in-between for appropriate zoning and lot size(s).
- However, prior to Gateway submission, the Panel believes an access strategy (and funding principles) should be established in collaboration with Transport for NSW. This is important in order to establish a zoning hierarchy, open space location and to consider appropriate lot sizes, all of which are key aspects of the Planning Proposal.
- The open space should be located as close as possible to the surrounding community to be a wider community asset, not just the site.
- A drainage strategy should also be established prior to exhibition.
- The Panel does not share the view that all lot sizes and zoning must be consistent across the LGA. Lot sizes can and should be varied having regard to site-specific considerations, environmental constraints and surrounding context.
- DCP provisions (including access and drainage strategies and a funding/delivery mechanism such as a VPA) should be part of the exhibition package.
- The Panel had queried whether an E4 zone and 4,000sqm lot sizes for existing larger lots on the site may be appropriate. It is accepted that an E4 zone may not be appropriate due to the range of permissible uses. However, other

environmental zones or large lot residential zones should be considered, as the key aspects of transition from an E2 zone to surrounding environmental and R2 zones and larger lot controls, for lots on the site not on the edges, may not be best encapsulated in an R2 zone.

4.4 Request to Prepare a Planning Proposal for Parts of 121 and 129 Newling Street, Lisarow

The Panel considered the report on the matter and the material presented to the Panel by report and subsequent memorandum.

The Panel generally supports the proposal proceeding to gateway and offers the following advice:

- The strategic merit is predicated on the retail demand assessment by the applicant's consultant. This aspect should be subject to peer review by an independent consultant nominated by Council (which may be a list of potential consultants to avoid perceptions of conflicts), the cost of which should be met by the applicant/landowner seeking the changes. This should occur prior to Gateway as the strategic merit of the proposal is predicated on retail demand analysis.
- The FSR and Height needs further assessment and needs to be settled prior to exhibition. In principle, the approach of seeking statutory and strategic consistency with other R1 zoned land is sound.
- The proposed zoning appears appropriate given the context of the site. The location of adjoining services supports higher order residential uses facilitated by the R1 zoning (subject to testing the retail demand assessment). It is noted the land is physically separated by landform to the adjoining retail uses and is opposite other residential uses.
- Prior to exhibition an access strategy and drainage strategy should be developed. DCP controls (whether existing or site-specific) should be considered and it be clear on exhibition what supporting controls would apply to the site.
- A suitable funding mechanism for any infrastructure upgrades should be considered and addressed.

4.5 Request to Prepare a Planning Proposal – 6-8 Pacific Hwy, Wyong

- The Panel considered the report on the matter and the material presented to the Panel by report and subsequent memo. The Panel agrees the proposal should not proceed to Gateway and the Planning Proposal lacks both strategic and site-specific merit. The site was subject to flooding (including recent significant flooding), and is relatively small and constrained. The approach adopted by Council staff is consistent with other former "gateway" sites that have not been developed or progressed.

4.6 Request to Prepare a Planning Proposal for the draft Central Coast Local Environmental Plan Deferred Matters Land

The Panel considered the report on the matter and the material presented to the Panel by report and subsequent memo. The Panel supports the recommendation that the Planning Proposal proceed to Gateway and offers the following advice:

- There is a clear need and benefit to addressing deferred matters as a matter of priority, and given the disparate approaches and range of outdated planning controls that apply;
- The review of environmental land should be derived from considered and consistent principles (as intended to be done). This may also benefit a wider review at a later stage for the remaining LGA, given previous disparate approaches by Wyong and Gosford planning instruments.

Item No: 3.1
Title: DA60097/2020 - Short-term Rental
Accommodation - 12 Dover Road Wamberal
Department: Environment and Planning

Central Coast
Local Planning Panel

22 April 2021 Local Planning Panel Meeting

Reference: 011.2020.00060097.001 - D14568057
Author: Karen Hanratty, Senior Development Planner
Manager: Ailsa Prendergast, Section Manager, Development Assessment South
Approver: Andrew Roach, Unit Manager, Development Assessment

Summary

An application has been received for short term rental accommodation of a dwelling containing 6 bedrooms.

The development application has been referred to the Local Planning Panel (LPP) as a result of the number of submissions objecting to the proposal. A total of 36 submissions were received.

The application is recommended for approval.

Applicant	Doug Snedden Planning Pty Ltd
Owner	D Wehbe
Application No	DA60097/2020
Description of Land	LOT: 4 DP: 13304, 12 Dover Road WAMBERAL
Proposed Development	Short-term Rental Accommodation
Site Area	619.7sqm
Zoning	R2 Low Density Residential
Existing Use	Dwelling House
Employment Generation	No
Estimated Value	Nil

Recommendation

- 1** *That the Local Planning Panel grant consent to DA60097/2020 for Short-term Rental Accommodation on LOT: 4 DP: 13304, 12 Dover Road Wamberal 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.*
- 2** *That Council advise those who made written submissions of the Panel's decision.*

3.1 DA60097/2020 - Short-term Rental Accommodation - 12 Dover Road Wamberal (contd)

- 3 That the alleged unauthorised structures comprising awning/roof structure and privacy screens on the upper deck of the dwelling be referred to Council's Development Control for investigation.**

Key Issues

- Matters raised in public submissions

Precis:

Proposed Development	Short-term Rental Accommodation
Permissibility and Zoning	<p>The subject site is zoned R2 Low Density Residential under Gosford Local Environmental Plan 2014 (GLEP 2014).</p> <p>The proposed development is defined in the GLEP 2014 as a short-term rental accommodation:</p> <p><i>short-term rental accommodation means a dwelling that is commercially available for rent as short-term accommodation on a temporary basis, but does not include bed and breakfast accommodation.</i></p> <p>'Temporary or short term' is defined 'as any period up to 3 months'.</p>
Relevant Legislation	<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"> • Environmental Planning & Assessment Act 1979 – Section 4.15 (EP&A Act) • State Environmental Planning Policy No. 55 – Remediation of Land (SEPP 55) • State Environmental Planning Policy (Coastal Management) 2018 (SEPP Coastal Management) • State Environmental Planning Policy (Affordable Rental Housing) Amendment (Short-term Rental Accommodation) 2021 • Gosford Local Environmental Plan 2014 (GLEP 2014) • Gosford Development Control Plan 2013 (GLEP 2013)
Current Use	Dwelling House
Integrated Development	No
Submissions	36 Submissions

3.1 DA60097/2020 - Short-term Rental Accommodation - 12 Dover Road Wamberal (contd)

The Site

The subject site has an area of 619.7sqm and is located on the southern side of the street described as LOT: 4 DP: 13304, 12 Dover Road WAMBERAL, refer Figure 1.

The site contains a multi-level dwelling house over 3 levels with a swimming pool and spa located in the rear yard. The dwelling house contains 6 bedrooms and is currently used for short-term rental accommodation on the basis that 4 bedrooms are available for rental occupation. The remaining 2 bedrooms are locked and unavailable for use. Large deck areas are located off levels 2 & 3 of the dwelling house. Vehicular access to the property is provided directly off Dover Road via a concrete driveway into the double garage.

The site is not identified as being "bushfire prone land" on Council's bushfire maps.



Figure 1 – Site and Locality Plan

Surrounding Development

The site is located approximately 60m to the west of Ocean View Drive. The area in the vicinity of the site is predominantly within a low-density residential in nature, characterised by a mixture of multi-level dwelling houses. Adjoining development comprises a 2-storey dwelling house to the east, 2-3 storey residential flat building containing 4 units (redevelopment of existing flats via existing used rights) to the west and a two-storey dwelling house to the south.

The location of the site within the broader locality is shown in refer Figure 2.

3.1 DA60097/2020 - Short-term Rental Accommodation - 12 Dover Road Wamberal (contd)



Figure 2 – Locality Plan (subject site blue highlight)

The Proposed Development

The proposal comprises the use of the existing 6-bedroom dwelling house, as shown in Figure 3, for short-term rental accommodation.



Figure 3 – existing dwelling house at 12 Dover Road Wamberal

History

Short term holiday letting has historically been seen alongside long-term leasing of residential dwellings as an activity that did not require any form of development approval. A change in the nature of the operation of the activity in recent years in some locations has highlighted the issue as to whether the use should require town planning approval.

It is acknowledged that 'party houses' have caused a significant level of distress to some local residents and that some short-term holiday lets are advertised for purposes such as 'bucks' and 'hens' parties. However, the advertising of a property for these uses does not automatically result in every short-term tenant using the premises for these purposes.

Council has addressed the issues of short term rental accommodation by implementing exempt provisions and development standards within the *Gosford Local Environmental Plan 2014* (GLEP 2014) and *Gosford Development Control Plan 2013* (GDGP 2013) and to establish controls for those examples of the use that are operating not in accordance with community expectations for their neighbourhood. For most short-term holiday operations this is sufficient to provide a legal basis for the activity with little need for further Council input or involvement.

Development consent 26849/2005 was granted on 21 November 2005 for dwelling additions, including several modifications and a complying development certificate was issued on 10 August 2010 for the swimming pool.

The application for short term rental accommodation at No. 12 Dover Road, Wamberal has been lodged for use of all 6 bedrooms in the dwelling rather than only 4 bedrooms with 2 bedrooms locked and not available for rental. In addition, Council has received complaints within the previous 12 months from adjoining neighbours where the use as short-term rental accommodation is affecting the amenity of the residential neighbourhood from loud music and parties most weekends.

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 information of the Panel.

DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

Draft Central Coast Local Environmental Plan

The application has been assessed under the provisions of the draft *Central Coast Local Environment Plan 2018* (draft CCLEP) publicly exhibited from 6 December 2018 to 28 February 2019 with respect to zoning, development standards and special provisions.

Under the draft CCLEP the subject land retains its R2 Low Density Residential zoning. Dwelling houses remain permitted within the zone. Development consent is required for the use of dwellings up to 6 bedrooms as short-term rental accommodation in accordance with clause 7.5(2) of the draft CCLEP.

The assessment concluded the proposal is consistent with the *Draft Central Coast Local Environment Plan*.

STATE ENVIRONMENTAL PLANNING POLICIES

State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55) applies to all development and requires consideration and management of site contamination issues as part of the development assessment process. The current use of the site is for domestic residential purposes, and there are no known previous uses that would lead to the site being contaminated or unsuitable for the proposed use.

State Environmental Planning Policy (Coastal Management) 2018

The provisions of *State Environmental Planning Policy (Coastal Management) 2018* (Coastal Management SEPP) require Council consider the aims and objectives of the SEPP when determining an application within the Coastal Management Area. The Coastal Management Area is an area defined on maps issued by the NSW Department of Planning & Environment and the subject property falls within this zone.

The subject property is within the Coastal Environment area and Coastal Use area. The application is for the use of an existing dwelling. No works are proposed. The relevant matters have been considered in the assessment of this application. The application is considered consistent with the stated aims and objectives.

State Environmental Planning Policy (Affordable Rental Housing) Amendment (Short-term Rental Accommodation) 2021

On 9 April 2021, The NSW Government has announced implementation of a new statewide regulatory framework for short-term rental accommodation (STRA) as exempt development, which includes a new planning framework, fire safety standards for STRA dwellings and a new Government-run STRA Register. The new framework compliments the mandatory Code of Conduct and changes to strata legislation made by the Department of Customer Service.

The STRA planning policy will come into effect on 30 July 2021. The delayed commencement will allow all STRA stakeholders, hosts, councils and industry participants adequate time to familiarise themselves with the policy and comply with the new Fire Safety Standards and registration on the new STRA Register which will be available from 10 April 2021 to allow hosts to register their dwellings before the new planning rules commence on the 30 July 2021.

The STRA policy provides/supported by:

- New definition for short-term rental accommodation
- amendments to the EP&A Regulation to introduce minimum fire safety standards for dwellings used for STRA and associated penalty notice offences for non-compliance; and
- the implementation of a new Government-run STRA register that will ensure compliance with the new fire safety standards, as well as tracking day limits of each STRA dwelling and provide details to assist local councils with monitoring STRA in their local government areas (LGA)

The new policy allows short-term rental accommodation as exempt development for hosted and non-hosted premises specifying criteria for number of days per year the use may occur depending on which local government area the STRA is located. In the Central Coast local government area hosted and non-hosted STRA may operate 365 days per year.

The NSW Government provides the following in relation to consents issued by Councils:

- Where a valid development consent has been issued by a council permitting the use of a dwelling to provide short-term rental accommodation, that development consent remains valid until proven otherwise or is amended by the applicant to vary the conditions of that consent.
- Where a valid development consent is in place for such a use, it may benefit from existing use rights under the existing local planning controls and the new statewide STRA planning rules will not apply, including the requirement for comply with the new STRA Fire Safety Standard and requirement to register the dwelling on the STRA Register.

The planning framework changes current in place:

- On 10 April 2020, strata and tenancy laws changed in relation to short-term rental accommodation.

3.1 **DA60097/2020 - Short-term Rental Accommodation - 12 Dover Road Wamberal (contd)**

- Owners corporations can adopt by-laws that limit short-term rental accommodation in their strata scheme, by banning it in lots that are not the host's principal place of residence.
- Residential tenancy laws have been changed to clarify that short-term rental accommodation arrangements of 3 months or less are not covered by the residential tenancy laws.
- On 27 October 2020 the Fair Trading Regulation 2019 was amended to declare the new mandatory Code of Conduct for the Short-term Rental Accommodation Industry. The new Code of Conduct came in force from 18 December 2020 and imposes obligations on booking platforms, hosts, letting agents and guests. It is planned that a premises register is implemented 1 June 2021 to monitor/regulate the use for short-term rental accommodation.

The new regulatory framework seeks to ensure local communities continue to enjoy the economic benefits of STRA, while managing potential adverse impacts. The parameters of the current changes to the planning framework have been considered in the assessment of the application for a non-hosted short-term rental accommodation.

GOSFORD LOCAL ENVIRONMENTAL PLAN 2014

Permissibility

The subject site is zoned R2 Low Density Residential under *Gosford Local Environmental Plan 2014* (GLEP 2014).

Dwelling houses are permitted within the zone. Development consent is required for the use of dwellings containing 5 or more bedrooms as short-term rental accommodation in accordance with clause 7.6(2) of the GLEP 2014.

In the GLEP 2014 ***short-term rental accommodation*** means a dwelling that is commercially available for rent as short-term accommodation on a temporary basis, but does not include bed and breakfast accommodation.

'Temporary or short term' is defined 'as any period up to 3 months'.

2.3 Zone Objectives and Land Use Table

Subclause 2.3(2) of the GLEP 2014 requires the consent authority to have regard to the objectives for development in a zone when determining a development application.

The objectives of the R2 Low Density Residential zone are:

- *To provide for the housing needs of the community within a low density residential environment.*

3.1 DA60097/2020 - Short-term Rental Accommodation - 12 Dover Road Wamberal (contd)

- To enable other land uses that provides 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.

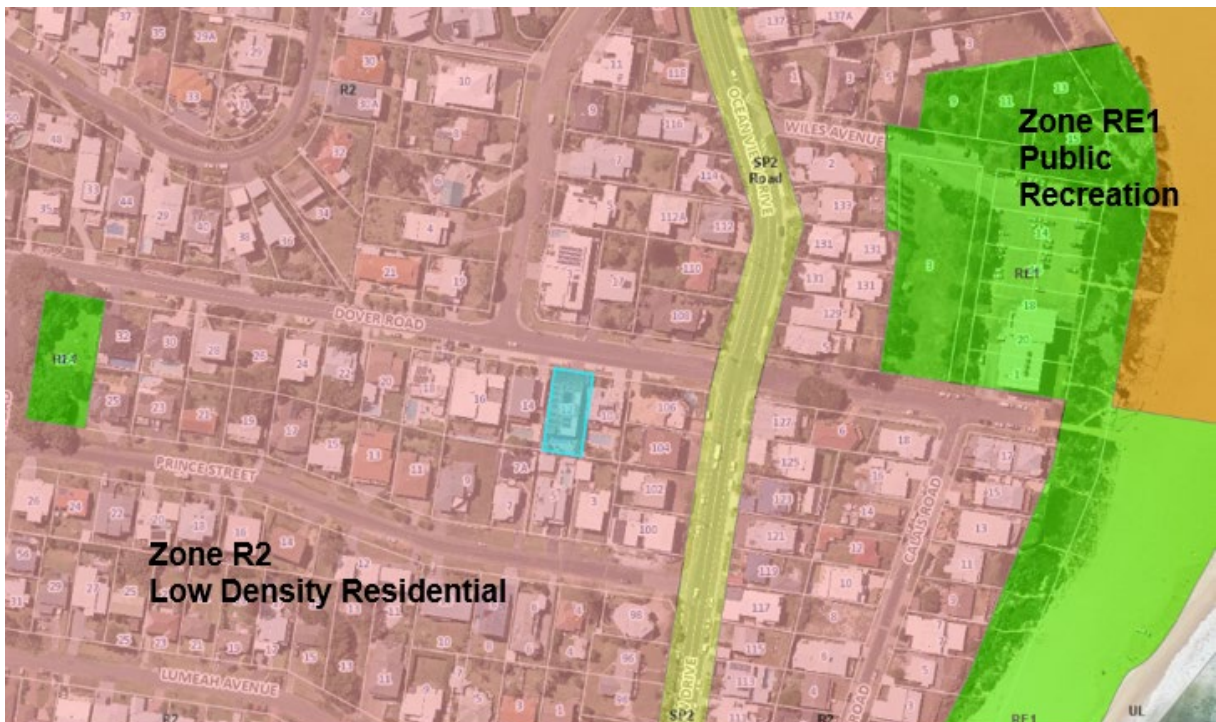


Figure 4 – Zoning Map – subject site (blue highlight)

The 4-bedroom maximum for short-term residential accommodation as exempt development reflects the maximum size of the majority of dwelling houses in the local government area. This bedroom limit encompasses the vast majority of short-term holiday lets and provides a reasonable delineation point for a 'domestic' scale reflective of the general residential environment and operating with due regard to the amenity/environment of the local area.

The use of the existing dwelling house containing 6 bedrooms for short term rental accommodation has the potential to move beyond the 'domestic scale', therefore be considered a non-residential use and aligns with the scale of other uses of dwellings which have a commercial basis, e.g. bed and breakfast accommodation, home occupation and home industry, permitted in the R2 zone.

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The ability to accommodate a large group of guests at any one time and the likelihood that guests are unrelated persons rather than family members has the potential to impact on behaviour of short-term tenants. Frequency of use of the dwelling for short-term rental accommodation by different guests and the number of guests has the potential to increase car parking, traffic, waste and noise in the neighbourhood.

As the proposed use is considered a commercial nature, Council has the ability to place controls on use of the dwelling with the intent to regulate the behaviour of persons on the premises.

The opportunity exists for the owner/operator of the short-term rental accommodation to accord with appropriate standards and conditions and to improve the operation and management of the use to minimise adverse social or environmental impacts. It is considered that the proposal can be consistent with the stated objectives by the appropriate management of the site and the imposition of relevant conditions of consent.

Development Standards

An assessment of the proposed development against the relevant planning controls is detailed below.

Table 1 – GLEP 2014 Development Standards

Development Standard	Required	Proposed	Compliance with Controls	Compliance with Objectives
Clause 4.3 - Height	8.5m	Temporary use of existing dwelling - no change to existing height of the building	n/a	n/a
Clause 4.4(2) - Floor Space Ratio (FSR)	0.5:1	Temporary use of existing dwelling - no change to existing FSR of the building	n/a	n/a
Clause 7.6(2) - Short term Rental Accommodation - Number of bedrooms	Dwelling containing 5 or 6 bedrooms	Dwelling containing 6 bedrooms	Yes	Yes

The proposal is consistent with the relevant development standards of the GLEP 2014.

7.1 Acid sulfate soils

This land has been identified as being affected by the Acid Sulfate Soils Map and the matters contained in clause 7.1 of *Gosford Local Environmental Plan 2014* have been considered. The site contains Class 5 Acid Sulfate Soils. In this instance, the proposal does not involve any ground disturbance and does not impact on Acid Sulfate Soils.

GOSFORD DEVELOPMENT CONTROL PLAN 2013

An assessment of the proposed development against the relevant chapters of Gosford Development Control Plan 2013 (GDGP 2013) is provided as follows:

Chapter 2.1 Character

The site is located within the character area: Wamberal 6: Open Woodland Hillsides of Gosford Development Control Plan 2013 (GDGP 2013) Chapter 2.1 Character.

The proposal does not involve any external building works that would impact upon the character of the area. The management of the dwelling house is considered under Chapter 3.14 and the imposition of conditions of consent is recommended to ensure the use of the dwelling for short-term rental accommodation is consistent with a domestic scale and amenity of the neighbourhood.

Chapter 3.14 Short Term Rental Accommodation of Dwellings

The aim of Chapter 3.14 is to provide guidelines for the assessment of a development application. It is relevant in the consideration of the requirements below that effective management of the property is paramount in relation to the use of the dwelling for short-term rental accommodation to mitigate environmental and amenity issues and addressed in Table 2 as follows:

Table 2 – Chapter 3.14 or GDGP 2013 Development Controls

3.14.5.1 Maximum Car Parking Spaces	
Objective: To encourage shared vehicle use. To identify on street car parking as an amenity/environment issue for short term rental accommodation of dwellings. To allow onsite parking only to a level that is appropriate in a residential setting.	
Control / Requirement: <ul style="list-style-type: none"> • Maximum 6 off-street car parking spaces • Stacked car parking acceptable 	Compliance: <ul style="list-style-type: none"> • Double garage accessible from a full width driveway servicing the property. • This configuration provides 4 car parking spaces – 2 within the garage, 2 within the driveway of the property.

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Comments

A 6-bedroom dwelling is capable of accommodating 12 adult persons. Management action is required during booking arrangements to identify and confirm no more than 4 vehicle car parking spaces are available reinforced through the vetting process by the manager/letting agent and the Holiday Letting Agreement. Two (2) additional street front spaces are available as overflow spaces if required as shown in Figure 3.

Conditions are imposed for ongoing management in relation to car parking **refer Condition 2.9**. Limitations on the number of adults permitted on the premises at any one time through conditions of consent will also assist in reducing impact of overflow car parking and encourage shared vehicle use.

3.14.5.2 Amenity / Environment

Objective:

To provide in the assessment of development applications for the consideration of the potential impacts of the use on adjoining and nearby residents' enjoyment of their residences.

Control / Requirement:

Council may impose conditions on the use of the type identified in Section 3.14.6

Compliance:

Recommend conditions imposed for time limited consent including appointment of a manager, improved record keeping of complaints and guest register, restriction on use of outdoor facilities – refer below for comment. Management action is required to develop stringent procedures for vetting of potential guests.

Comments:

The use is proposed to be operated as non-hosted short-term rental accommodation, managed by a local owner/manager, in accordance with a Plan of Management and detailed rental agreement (Holiday Letting Agreement) which details guidelines and operation procedures to manage behaviour of guests, noise, car parking, and garbage.

Management of the use will involve stringent procedures for the vetting of potential guests and overseeing the adherence to the rental agreement which provides house rules / code of conduct for guests. The vetting process of clients is undertaken by the owner/manager.

The operation of the short-term rental accommodation in accordance with the Plan of Management and Holiday Letting Agreement will provide best practice for management of the site and address residential amenity by:

- Restrictions on the hours of use of outdoor facilities (swimming pool, spa and deck areas) and amplified sound devices.
- Limit on number of guests at any time, proposes a maximum of 12 adult persons to reduce the intensity of the use.
- No parties of any nature allowed including bucks/hens parties, schoolies, functions or weddings.
- Taking/holding significant bonds. Verification of complaints by the manager/letting agent may result in withholding bonds and lease arrangements terminated.
- Expected appropriate behaviour of guests.

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It is proposed that a time limited consent be imposed for Council to monitor the operation of the use and require the submission of a further development application at the end of the consent period. If the use is not operating appropriately, Council could consider an increase in regulatory control and amendments to conditions of consent or refuse the application. Notification to surrounding dwellings would occur at that time to give further opportunity for comment and review of conditions.

The operational aspect of premises in accordance with the Plan of Management/Holiday Letting Agreement and the above stated measures is deemed suitable to manage the amenity impacts raised by neighbours. The effectiveness of the management practices of the premises and compliance with conditions of consent in reducing amenity impacts is ongoing monitoring of the use.

Refer to Clause 3.14.7 Code of Conduct for detailed comments in relation to proposed state planning framework implementation for which short-term rental accommodation may operate in the future.

3.14.5.3 Waste Services

Objective:

To ensure that the short-term rental accommodation use does not result in failure of on-site treatment systems for sewerage.

To ensure that garbage services are adequate for the short-term rental accommodation.

Control / Requirement:

- Sewerage Disposal Reticulated sewer / on-site sewage treatment
- Minimum 240 litre general waste garbage bin

Compliance:

- Serviced by reticulated sewer system.
- Issue of 240 litre general waste garbage bin.

Comments:

- Waste management is an issue that has been raised by a number of submissions.
- Management action is required during booking arrangements to identify disposal of waste and placement of bins for kerbside collection for Council's routine garbage collection and included in the Holiday Letting Agreement.
- It is the responsibility of the manager/letting agent to ensure additional garbage collection where necessary, inspect the premises within 24 hours after rental occupancy including removal immediately of excess rubbish from the premises. Specific conditions of consent are recommended for waste management, *refer Condition 2.10*.

3.14.6 Conditions of Consent

Objective:

To provide guidance as to conditions of consent that could be used by Council for development consent for short term rental accommodation of a dwelling which can be easily monitored for compliance but also help to ensure the use operates in a manner that considers the amenity/environment of the neighbourhood.

<p>Control / Requirement:</p> <ul style="list-style-type: none"> • Under Clause 4.17 (1) (d) of the Environmental Planning and Assessment Act 1979 Council may impose time limited development consent (i.e. 1 year on a development for short term rental accommodation). • Outdoor areas such as swimming pools/spas, outdoor decking/balconies or other spaces which are not classed as a room on a development application for construction/alterations to the dwelling can be limited in their hours of operation in their use. • Amplified sound devices as heard at the boundary of the property may be time restricted in their use. 	<p>Compliance:</p> <ul style="list-style-type: none"> • Recommend conditions imposed for time limited consent of 1 year, refer Condition 1.2. • Restrictions on the hours of use of outdoor facilities and amplified sound devices applied through the Holiday Letting Agreement prepared by Doug Sneddon Planning and where modified by conditions of consent, refer comments below for relevant conditions of consent.
<p>Comments:</p> <p>The current use of the dwelling as short-term rental accommodation has affected the residential amenity of the neighbourhood particularly to the premises to the east and to the rear of the site and to the neighbourhood evident by the issues raised in the submissions to this application regarding noise and the use of outdoor areas at the side and rear of the dwelling.</p> <p>Additional conditions of consent are also applied to effectively operate and manage the premises for car parking, waste management and residential amenity. While a regulatory approach is not the only means of addressing residential amenity, communication, education and efficient management of the site is paramount.</p> <p>The assessment of the proposal has considered that in conjunction with the proposed conditions of consent, best management practices will be implemented to ensure the proposed use of the dwelling is consistent with a domestic scale and amenity/environment of the neighbourhood. The following conditions are recommended:</p> <ul style="list-style-type: none"> • Time-limited condition refer Condition 1.2. • Implementation of the Plan of Management and the Holiday Letting Agreement refer Condition 2.1. • Restrictions on the number of occupants/guests, refer Condition 2.2. <ul style="list-style-type: none"> ○ The dwelling has capacity to cater for this number of occupants. The booking register during September 2019 and January 2021 indicates groups of up to 16 persons at any one time have rented the dwelling and it is possible that this comprises only adults. A large number of adult persons such as this have the potential to cause impact to neighbours in terms of increase in car parking, noise and garbage. ○ Consideration has been given to reducing maximum occupants to 12 adult persons at any one time in order to control the scale of the use. ○ The applicant has requested that consideration be given also to allow 10 adult persons and 6 children where circumstances warrant this. Note: Children are defined as a person who is under the age of 16 years in accordance with the Children and Young Persons (Care and Protection) Act 1998. ○ Council is of the opinion that the current management practices and guest numbers are effective through strict vetting process and identified house rules. 	

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- Restrictions on the hours of use of outdoor facilities (swimming pool), amplified sound devices and outdoor deck areas. The Holiday Letting Agreement stipulates hours of use for these matters. The proposed hours are more restrictive than general neighbourhood noise restrictions, **refer Conditions 2.3 & 2.4.**
- Restrictions on the use of the property for functions and/ or parties, **refer Condition 2.5.**
- In this instance, the use is operated by an owner/manager rather than an independent manager or letting agent. The owner/manager is contactable 24 hours per day. The manager’s phone number is to be provided to adjoining neighbours and displayed on the property to address any immediate concern regarding the use of the premises **refer Condition 2.6.**
- A register of guests to be kept including a complaint register and policy for dealing with complaints and made available to Council on request, **refer Conditions 2.7 & 2.8.**
- Management of waste is addressed in the Plan of Management and conditions of consent, **refer Condition 2.10.**

3.14.7 Code of Conduct

Objective:

To support the Code of Conduct prepared by the Department of Planning and Environment and peak bodies relating to short term rental accommodation of dwellings.

Control / Requirement:

The code of conduct be referenced in all development consents for short term rental accommodation of dwellings.

Comments / Compliance:

- The Department of Customer Service and the Department of Planning, Industry and Environment (the department) have worked together to develop a framework for Short-term Rental Accommodation (STRA) which includes a Code of Conduct (the Code), which started on 18 December 2020.
- The Code creates new minimum standards of behaviour and requirements for all participants i.e. hosts, guests, letting agents and facilitators.
- The Code sets out a process for breaching the Code and disciplinary actions for short-term rental accommodation complaints.
- Obligations on guest actions to neighbours (section 2.5.2 of the Code) states:

Obligations to neighbours

2.5.2 A guest must not at any time during the occupancy period:

- a. create noise that because of its level, nature, character, or quality, or the time it is made, is likely to harm, offend, or unreasonably disrupt or interfere with the peace and comfort of neighbours and other occupants of the premises*
- b. act in a violent or threatening manner towards neighbours or other occupants of the premises*
- c. act in a manner that could reasonably be expected to cause alarm or distress to neighbours and other occupants of the premises*
- d. use or enjoy the premises in a manner, or for a purpose, that interferes unreasonably with the use or enjoyment of common property by neighbours and other occupants of the premises in a strata or community scheme*

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- e. *intentionally, recklessly or negligently cause damage to premises, any common property or any other communal facilities within the immediate vicinity of the premises, or any public property in the vicinity of the premises*
- f. *intentionally, recklessly or negligently damage the personal property of neighbours of the premises or other occupants of a strata or community scheme.*

In the assessment of the development application Council has worked with the Applicant and owner/manager to implement a Plan of Management and Holiday Letting Agreement to manage noise, waste, car parking and the behaviour of guests at the premises for short-term rental accommodation. Reference is made to the Code of Conduct in the proposed Plan of Management.

Further to this, the owner may consider operation as exempt development under the amendments via the *State Environmental Planning Policy (Affordable Rental Housing) Amendment (Short-term Rental Accommodation) 2021* published on 9 April 2021 and to commence on 30 July 2021. Council has been advised by the DPIE that operation as exempt development under the proposed policy amendment will not consider previous compliance matters and that a lawfully issued consent will be recognised. The approach by the relevant state Departments to compliance is yet to be realised by owners and neighbours. However, the proposed compliance process under the new Code of Conduct includes a 'two strikes and you're out' approach that could result in problematic hosts and guests being banned from holiday letting for five years and result in being listed under an Exclusion Register.

3.14.8 Bushfire Safety

Objective:

To reflect the Rural Fire Service requirements for short term rental accommodation of dwellings.

Comments:

The site is not bushfire prone land.

The assessment has considered impacts on residential amenity and proposed relevant conditions of consent relating to the restriction on number of occupants, the use of outdoor facilities and amplified sound devices, car parking and waste management. The proposal is generally in accordance with the objectives of Chapter 3.14 of the GDCP 2013.

The proposal is permissible on the land with the consent of Council. Submissions received have provided helpful comments in framing appropriate conditions of consent in relation to amenity impacts on nearby residents.

It is considered reasonable to give the opportunity to the operator to accord with appropriate standards and conditions and by adopting best management practices to improve the operation and management of the use for this purpose to minimise any adverse social or environmental impacts and to ensure the proposed use of the dwelling is consistent with a domestic scale and amenity/environment of the neighbourhood.

OTHER MATTERS FOR CONSIDERATION

Development Contribution Plan

The site is not subject to the provisions of any section 7.11 or 7.12 development contribution plan. Therefore, no contributions are applicable.

PLANNING AGREEMENTS

The proposed development is not subject to a planning agreement / draft planning agreement.

REFERRALS

Internal Referral Body	Comments
Environmental Health	Supported, subject to conditions

PUBLIC SUBMISSIONS

The development has been notified in accordance with the provisions of Gosford Development Control Plan 2013.

A total of 36 public submissions were received in relation to the application. Of these submissions only 13 submissions are either adjoining or near the subject site either located in Dover Road or Prince Street (properties in Prince Street are located to the rear/south of the subject site). Therefore, the major of submissions, i.e. 23 submissions, are not directly affected by the use of the premises for short-term rental accommodation.

Those issues associated with key issues have been addressed in the above report. The remaining issues pertaining to various concerns were addressed in the assessment of the application pursuant to the heads of consideration contained within section 4.15 of the Environmental Planning and Assessment Act 1979.

A summary of the submissions objecting to the proposal is detailed below.

1 *The property has hosted very large groups of people which impacts on the amenity of neighbours by excessive and unreasonable noise, increase in on-street parking and waste management*

- *Listed on AirBNB as accommodating 16 persons, now changed to 14 persons after lodgement of the development application.*

- *Large groups of people use premises as weekend party house resulting in unpoliced anti-social behaviour and offensive language in a quiet residential area*
- *Dwelling used for parties is unacceptable for a residential zoning*
- *Loss of amenity - impacts on use of neighbouring properties outdoor areas and balconies*
- *Littering of property*
- *Increase in crime*

Comment:

The dwelling has been operating using only 4-bedrooms under the exempt development provisions of Council's planning controls. In accordance with the booking register between September 2020 and January 2021 groups of up to 16 persons at any one time have rented the dwelling. The dwelling has capacity to cater for a large number of persons which may comprise only adults. A large number of persons such as this has the potential to cause impact to neighbours by increased on-street parking, garbage, noise and can result in anti-social behaviour.

Council has received two complaints during 2020 in relation to large noisy groups of people having parties, including 'schoolies' groups, where excessive noise has occurred during the weekends and weekdays after 10.00pm and to early hours of the morning.

It is proposed to use all bedrooms in the dwelling i.e. 6 bedrooms. This will not result in more persons renting the dwelling. Since lodgement of the application Council has worked with the owner in relation to improving the management of the site and has considered the following measures:

- Council has requested and reviewed a Plan of Management (owner/manager) and a Holiday Letting Agreement (guests). Council has required the measures detailed in these documents implemented immediately during the assessment of the proposal.
- The management practices require strict vetting process and identified house rules being undertaken by the owner/manager and guests. A guest register is to be maintained including a complaints register and complaints policy is to be put in place which will identify how any ongoing issues will be addressed.
- Consideration has been given to reducing maximum occupants to 12 adult persons at any one time in order to control the scale of the use. In addition, the owner has requested that where guests comprise children then a maximum of 10 adult guests and a maximum of 6 children (16 years of age or less) are permitted to occupy the premises. Conditions of consent are imposed.
- In addition, restrictions on use of outdoor areas, pool, spa and amplified music during weekdays, public holidays and Sundays to 9.00pm and on

Friday and Saturday to 10.00pm will also assist in noise reduction. Conditions of consent are imposed.

- Conditions of consent are imposed for improved waste management.
- Conditions are imposed to control car parking.
- The application of time limited consents to such uses can provide a strong incentive for owners to ensure their properties are operating appropriately. If Council becomes aware that the use is having a negative impact on the amenity of the neighbourhood then it is possible that Council will refuse an application to extend the use and it will be prevented from taking place in the property at significant cost to the owner. A time limited condition is imposed.

The opportunity exists for the owner/operator of the short-term rental accommodation to accord with appropriate standards and conditions and to improve the operation and management of the use and to minimise adverse social or environmental impacts. It is considered that the proposal can be supported on this basis.

2 *Out of character with the neighbourhood. The use of the dwelling for short-term rental accommodation is a commercial use and will adversely affect residential amenity.*

- *Council should be classing this property as a commercial use and therefore not allow it to be utilised for commercial purposes in the residential zoned area.*
- *Does not provide for the housing needs off the community within a low-density residential environment.*
- *A large-scale holiday letting should never be allowed in a quiet low density residential area.*
- *This is a residential area in habited by families and pensioners. Several other lettings in the street have resulted in noise and parking problems leaving no parking for residents*
- *This is an over development of the site as it is located on a narrow road which is the Bus Route for the Local Bus Service and has limited street parking.*

Comment:

'Holiday Homes' have been operating in low density residential zones or the equivalent for many decades without impact on the amenity of neighbourhoods. Recent more intense use of holiday homes has resulted in a small number of instances where the occupiers have not respected the amenity of adjoining and nearby property occupiers. It is not appropriate for Council to prevent the use from taking place as in the vast majority of cases there is no impact from the use upon neighbourhood amenity.

It is acknowledged that use of a dwelling for short-term rental accommodation is a non-residential use and can be regarded a business operation. As a business operation Council has more control over its use than if it operated as a dwelling used for a long-

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term rental. As a long-term rental many of the issues raised by the objectors could still be evident without Council being able to take any action. As a short-term rental Council can take action on non-compliance with conditions of consent.

The relevant objective for the use in the R2 Low Density Residential zone is '*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*'.

Council can impose restrictions on the use to ensure that the owner reinforces to the users that respect for neighbourhood amenity is paramount in the use of the premises and ensure that a reasonable level of operation occurs.

Council through conditions of consent and monitoring of the use will require that residential amenity is not adversely impacted and does not place demands on relevant services such as garbage and on street parking.

In this instance, consistency with objectives of the zone and desired character is defined by the management of the dwelling house to maintain the levels of privacy and amenity currently enjoyed by neighbouring dwellings that is expected within a low-density residential environment. The owner has indicated by the lodgement of the application to accept conditions of consent and ensure best management practices.

The opportunity exists for the owner/operator of the short-term rental accommodation to improve management practices in accordance with a Plan of Management and conditions to minimise adverse social or environmental impacts and be consistent with the stated objectives of the residential zoning to facilitate the provision of short-term rental accommodation in holiday areas.

3 *Contravenes local planning regulations in letting the premises for short-term rental accommodation which has resulted in excessive noise, no contact details provided of the host to lodge concerns, no confidence that the property can be successfully let to large number of guests into the future without continued unreasonable and unacceptable disruptions to the peaceful neighbourhood.*

Comment:

The proposal has been considered under the provision of local planning regulations and deemed suitable for the site subject to conditions as stated within the report and in Points 1 & 2 above. A condition is imposed for the owner/manager to provide contact details to adjoining neighbours and clearly display the contact details on the premises, **refer Condition 2.6.**

4 *On-street Parking*

- *Likely to cause traffic congestion in what is a residential street with limited on-street parking available.*

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- *Property does not have sufficient off-street parking for large groups of people.*

Comment:

A 6-bedroom dwelling used by permanent residents as either owner/occupier or under a long-term lease agreement has the potential to result in overflow car parking along the street. The use of the dwelling for short-term rental accommodation is considered a non-residential use and conditions of consent can be applied with limitations on car parking for 2 spaces in the double garage and 2 spaces in front of the garage.

While a regulatory approach is not the only means of addressing car parking, communication and education is paramount. Management action is required during booking arrangements to identify and confirm no more than 4 vehicle car parking spaces are available, reinforced through the vetting process by the owner/manager and the 'house rules' in the Holiday Letting Agreement.

5 Waste Management - Garbage collection and overflow of rubbish onto the street

Comment:

A restriction will be placed on the number of people allowed to stay at the premises to limit garbage generated and Council will also require a larger garbage bin to be provided for the premises.

Conditions of consent are applied for the management of waste by the owner/manager to ensure additional garbage collection where necessary, inspect the premises within 24 hours after rental occupancy including removal immediately of excess rubbish from the premises.

6 Modifications to the dwelling without DA approval which we understand would not be considered 'exempt development'. These include:

- *Addition of a part solid part louvered roof and several screen louvered walls to the rear and eastern side of the dwelling. We understand the side section of this roof is non-complaint as it exceeds height-setback limits for 'side setback' in accordance with Cl 3.10 (3) of the DCP.*
- *Contributes to gross floor area*
- *This additional roof / screening has focussed large group gatherings towards the rear (now covered) top balcony and resulted in a significant increase in noise impacts to our internal and external living areas as well as loss of privacy to our rear balcony and rear pool area.*
- *The recent addition of two new external openings in the eastern mid-level wall facing our property - one providing doorway access to a front balcony and the second a cafe style fully retractable window to the rear kitchen. We understand that such new external doors and windows are not 'exempt*

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development' and should have required DA approval (although none appears to have been sought or provided).

- *Even though the owner has attempted to partly screen this opening with a slat style screen, the increase in noise impacts to our internal and external living areas is significant, particularly when the large new kitchen window is open.*

Comment:

A large awning/roof structure with privacy screens (the structure) has been installed on Level 3 of the dwelling over the upper deck area; without obtaining development consent. The structure extends along the southern elevation and the eastern elevation of the dwelling. This application is not seeking approval for the structure. The alleged unauthorised installation of the structure is referred to Council's Development Control section for investigation, **refer Recommendation 3**.

The potential for overlooking the private open space of adjoining properties and any loss of privacy resulting from the use of the Level 3 terrace would have been the subject of consideration and assessment by the Council with the approval granted for the terrace arrangement under Development Consent 26849/2005 Parts 1 – 3.

Notwithstanding this, the amenity impact of the use of the approved deck areas on the dwelling has been considered during the assessment of the subject application and recommended conditions of consent. The operation of the dwelling house with adherence to a Plan of Management and Holiday Letting Agreement, reduction in number of persons able to rent the dwelling and restriction on hours of use of all deck areas via conditions of consent will assist in minimising adverse amenity impacts to neighbours.

The new windows and door referred to in the submission appear to be in the same location as openings approved under DA26849/2005 Part 3. The structure does not contribute to floor area.

7 Submissions from residents that do not live in the street or adjoin the subject site or have lodged a submission to another development application for STRA

- *Too many short-term rentals and AirBNBs in the area and the street*
- *Previous Police intervention in previous years in that street already*
- *Increases crime*
- *Wamberal is not a holiday destination, it is a family residential area and developments like this take that away. There is enough of this type of accommodation in Terrigal.*
- *The proposed development will add significantly to the density of occupation of this residential area which surely was not foreseen or intended by earlier planners. The precedents being set now will undoubtedly lead to an expansion of these residential activities which in essence are unintended*

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business in character. The amenity of the residential precinct is slowly but surely being downgraded and with adverse impacts on property capital values.

Comment:

'Holiday Homes' have been operating in low density residential zones or the equivalent for many decades without impact on the amenity of neighbourhoods. The proposed development will be beneficial in terms of its social and economic effects, as it will provide short term tourist accommodation, be ideally located with walking distance of Wamberal Beach and all retail/commercial services are available in nearby Terrigal Village Centre.

The State government has recognised the need for holiday letting and has consulted industry stakeholders and council on a proposed regulatory framework for short-term rental accommodation. On 9 April 2021, The NSW Government has announced implementation of a new statewide regulatory framework for short-term rental accommodation (STRA) as exempt development, which includes a new planning framework, fire safety standards for STRA dwellings and a new Government-run STRA Register. The new framework compliments the mandatory Code of Conduct and changes to strata legislation made by the Department of Customer Service.

The STRA planning policy will come into effect on 30 July 2021. The delayed commencement will allow all STRA stakeholders, hosts, councils and industry participants adequate time to familiarise themselves with the policy and comply with the new Fire Safety Standards and registration on the new STRA Register which will be available from 10 April 2021 to allow hosts to register their dwellings before the new planning rules commence on the 30 July 2021.

The new policy allows short-term rental accommodation as exempt development for hosted and non-hosted premises specifying criteria for number of days per year the use may occur depending on which local government area the STRA is located. In the Central Coast local government area hosted and non-hosted STRA may operate 365 days per year.

A new Code of Conduct has come into effect on 18 December 2020. Council's planning controls will be repealed on the commencement of the amendments to the state environmental planning policy for affordable rental housing. Until this time, Council can consider the proposal and recommend conditions of consent to manage amenity impacts. The stated documents have been considered in the assessment of the application. The proposal will operate under a Plan of Management and Holiday Letting Agreement with restrictions and conditions for the operation of the use.

There is no documentary evidence that suggests the proposal will impact on property values in the area or increase the opportunity for crime.

- 8** *No amount of vetting of applicants, 'house rules' or genuine intentions by an owner to prevent such disturbances are ever going to be effective in negating impacts on the neighbours. Additionally, relying on a complaint handling policy is like shutting the barn door after the horse has bolted.*

Comment:

Council's approach to the assessment of the application is consistent with similar applications previously considered and deemed effective. While a regulatory approach is not the only means of addressing amenity impacts, effective management, communication and education is paramount. Together with a Plan of Management, imposing controls / restrictions on use of outdoor facilities and excessive noise, including a time limited consent is considered the most appropriate course of action for the benefit of all concerned. The application of time limited consents to such uses can provide a strong incentive for owners to ensure their properties are operating appropriately to minimise amenity impacts on surrounding properties.

Likely Impacts of the Development

Section 4.15 (1)(b) of the EP&A Act requires consideration of the likely impacts of the development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality.

The subject site is zoned R2 Low Density Residential under GLEP 2014 and adjoins residential developments comprising single dwellings and medium density developments. Amenity impacts on the built environment have been considered. The opportunity exists for the owner/operator of the short-term rental accommodation to accord with appropriate standards and conditions and to improve the operation and management of the use and to minimise adverse social or environmental impacts. It is considered that the proposal can be consistent with the stated objectives of the zone by the appropriate management of the site and the imposition of relevant conditions of consent. The proposed built form is considered acceptable in the context of the site.

The proposed development will be beneficial in terms of its social and economic effects, as it will provide short term tourist accommodation, be ideally located with walking distance of Wamberal Beach and all retail/commercial services are available in nearby Terrigal Village Centre.

SUITABILITY OF THE SITE FOR THE DEVELOPMENT

The site is zoned is zoned R2 Low Density Residential under GLEP 2014. The proposed development is permitted in the zone with development consent. The proposal is generally in keeping with the provisions of GLEP 2014 and GDCP 2013 and raises no adverse impacts or consequences in regard to the principles of Ecologically Sustainable Development.

3.1 DA60097/2020 - Short-term Rental Accommodation - 12 Dover Road Wamberal (contd)

The site is not subject to flooding or bushfire constraints. The use of the site is for a residential purpose; although for a commercial gain. As such the site is considered suitable for this type of development subject to conditions of consent to minimise adverse amenity impacts on adjoining residents.

THE PUBLIC INTEREST

The approval of the application is considered to be in the public interest. Despite the number of submissions objecting to the proposed use of the premises for short-term rental accommodation, the proposal will generate social and economic benefits for the community; will not have any adverse impact on the natural environment; and will not unreasonably impact neighbouring properties.

POLITICAL DONATIONS

During assessment of the application there were no political donations were declared by the applicant, applicant's consultant, owner, objectors and/or residents.

CONCLUSION

This application has been assessed under the heads of consideration of section 4.15 of the *Environmental Planning and Assessment Act 1979* and all relevant instruments and policies. Subject to the imposition of appropriate conditions, the proposed development is not expected to have any adverse social or economic impact.

Accordingly, the application is recommended for **approval** pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

Reasons for the Decision

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

- 1 The proposal is satisfactory having regard for the relevant environmental planning instruments, plans and policies.
- 2 There are no significant issues or impacts identified with the proposal under s.4.15 of the *Environmental Planning and Assessment Act 1979*.

Attachments

- | | | |
|---|---|---|
| 1 | Draft Consent Conditions DA60097 12 Dover Rd Wamberal | D14572384 |
| 2 | Plans DA60097 12 Dover Road Wamberal | Provided Under Separate Cover D14573114 |

**3.1 DA60097/2020 - Short-term Rental Accommodation - 12 Dover Road
Wamberal (contd)**

- | | | |
|----------|---|-----------|
| 3 | Final Short Term Rental Accommodation - Plan of Management & Holiday Letting Agreement 12 Dover Road, WAMBERAL DA60097 Part 1 | D14508158 |
| 4 | Response to Council's Letter of 8th February 2021 - 12 Dover Road, WAMBERAL DA60097 Part 1 | D14508161 |
| 5 | PUBLIC Statement of Environmental Effects 12 Dover Road, WAMBERAL DA60097 Part 1 | D14288527 |

Draft Conditions of Consent

DA60097/2020: Short Term Rental Accommodation

Description of Land: LOT: 4 DP: 13304, 12 Dover Road WAMBERAL

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 to which is affixed a Council stamp "*Development Consent*" unless modified by any following condition.

Architectural Plans by: Doug Sneddon Planning Pty Ltd

Drawing	Description	Date
A-01	Site Plan (nearmaps.com)	29/03/2021
A-02	Floor Plans (Slater Architects)	undated

Supporting Documentation

Document	Prepared by	Date
Plan of Management, Short-term Rental Accommodation (6 bedrooms) at No. 12 Dover Road, Wamberal	Doug Sneddon Planning Pty Ltd	undated

- 1.2. This consent is for a twelve (12) month period only and accordingly the development must cease at the expiration of twelve (12) months from the date of determination of this consent.

Any extension of the approved use beyond twelve (12) months will require the prior submission and approval of an application under section 4.55 of the *Environmental Planning and Assessment Act, 1979*. In considering any application for the extension of this consent, Council would have regard for relevant matters under the *Environmental Planning and Assessment Act 1979*, including any submissions received during the period.

Note: Any application to modify this condition should be submitted to Council three (3) months prior to the date the consent will lapse.

2. ONGOING OPERATION

- 2.1. Implement and operate in accordance with the Plan of Management, Short-term Rental Accommodation (6 bedrooms) at No. 12 Dover Road, Wamberal, listed as supporting documentation in this consent, (including Annexures), and Holiday Letting Agreement

'DoVilla' 12 Dover Road Wamberal except where modified by consent conditions of DA60097/2020.

All rules are to be displayed in a prominent position in the dwelling for all guests to read. A copy of the Holiday Letting Agreement is to be signed by guests upon registration and booking.

- 2.2. The number of guests permitted at the property must not exceed twelve (12) persons in total or 10 adult persons and 6 children at any one time during the term of the occupancy when used for short term rental accommodation.

Note: Children are defined as a person who is under the age of 16 years in accordance with the Children and Young Persons (Care and Protection) Act 1998

- 2.3. Restrict the hours of operation of amplified sound devices and musical instruments from the property to the following hours:

Fridays and Saturdays	8.00 am to 10.00 pm
Monday – Thursday, Sunday and Public Holidays	8.00 am to 9.00 pm

Any variation to these hours is subject to the prior consent of Council.

- 2.4. Restrict the use of the outdoor areas (including decks, outdoor dining areas, pool and spa) by guests to the following hours:

Fridays and Saturdays	7.00 am to 10.00 pm
Monday – Thursday	7.00 am to 9.00 pm
Sunday and Public Holidays	8.00 am to 9.00 pm

Any variation to these hours is subject to the prior consent of Council.

- 2.5. Ensure that the property, when used for short term holiday letting, is not used for parties and/or functions, including bucks/ hens' parties, schoolies, engagement parties, birthday parties and/or weddings at any time.
- 2.6. Appoint a manager/letting agent who shall be contactable 24 hours per day. Provide adjoining neighbours with the phone number of the manager/letting agent for them to contact in case there is a need to address an immediate concern regarding the use of the property for short term rental accommodation.

Note: The 24 hour/7 day contact phone number must also be displayed in a prominent location at the property.

- 2.7. Maintain an accommodation register, which includes full name, address, drivers' licence and contact details of all adult guests. Provide to Council Officers on request.

- 2.8. Maintain the Complaints Register in accordance with Annexure C of the Plan of Management, Short-term Rental Accommodation (6 bedrooms) at No. 12 Dover Road, Wamberal, listed as supporting documentation in this consent, including the following:
- Retain a log of related communication and actions taken;
 - Respond to complaints and take effective action;
 - Maintain a complaints register which includes date and time complaint received, name and designation (e.g. guest, neighbour, council, police etc.) of complainant and contact details of complainant, nature of complaint;
 - Action taken (by whom and when);
 - Outcome and/or further action required (e.g. community consultation, meet with Council, meet with local police, review management systems or issue resolved).
- 2.9. Provide four (4) off-street car parking spaces as stacked car parking spaces on the driveway.
- Note: Booking arrangements must identify and confirm no more than 4 vehicle car parking spaces are available on-site.
- 2.10. Place the mobile garbage / recycling / green waste containers at a suitable location at the kerbside no earlier than the evening prior to the collection day and return to a screened area as soon as possible after service, no later than the evening on collection day. The general waste garbage bin must be at least 240L capacity.
- The manager/letting agent and owner of the premises are responsible for the placement and return of the mobile waste containers.
 - The manager/letting agent shall inspect the premises within 24 hours after the rental occupancy has vacated the premises to ensure waste is disposed into allocated mobile waste containers and rubbish is not left in public or common areas.
 - Excess rubbish shall be removed immediately from the premises to an authorised waste facility.
- Note: The Holiday Letting Agreement (booking arrangements) identify disposal of waste and placement of bins for kerbside collection for Council's routine garbage collection.
- 2.11. All external lights shall be operated and maintained in accordance with the Australian Standard AS4282 - Control of the Obtrusive Effects of Outdoor Lighting so as not to cause a nuisance or adverse impact on the amenity of residents of the surrounding area or to motorists on nearby roads.
- 2.12. Ensure a current Certificate of Compliance is in force for the swimming pool and that the swimming pool barrier is compliant with the Swimming Pools Act 1992.

3. 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.

PLAN OF MANAGEMENT

SHORT TERM RENTAL ACCOMMODATION (6 BEDROOMS) AT NO. 12 DOVER ROAD, WAMBERAL.

This *Plan of Management* for the use of an existing six bedroom dwelling house at No. 12 Dover Road, Wamberal for the purpose of short term rental accommodation comprises:

- A *Holiday Letting Agreement* (copy provided in **Annexure A**) setting out the terms and conditions for the letting and occupation of the premises (6 bedrooms) for short term rental accommodation, which include:
 - The maximum number of resident guests permitted at any one time (i.e. 12 adult persons, or if children are present, then a maximum of 10 adult persons and up to six (6) children;
 - Procedure for vetting guests; guest registration and guest check-in/check-out;
 - Strictly No-Party rule & no indoor smoking rule. Pets prohibited;
 - Car Parking arrangement (up to 4 on-site spaces & 2 street front spaces);
 - Cleaning arrangements and guest responsibilities;
 - Rules and time restrictions for use of the outdoor swimming pool and SPA;
 - Prohibition of movement of furniture by guests;
 - Waste Management rules and arrangements;
 - Facilities and equipment operating instructions;
 - Noise Policy, including restricted hours of use of outdoor areas and the operation of amplified sound devices;
 - Reference to the *Code of Conduct for Short Terms Rentals in NSW*;
 - Emergency service numbers for information of guests;
 - Cancellation Policy; and
 - Guest Agreement to the terms and conditions of the *Holiday Letting Agreement*.
- A *Guest Register* (copy provided in **Annexure B**); and
- A *Complaints Register* (copy provided in **Annexure C**).

Guests are expected to occupy the premises in a manner consistent with NSW legislative requirements for the use of premises for short term rental accommodation; the specific conditions of Development Consent 60097/2020; and the terms and conditions of the *Holiday Letting Agreement* provided in Annexure A.

ANNEXURE A.

‘HOLIDAY LETTING AGREEMENT’ FOR SHORT TERM RENTAL ACCOMMODATION AT NO. 12 DOVER ROAD, WAMBERAL (‘DoVilla’).

This Holiday Letting Agreement is made between Doris Wehbe as Owner/Host – (Contact 0414 880 033) and:

Guest:

Guest Address:.....

.....

Short Term Rental Property: No. 12 Dover Road, Wamberal – ‘DoVilla’.

The Guest agrees to the following terms and conditions of occupation of the rental premises:

1. Rental Payment: Payment of the agreed rent is payable in full within 30 days of your arrival date by direct deposit.

2. Security Bond: A Security Bond of \$1,000 is payable by the Guest prior to arrival. The Bond is returned to the Guest following the Host’s inspection of the property after the Guest has departed. Should damages or extra charges be incurred per the conditions of this agreement, the Guest authorises the deduction of money from the Bond and the Guest will be notified of the amount and reasons for the additional charges.

If the damage or charges exceed the Bond amount, the Guest agrees to pay the difference between the cost of the damages/charges and the Bond amount.

3. Rental Period: The agreed rental period is fordays, between the dates of

.....

4. Maximum Number of Resident Guests (up to 6 available bedrooms): The maximum number of guests residing at the property any one time must not exceed 2 adult persons per bedroom (i.e. up to 6 available bedrooms and a maximum of 12 adult persons).

If children of guests are also residing at the property, the total number of residents permitted is 10 adults within five of the available double bedrooms and up to 6 children within the available ‘bunk’ Bedroom 4.

5. Procedure for vetting Guests/Guest Register: All adult resident guests must provide their details to the host on the accompanying Guest Register prior to occupation of the premises.

Details to be provided for each adult guest are to include name, contact details and drivers licence details. Failure to complete and submit the required Guest Register details to the host prior to the day of occupation will result in cancellation of the Guest booking.

6. Strictly “NO PARTY” rule: Please note that the residence is provided for holiday residential purposes only and is limited to the number of resident guests specified in item 4 above.

The Host strictly applies a ‘NO PARTY’ policy under this Holiday Rental Agreement, meaning that there can be no parties; wedding events or functions of any kind. This Policy is strictly applied in the interest of protecting the amenity of neighbouring residents from noise disturbance and anti-social behaviour.

The property is not available for rent for any ‘Schoolies’ related group.

7. Checking in: Checking in time is available from 3.00pm. A code for the front gate and garage will be messaged to your mobile phone number on the morning of arrival. Keypad entry is located at the entry gate and front door. A reset code will be given to each new guest prior to arrival.

8. Checking out: Check out time is strictly by 10.00am on the morning of departure. The guest is responsible for ensuring that all windows and doors are securely locked prior to leaving the premises and ensuring that all rubbish is removed and placed in the respective bins provided in the waste bin store located adjacent to the front entry driveway.

If any rubbish is left inside the residence and not placed in the bins provided, the guest will incur an extra service charge for cleaning.

9. Bond: The property will be inspected upon your departure. If left in the condition in which you found it, the rental bond will be refunded within 5 – 10 days. If there are any issues to be resolved following your occupation, it will take longer.

10. Car Parking: Secure on-site car parking is available for 4 cars. Do not park on the lawn. Additional kerbside parking for 2 cars is available at the street front.

11. Strictly NON-SMOKING Inside: A strict non-smoking policy is applied to all indoor areas of the residence.

If smoking outside, all cigarette butts must be discarded into the waste bins provided. If there is any evidence of a breach of this policy, additional cleaning charges will be imposed.

12. Cleaning: The residence is professionally cleaned after every stay. Cleaning fees are included in the amount charged for your stay. To avoid additional cleaning charges, guests are required to leave the property in a neat and tidy condition. On departure please ensure:

- The dishwasher is emptied and any used dishes/utensils are washed, dried and put away;
- Wipe down kitchen benches;
- Ensure that the BBQ is left ready for the next guest to use. If left dirty, a \$50 cleaning fee will apply; and
- Remove all food items from the property.

Although the rental price does include provision for cleaning, the guest has responsibility for cleaning any mess made in the bathrooms and/or after any kind of sickness/vomiting or any other personal excretions. Please do not leave used condoms, nappies, used tissues, personal hygiene items or the like for pick up by the cleaners. Please dispose of these items yourselves.

13. Use of Swimming Pool and SPA: A pool and SPA are provided for the enjoyment of guests. The pool and SPA are professionally checked, tested and chemically treated before every check-in.

Please note that chlorine and other pool related chemicals are used to protect the health of guests. Use of the pool and SPA is at your own risk and may cause allergies for some. The host/owner bears no responsibility. Please ensure that all guests shower before using the SPA.

The use of these facilities is **STRICTLY RESTRICTED** to the following hours in accordance with Council requirements so as to minimise adverse amenity impacts on neighbours;

- Fridays and Saturdays - 7.00am to 10.00pm;
- Sundays and Public Holidays – 8.00am – 9.00pm; and
- Monday to Thursday – 7.00am to 9.00pm.

The outdoor pool lights are on a timer and will turn off at approximately 10.00pm each night.

An outdoor umbrella is provided and is closed and covered when not in use. If instructions are not followed in times of storm or high winds, damage may occur. If damage occurs due to misuse, additional charges will apply.

No food or drink is to be consumed whilst in the pool. For the personal safety of guests, do not jump into the pool off any balcony or terrace.

Please ensure that the SPA cover remains fitted in place when the SPA is not in use. Ensure that the water level is full prior to use and do not adjust the temperature to exceed 38 degrees at any time. Please check the water level after use as the water level may have decreased whilst in use.

14. Furniture: No movement of either indoor or outdoor furniture from their original location is permitted, as damage to floors, floor coverings or walls may result. Any damage evident from moving furniture will result in a reduction of the bond refund. Please be respectful of all furniture made available for your stay. Any damage to furniture will result in additional charges.

15. Locked Owners Cupboards: The owners locked cupboards within the premises must not be tampered with in any way.

16. Waste Management & Collection: All kitchen and other rubbish is to be placed in the bins provided in the bin store located adjacent to the front driveway entry:

- Red Bin is for general waste;
- Yellow Bin is for recyclable rubbish only; and
- Green Bin is for garden waste only.

Please use the recycle tubs and boxes located in the garage area for placement of used bottles and recyclable plastic containers.

Council garbage collection night is Thursday night. If you are here on a Thursday night, please ensure that bins are placed at the kerbside for collection by council's contractor. The red bin is collected weekly, with the yellow and green bins collected on alternate weeks. It will be evident from the neighbour's bins, which bins are to be collected on any particular Thursday night.

It is important to emphasize the proper placement of waste in the respective bins as Council will not empty them if they are filled incorrectly. Should this occur you will be charged a service fee for removal.

17. Pets Prohibited: Strictly **NO PETS** are allowed either the inside or outside areas. If evidence of pets is found, guests will be liable for cleaning costs and will be asked to leave the premises without refund of rent or bond.

18. Facilities and equipment operating instructions: Instructions for the operation of all facilities and equipment (including entry and garage keypads/remote control; WIFI; televisions; air-conditioning; microwave; grill/oven; induction cooktop; water dispenser; and ice maker) are provided in the Operations Information Manual located on the kitchen bench.

19. NOISE POLICY: The use of the premises for short term rental accommodation is subject to strict noise abatement conditions/requirements imposed by Central Coast Council under Development Consent No. 60097/2020.

Guests must be mindful of the proximity of neighbouring properties and that they are holidaying in a residential area. In order to mitigate the adverse impacts of audible noise on the amenity of neighbours and the locality generally, all guests must comply with the following requirements in relation to amplified sound devices and the use of outdoor deck/verandah/terrace areas, swimming pool and SPA:

(i) The operation of **amplified sound devices** from the property by any guest is restricted to the following hours:

- Fridays and Saturdays – 8.00am to 10.00pm; and
- Monday – Thursday, Sunday and Public Holidays – 8.00am to 9.00pm.

(ii) The use of **outdoor deck/verandah/terrace areas, swimming pool and SPA** by any Guest is restricted to the following hours:

- Friday and Saturdays – 7.00am to 10.00pm;
- Monday – Thursday – 7.00am to 9.00pm; and
- Sunday and Public Holidays – 8.00am to 9.00pm.

Please be aware that a *Code of Conduct for Short Term Rentals in NSW* has been introduced by the NSW Government, which came into effect on 18th December 2020. Inappropriate or nuisance guest behaviour may lead to formal complaints being lodged with NSW Fair Trading by neighbours or members of the public, which may lead to repeat offender guests being banned from any short term rental accommodation in NSW for a period of up to 5 years.

Should there be any breach of this noise policy, the rental agreement will be immediately terminated by the Host and all guests will be required to immediately vacate the premises.

20. Emergency Numbers for Guests: The following emergency numbers are provided for guests:

- Host (Doris Wehbe) – 0414 880 033;
- NSW Police – 4348 4822 (Terrigal) or 43235599 (Gosford);
- After Hours Medical – 4367 9699;
- Chemist – Wamberal Chemist, Central Coast Highway (4384 1994);
- Gosford Hospital – 4320 2111.

A local telephone book is provided with the Guest information package located in the kitchen.

21: Cancellations: All cancellations must be in writing and submitted to the Host within 30 days prior to arrival otherwise a 100% cancellation fee will be charged. Part cancellation of a booking will not be accepted.

22. Guest Agreement to the terms of this Holiday Rental Agreement:

I (being the guest responsible for this booking) have read, understood and agree to the terms of this agreement for the short term rental accommodation of the 6 bedroom residence at No. 12 Dover Road, Wamberal and confirm that there will be no parties or other functions (referred to in clause 6) and that all guests will comply with the noise abatement policy and requirements specified in clause 19 of this agreement. I take responsibility to ensure the compliant behaviour of all guest's subject to this particular agreement:

Guest Name

Signature **Date**

Signed by Doris Wehbe (Host)

ANNEXURE B: GUEST REGISTER.

*Welcome to DoVilla
Please complete the Guest Register below
Regards
Doris*

GUEST REGISTER							
CHECKIN DATE	CHECKOUT DATE	GUEST NAME - OVER 18	GUEST NUMBER	NO OF GUESTS	ADDRESS	SIGNATURE	

ANNEXURE C: COMPLAINTS REGISTER.

3.1
Attachment 3

DA60097/2020 - Short-term Rental Accommodation - 12 Dover Road Wamberal
Final Short Term Rental Accommodation - Plan of Management & Holiday Letting
Agreement 12 Dover Road, WAMBERAL DA60097 Part 1

COMPLAINTS REGISTER

COMPLAINT DATE	COMPLAINT TIME	RESPONSE TIME	GUEST NAME	GUEST NUMBER	COMPLAINANT	COMPLAINT	COMMENTS/RESOLUTION

Karen Hanratty
Senior Development Planner
Central Coast Council
49 Mann Street
GOSFORD NSW 2250

**RE: DA 60097/2020 – PROPOSED SHORT TERM RENTAL ACCOMMODATION
ON LOT 4 DP 13304, NO. 12 DOVER ROAD, WAMBERAL.**

I refer to Council's correspondence dated 8th February 2021 requesting additional information in relation to DA 60097/2020 for short term rental accommodation at No. 12 Dover Road, Wamberal, before the development application can be further considered.

I provide the following responses to the matters raised in Council's correspondence.

**(i) Item 1: Demonstrate Compliance with Gosford Development Control Plan 2013 –
Chapter 3.14 Short Term Rental Accommodation.**

Please refer to the analysis and assessment provided in **Appendix A**.

(ii) Item 2: Plan of Management and House Rules.

Please refer to the *Plan of Management* provided in **Appendix B**. This includes details of:

- Guest agreement to the terms and conditions of the *Holiday Letting Agreement*;
- Maximum number of resident guests permitted at any one time;
- Procedure/process for vetting guests/guest arrival/acceptance of house rules;
- House rules;
- Procedure for guest departure;
- Strictly 'No Party' policy;
- Restricted hours of use of outdoor areas and amplified music;
- Guest Register;
- Emergency contacts for guests;
- Waste management procedures; and
- Complaints handling procedure.

(iii) Item 3: Use of Premises.

Please refer to **Appendix C** for response to issues raised by Council in relation to the existing Level 3 terrace roof/ pergola/privacy screens.

2/101 Excelsior St,
Lisarow NSW 2250
TEL: 02 4328 3851
FAX: 02 4328 4050
MOB: 0408 432 838

sneddond@bigpond.net.au
ABN: 20 100 396 914

Responses to matters raised in public submissions are provided in **Appendix D**.

Yours Sincerely

Doug Sneddon
22nd February 2021.

**APPENDIX A: ASSESSMENT OF COMPLIANCE WITH GOSFORD
DEVELOPMENT CONTROL PLAN 2013 - CHAPTER 3.14 –
SHORT TERM RENTAL ACCOMMODATION OF DWELLINGS.**

**PROPOSED SHORT TERM RENTAL ACCOMMODATION (6 BEDROOMS) AT
NO. 12 DOVER ROAD, WAMBERAL.**

ANALYSIS OF COMPLIANCE WITH CHAPTER 3.14 OF GDCP 2013.

Gosford Development Control Plan 2013 – Chapter 3.14 – Short term rental accommodation of dwellings provides development guidelines for the use of a dwelling for short term rental accommodation on land within the former City of Gosford where a dwelling is permitted.

(i) Aims and Objectives - Sections 3.14.2 & 3.14.3.

- *Section 3.14.2 Aim of this Chapter: The aim of this chapter is to provide development guidelines for the assessment of a development application and types of conditions of consent for the short term rental accommodation of a dwelling.*
- *Section 3.14.3 Objectives of this Chapter:*
 - (a) To provide development assessment guidelines for the short term rental of a dwelling where Council has required the submission of a development application because the development limits for the use are exceeded as exempt development or as a result of complaint concerning the operation of the use as per exempt development limits.*
 - (b) To identify guidelines for the consideration of development applications for the erection or conversion of a dwelling for the purpose of short term rental accommodation of a dwelling.*
 - (c) To ensure that short term rental accommodation of a dwelling is consistent with a domestic scale and amenity/environment of a neighbourhood.*
 - (d) To provide guidance as to appropriate conditions of consent for the short term rental accommodation of a dwelling.*
 - (e) To supplement the provisions of the relevant planning instruments with regard to short term rental accommodation of dwellings.*
 - (f) To support the Department of Planning and Infrastructure's holiday letting and the holiday rental Code of Conduct.*

Assessment: DA 60097/2020 seeking approval for the use of No. 12 Dover Road, Wamberal for the purpose of short term rental accommodation (up to 6 bedrooms) is consistent with the aim and objectives of Chapter 3.14 to facilitate Council's consideration of development applications for short term rental accommodation:

- The residence at No. 12 Dover Road, Wamberal is a six bedroom dwelling house;
- The number of bedrooms (6) proposed for short term rental accommodation requires the lodgement of a development application (**Objective (a)**);
- The proposed development involves the *conversion* of a dwelling for use as short term rental accommodation (**Objective (b)**);

- The proposed use of the subject premises does not involve any new building works. The originally approved dwelling was considered by Council to be of a suitable domestic scale (Development Consent 26849/2005 – as modified) and compatible with the amenity/environment of the neighbourhood.

The *Plan of Management* submitted with DA 60097/2020 (refer to **Appendix B**) will ensure that the proposed use of the dwelling for short term rental accommodation will be compatible with the amenity and environment of the neighbourhood (**Objective (c)**);

- In approving DA 60097/2020, Central Coast Council will impose appropriate conditions of consent to ensure that use of the premises for short term rental accommodation does not significantly affect the amenity of neighbours or other residents in the locality (**Objectives (d) and (f)**);
- **Objective (e)** has no specific relevance to this particular development application.

(ii) Section 3.14.4 - Definitions:

“Short term rental accommodation means “a dwelling that is commercially available for rent as short term accommodation on a temporary basis, but does not include bed and breakfast.

For the purposes of this DCP 'temporary or short term' is defined 'as any period up to 3 months”.

Assessment: The proposed development complies with the definition of *short term rental accommodation* and the time limitation on any particular guest occupation of the premises.

The proposal does not involve *bed and breakfast* accommodation and Council may impose a condition of consent mandating that the period of any one occupancy must not exceed 3 months.

(iii) Section 3.14.5 - Development Guidelines.

- **Section 3.14.5.1 Maximum Car Parking Spaces:**

- a – Objective:**

- *To encourage shared vehicle use.*
- *To identify on street car parking as an amenity/environment issue for short term rental accommodation of dwellings.*
- *To allow onsite parking only to a level that is appropriate in a residential setting.*
- *To provide Council with a measurable and determinable enforcement tool in identifying if the use is operating at a domestic scale.*

b - Development Control.

- *The use must not contain more than 6 off street carparking spaces.*
- *On – street parking impacts in a neighbourhood can be considered as an amenity/environment issue for the purposes of this plan. It would be necessary though for a complainant to be able to prove that the on – street carparking issue was attributable to the use.*
- *It should be noted that stack parking is acceptable.*

Assessment: The proposed development complies with the car parking objectives and development controls as the existing dwelling provides four (4) on-site car spaces. Two additional street front spaces are available as overflow spaces, if required.

(iv) Section 3.14.5.2 - Amenity/Environment:

a – Objective

To provide in the assessment of development applications for the consideration of the potential impacts of the use on adjoining and nearby residents' enjoyment of their residences.

b - Development Control

As a result of more than 2 written complaints from the occupiers of separate dwellings located within 40 metres of the subject property over a 12 month period concerning the activities taking place on the property (exempt development limits) which identify issues of concern relating to the impact of the use as an exempt development on the amenity/environment of a neighbourhood, Council may impose conditions on the use of the type identified in Section 3.14.6.

'On the property' for the purposes of this clause means within boundary of the land including the dwelling.

Council may consider the imposition of conditions of consent relating to amenity on development applications for a new short term rental accommodation of a dwelling.

Assessment: This section of DCP 2013 has limited application as the proposal does not constitute 'exempt development'.

The amenity of neighbours and close residents are to be protected under the conditions of occupation to be imposed under the Plan of Management/House Rules accompanying this development application (refer to **Appendix B**).

(v) Section 3.14.5.3 - Waste Services.

a – Objective

- *To ensure that the short term rental accommodation use does not result in failure of on-site treatment systems for sewerage.*
- *To ensure that garbage services are adequate for the short term rental accommodation.*

b - Development Control

- *Council may impose relevant restrictions for development proposals for short term rental accommodation of a dwelling where the means of sewerage disposal is on – site treatment.*
- *All dwellings conducting the use must have a minimum of a 240 litre general waste garbage bin.*

Assessment: The proposed development complies with Council's waste management requirements. The accompanying *Plan of Management* provides house rules for the management, storage and collection of domestic waste by guests.

(vi) Section 3.14.6 - Conditions of Consent.

a – Objective

- *To provide guidance as to conditions of consent that could be used by Council for development consent for short term rental accommodation of a dwelling which can be easily monitored for compliance but also help to ensure the use operates in a manner that considers the amenity/environment of the neighbourhood.*

b - Types of Conditions

- *Under Clause 80A (1) (d) of the Environmental Planning and Assessment Act Council may impose time limited development consent (i.e. 1 year on a development for short term rental accommodation).*
- *Outdoor areas such as swimming pools/spas, outdoor decking/balconies or other spaces which are not classed as a room on a development application for construction/alterations to the dwelling can be limited in their hours of operation in their use.*
- *Amplified sound devices as heard at the boundary of the property may be time restricted in their use.*

Assessment: The accompanying *Plan of Management/House Rules* imposes the restricted hours of use of outdoor areas and amplified music required in Council's letter dated 8th February 2021 and may, if required by Council, be imposed as conditions of development consent. There is no reasonable basis in this case for the Council to consider imposing a time limited development consent under Section 80A (1) (D) of the EPA Act 1979.

(vii) Section 3.14.7 - Department of Planning and Environment Holiday letting and Holiday rental Code of Conduct.

a – Objective

- *To support the Code of Conduct prepared by the Department of Planning and Environment and peak bodies relating to short term rental accommodation of dwellings.*

b – Recommendation

- *The code of conduct be referenced in all development consents for short term rental accommodation of dwellings.*

Assessment: Noted. This is a matter for the Council to consider.

(viii) Section 3.14.8 - Bushfire Safety.

This section of DCP 2013 has no applicability to the proposed development because the subject land is not identified as *Bushfire Prone Land*.

(ix) Section 3.14.9 - Development Application Submission Requirements.

“Applicants are to submit with a development application for the use, a plan that indicates the internal layout of the dwelling, including bedroom designation and ancillary structures. In addition, the plan is to identify the location and number of off - street carparking spaces on the site”.

Assessment: An internal dwelling layout plan showing 6 bedrooms accompanies the development application. A double garage (2 spaces) and on-site driveway pavement suitable for 2 uncovered on-site car spaces, providing for a total of 4 on-site car spaces is also shown.

SUMMARY.

In summary, the proposed use of No. 12 Dover Road, Wamberal for short term rental accommodation (6 bedrooms) complies with the applicable development guidelines of Gosford Development Control Plan 2013 – Chapter 3.14 – Short Term Rental Accommodation of Dwellings.

Doug Sneddon
22nd February 2021

APPENDIX B: PLAN OF MANAGEMENT.

**PLAN OF MANAGEMENT FOR SHORT TERM RENTAL ACCOMMODATION
(6 BEDROOMS) AT NO. 12 DOVER ROAD, WAMBERAL.**

This *Plan of Management* for the use of an existing six bedroom dwelling house at No. 12 Dover Road, Wamberal for the purpose of short term rental accommodation comprises:

- A ***Holiday Letting Agreement*** (copy provided in **Annexure A**) setting out the terms and conditions for the letting and occupation of the premises (6 bedrooms) for short term rental accommodation, which include:
 - The maximum number of resident guests permitted at any one time (i.e. 12 adult persons, or if children are present, then a maximum of 10 adult persons and up to six (6) children;
 - Procedure for vetting guests; guest registration and guest check-in/check-out;
 - Strictly No-Party rule & no indoor smoking rule. Pets prohibited;
 - Car Parking arrangement (up to 4 on-site spaces & 2 street front spaces);
 - Cleaning arrangements and guest responsibilities;
 - Rules and time restrictions for use of the outdoor swimming pool and SPA;
 - Prohibition of movement of furniture by guests;
 - Waste Management rules and arrangements;
 - Facilities and equipment operating instructions;
 - Noise Policy, including restricted hours of use of outdoor areas and the operation of amplified sound devices;
 - Reference to the *Code of Conduct for Short Terms Rentals in NSW*;
 - Emergency service numbers for information of guests;
 - Cancellation Policy; and
 - Guest Agreement to the terms and conditions of the *Holiday Letting Agreement*.
- A ***Guest Register*** (copy provided in **Annexure B**); and
- A ***Complaints Register*** (copy provided in **Annexure C**).

Guests are expected to occupy the premises in a manner consistent with NSW legislative requirements for the use of premises for short term rental accommodation; the specific conditions of Development Consent 60097/2020; and the terms and conditions of the ***Holiday Letting Agreement*** provided in Annexure A.

ANNEXURE A.

'HOLIDAY LETTING AGREEMENT' FOR SHORT TERM RENTAL ACCOMMODATION AT NO. 12 DOVER ROAD, WAMBERAL ('DoVilla').

This Holiday Letting Agreement is made between Doris Wehbe as Owner/Host – (Contact 0414 880 033) and:

Guest:

Guest Address:.....
.....

Short Term Rental Property: No. 12 Dover Road, Wamberal – 'DoVilla'.

The Guest agrees to the following terms and conditions of occupation of the rental premises:

1. Rental Payment: Payment of the agreed rent is payable in full within 30 days of your arrival date by direct deposit.

2. Security Bond: A Security Bond of \$1,000 is payable by the Guest prior to arrival. The Bond is returned to the Guest following the Host's inspection of the property after the Guest has departed. Should damages or extra charges be incurred per the conditions of this agreement, the Guest authorises the deduction of money from the Bond and the Guest will be notified of the amount and reasons for the additional charges.

If the damage or charges exceed the Bond amount, the Guest agrees to pay the difference between the cost of the damages/charges and the Bond amount.

3. Rental Period: The agreed rental period is fordays, between the dates of

4. Maximum Number of Resident Guests (up to 6 available bedrooms): The maximum number of guests residing at the property at any one time must not exceed 2 adult persons per bedroom (i.e. up to 6 available bedrooms and a maximum of 12 adult persons).

If children of guests are also residing at the property, the total number of residents permitted is 10 adults within five of the available double bedrooms and up to 6 children within the available 'bunk' Bedroom 4.

5. Procedure for vetting Guests/Guest Register: All adult resident guests must provide their details to the host on the accompanying Guest Register prior to occupation of the premises.

Details to be provided for each adult guest are to include name, contact details and drivers licence details. Failure to complete and submit the required Guest Register details to the host prior to the day of occupation will result in cancellation of the Guest booking.

6. Strictly "NO PARTY" rule: Please note that the residence is provided for holiday residential purposes only and is limited to the number of resident guests specified in item 4 above.

The Host strictly applies a 'NO PARTY' policy under this Holiday Rental Agreement, meaning that there can be no parties; wedding events or functions of any kind. This Policy is strictly applied in the interest of protecting the amenity of neighbouring residents from noise disturbance and anti-social behaviour.

The property is not available for rent for any 'Schoolies' related group.

7. Checking in: Checking in time is available from 3.00pm. A code for the front gate and garage will be messaged to your mobile phone number on the morning of arrival.

Keypad entry is located at the entry gate and front door. A reset code will be given to each new guest prior to arrival.

8. Checking out: Check out time is strictly by 10.00am on the morning of departure. The guest is responsible for ensuring that all windows and doors are securely locked prior to leaving the premises and ensuring that all rubbish is removed and placed in the respective bins provided in the waste bin store located adjacent to the front entry driveway.

If any rubbish is left inside the residence and not placed in the bins provided, the guest will incur an extra service charge for cleaning.

9. Bond: The property will be inspected upon your departure. If left in the condition in which you found it, the rental bond will be refunded within 5 – 10 days. If there are any issues to be resolved following your occupation, it will take longer.

10. Car Parking: Secure on-site car parking is available for 4 cars. Do not park on the lawn. Additional kerbside parking for 2 cars is available at the street front.

11. Strictly NON-SMOKING Inside: A strict non-smoking policy is applied to all indoor areas of the residence.

If smoking outside, all cigarette butts must be discarded into the waste bins provided.

If there is any evidence of a breach of this policy, additional cleaning charges will be imposed.

12. Cleaning: The residence is professionally cleaned after every stay. Cleaning fees are included in the amount charged for your stay. To avoid additional cleaning charges, guests are required to leave the property in a neat and tidy condition. On departure please ensure:

- The dishwasher is emptied and any used dishes/utensils are washed, dried and put away;
- Wipe down kitchen benches;
- Ensure that the BBQ is left ready for the next guest to use. If left dirty, a \$50 cleaning fee will apply; and
- Remove all food items from the property.

Although the rental price does include provision for cleaning, the guest has responsibility for cleaning any mess made in the bathrooms and/or after any kind of sickness/vomiting or any other personal excretions. Please do not leave used condoms, nappies, used tissues, personal hygiene items or the like for pick up by the cleaners. Please dispose of these items yourselves.

13. Use of Swimming Pool and SPA: A pool and SPA are provided for the enjoyment of guests. The pool and SPA are professionally checked, tested and chemically treated before every check-in.

Please note that chlorine and other pool related chemicals are used to protect the health of guests. Use of the pool and SPA is at your own risk and may cause allergies for some. The host/owner bears no responsibility. Please ensure that all guests shower before using the SPA.

The use of these facilities is **STRICTLY RESTRICTED** to the following hours in accordance with Council requirements so as to minimise adverse amenity impacts on neighbours;

- Fridays and Saturdays - 7.00am to 10.00pm;
- Sundays and Public Holidays – 8.00am – 9.00pm; and
- Monday to Thursday – 7.00am to 9.00pm.

The outdoor pool lights are on a timer and will turn off at approximately 10.00pm each night.

An outdoor umbrella is provided and is closed and covered when not in use. If instructions are not followed in times of storm or high winds, damage may occur. If damage occurs due to misuse, additional charges will apply.

No food or drink is to be consumed whilst in the pool.

For the personal safety of guests, do not jump into the pool off any balcony or terrace.

Please ensure that the SPA cover remains fitted in place when the SPA is not in use. Ensure that the water level is full prior to use and do not adjust the temperature to exceed 38 degrees at any time. Please check the water level after use as the water level may have decreased whilst in use.

14. Furniture: No movement of either indoor or outdoor furniture from their original location is permitted, as damage to floors, floor coverings or walls may result. Any damage evident from moving furniture will result in a reduction of the bond refund.

Please be respectful of all furniture made available for your stay. Any damage to furniture will result in additional charges.

15. Locked Owners Cupboards: The owners locked cupboards within the premises must not be tampered with in any way.

16. Waste Management & Collection: All kitchen and other rubbish is to be placed in the bins provided in the bin store located adjacent to the front driveway entry:

- Red Bin is for general waste;
- Yellow Bin is for recyclable rubbish only; and
- Green Bin is for garden waste only.

Please use the recycle tubs and boxes located in the garage area for placement of used bottles and recyclable plastic containers.

Council garbage collection night is Thursday night. If you are here on a Thursday night, please ensure that bins are placed at the kerbside for collection by council's contractor. The red bin is collected weekly, with the yellow and green bins collected on alternate weeks. It will be evident from the neighbour's bins, which bins are to be collected on any particular Thursday night.

It is important to emphasize the proper placement of waste in the respective bins as Council will not empty them if they are filled incorrectly. Should this occur you will be charged a service fee for removal.

17. Pets Prohibited: Strictly **NO PETS** are allowed either the inside or outside areas. If evidence of pets is found, guests will be liable for cleaning costs and will be asked to leave the premises without refund of rent or bond.

18. Facilities and equipment operating instructions: Instructions for the operation of all facilities and equipment (including entry and garage keypads/remote control; WIFI; televisions; air-conditioning; microwave; grill/oven; induction cooktop; water dispenser; and ice maker) are provided in the Operations Information Manual located on the kitchen bench.

19. NOISE POLICY: The use of the premises for short term rental accommodation is subject to strict noise abatement conditions/requirements imposed by Central Coast Council under Development Consent No. 60097/2020.

Guests must be mindful of the proximity of neighbouring properties and that they are holidaying in a residential area. In order to mitigate the adverse impacts of audible noise on the amenity of neighbours and the locality generally, all guests must comply with the following requirements in relation to amplified sound devices and the use of outdoor deck/verandah/terrace areas, swimming pool and SPA:

(i) The operation of **amplified sound devices** from the property by any guest is restricted to the following hours:

- Fridays and Saturdays – 8.00am to 10.00pm; and
- Monday – Thursday, Sunday and Public Holidays – 8.00am to 9.00pm.

(ii) The use of **outdoor deck/verandah/terrace areas, swimming pool and SPA** by any Guest is restricted to the following hours:

- Friday and Saturdays – 7.00am to 10.00pm;
- Monday – Thursday – 7.00am to 9.00pm; and
- Sunday and Public Holidays – 8.00am to 9.00pm.

Please be aware that a *Code of Conduct for Short Term Rentals in NSW* has been introduced by the NSW Government, which came into effect on 18th December 2020. Inappropriate or nuisance guest behaviour may lead to formal complaints being lodged with NSW Fair Trading by neighbours or members of the public, which may lead to repeat offender guests being banned from any short term rental accommodation in NSW for a period of up to 5 years.

Should there be any breach of this noise policy, the rental agreement will be immediately terminated by the Host and all guests will be required to immediately vacate the premises.

20. Emergency Numbers for Guests: The following emergency numbers are provided for guests:

- Host (Doris Wehbe) – 0414 880 033;
- NSW Police – 4348 4822 (Terrigal) or 43235599 (Gosford);
- After Hours Medical – 4367 9699;
- Chemist – Wamberal Chemist, Central Coast Highway (4384 1994);
- Gosford Hospital – 4320 2111.

A local telephone book is provided with the Guest information package located in the kitchen.

21: Cancellations: All cancellations must be in writing and submitted to the Host within 30 days prior to arrival otherwise a 100% cancellation fee will be charged. Part cancellation of a booking will not be accepted.

22. Guest Agreement to the terms of this Holiday Rental Agreement:

I (being the guest responsible for this booking) have read, understood and agree to the terms of this agreement for the short term rental accommodation of the 6 bedroom residence at No. 12 Dover Road, Wamberal and confirm that there will be no parties or other functions (referred to in clause 6) and that all guests will comply with the noise abatement policy and requirements specified in clause 19 of this agreement. I take responsibility to ensure the compliant behaviour of all guest's subject to this particular agreement:

Guest Name

Signature **Date**

Signed by Doris Wehbe (Host)

ANNEXURE B: GUEST REGISTER.

GUEST REGISTER

CHECKIN DATE	CHECKOUT DATE	GUEST NAME - OVER 18	GUEST NUMBER	NO OF GUESTS	ADDRESS	SIGNATURE

Welcome to DoVilla
 Please complete the Guest Register below
 Regards
 Doris

ANNEXURE C: COMPLAINTS REGISTER.

COMPLAINTS REGISTER									
COMPLAINT DATE	COMPLAINT TIME	RESPONSE TIME	GUEST NAME	GUEST NUMBER	COMPLAINANT	COMPLAINT	COMMENTS/RESOLUTION		

APPENDIX C: ASSESSMENT OF POTENTIAL IMPACTS ON NEIGHBOURS OF THE EXISTING UPPER DECK ROOF/PERGOLA/PRIVACY SCREEENS (LEVEL 3 TERRACE).

1. Introduction.

The Level 3 east facing terrace provides the occupants of No. 12 Dover Road with expansive views of beach, surf zone, ocean horizon and the headlands of both Terrigal Skillion and Wyrabalong Trig.

This terrace was constructed under the auspices of Development Consent 26849/2005 – Part 3, a copy of which is provided in **Annexure A**.

The series of Photographs 1 – 10 provided in **Annexure B** show the roof/pergola/privacy screens provided to the Level 3 east facing terrace, constructed without consent and being the subject of item 3 of Council's correspondence dated 8th February 2021. These structures have been installed by the owner in order to:

- Mitigate the penetration of rainwater to the Level 2 kitchen/dining/living area below, which was occurring following the construction of dwelling additions authorised under Development Consent 26849/2005 – Part 3;
- Improve the utility of the Level 3 terrace and amenity for occupants of the residence by providing sun and wind protection; and
- Provide privacy screens preventing overlooking from the neighbouring dwellings fronting Prince Street.

DA 60097/2020 is not seeking Council approval for these structures, which have been erected without consent. However, if it wishes, Council could impose a condition of consent requiring demonstration of their compliance with the National Construction Code.

2. Potential Impacts of Level 3 terrace roof/privacy screens on neighbours.

The erection of the Level 3 terrace roof and screening structures have no adverse amenity impacts upon the occupants of the neighbouring residences at No. 14 Dover Road or Nos. 5, 7, 7A or 9 Prince Street.

In relation to the downslope neighbouring residence at No. 10 Dover Road:

- The privacy screens installed on the Level 3 terrace at No. 12 Dover Road have no amenity or other environmental impact on the occupants of No. 10 Dover Road;
- Notwithstanding that the roof installed to the Level 3 terrace of No. 12 Dover Road exceeds the building envelope indicated on the approved DA26849/2005 – Part 3 Elevations/Sections Drawing A-03 (copy provided in Annexure A), it does not result in any significant additional overshadowing of No. 10 Dover Road.

The north-south orientation of the existing subdivision pattern enables the private open space of No. 10 Dover Road to continue to receive the required minimum of 3 hours unobstructed midwinter sunlight between the hours of 9.00am and 3.00pm;


- In relation to the potential for overlooking the private open space of No. 10 Dover Road and any loss of privacy resulting from the use of the Level 3 terrace, this would have been the subject of consideration and assessment by the Council when it originally approved the terrace arrangement under Development Consent 26849/2005 Parts 1 – 3.

It should be noted from topographical characteristics and the general development pattern in the locality that the design of all dwellings in the area seek to take advantage of the availability and access to high value beach/ocean views, resulting in some overlooking and privacy impacts on neighbouring downslope properties. This is unavoidable. All dwellings in the locality have some overlooking amenity/privacy impacts on their downslope neighbours.

In summary, the existing Level 3 terrace protective roof and privacy screens do not have any significant amenity impacts on the neighbouring residence at No. 10 Dover Road, Wamberal, or any other neighbouring residence.

Doug Sneddon
22nd February 2021.

ANNEXURE A: DEVELOPMENT CONSENT 26849/2005 – PART 3.



Telephone (02) 4325 8222

Please Quote: Assessment Unit
DA 26849/2005
25 March 2013

D M Zibara
Slater Architects
PO Box 552
TERRIGAL NSW 2260

Gosford City Council
49 Mann Street
Gosford NSW 2250
PO Box 21
Gosford NSW 2250
DX 7211 Gosford
Telephone: 02 4325 8222
Facsimile: 02 4323 2477
goscily@gosford.nsw.gov.au
www.gosford.nsw.gov.au
ABN 78 303 458 861

APPLICATION NUMBER: 26849/2005 Part 3
PROPOSAL: Amendment under Section 96(1A) of the Environmental Planning and Assessment Act to the Approved Dwelling Addition (Section 96 - Alteration to External Walls, Extend Balcony, Add Glass Skylight)
PROPERTY: LOT: 4 DP: 13304 No. 12 Dover Road WAMBERAL

Dear Sir/Madam,

I refer to your application dated 6 February 2013 for modification of the above consent 26849/2005.

Having regard to the provisions of Section 96(1A) of the Environmental Planning and Assessment Act, 1979, the Council is of the opinion that the amended proposal is a minor modification and is substantially the same development consented to by the Council.

The consent dated 21 November 2005 is hereby modified in the following manner:

i The replacement of Condition 3 with the following condition:

3 Architectural Plans (as amended in red) prepared by Slater Architects:

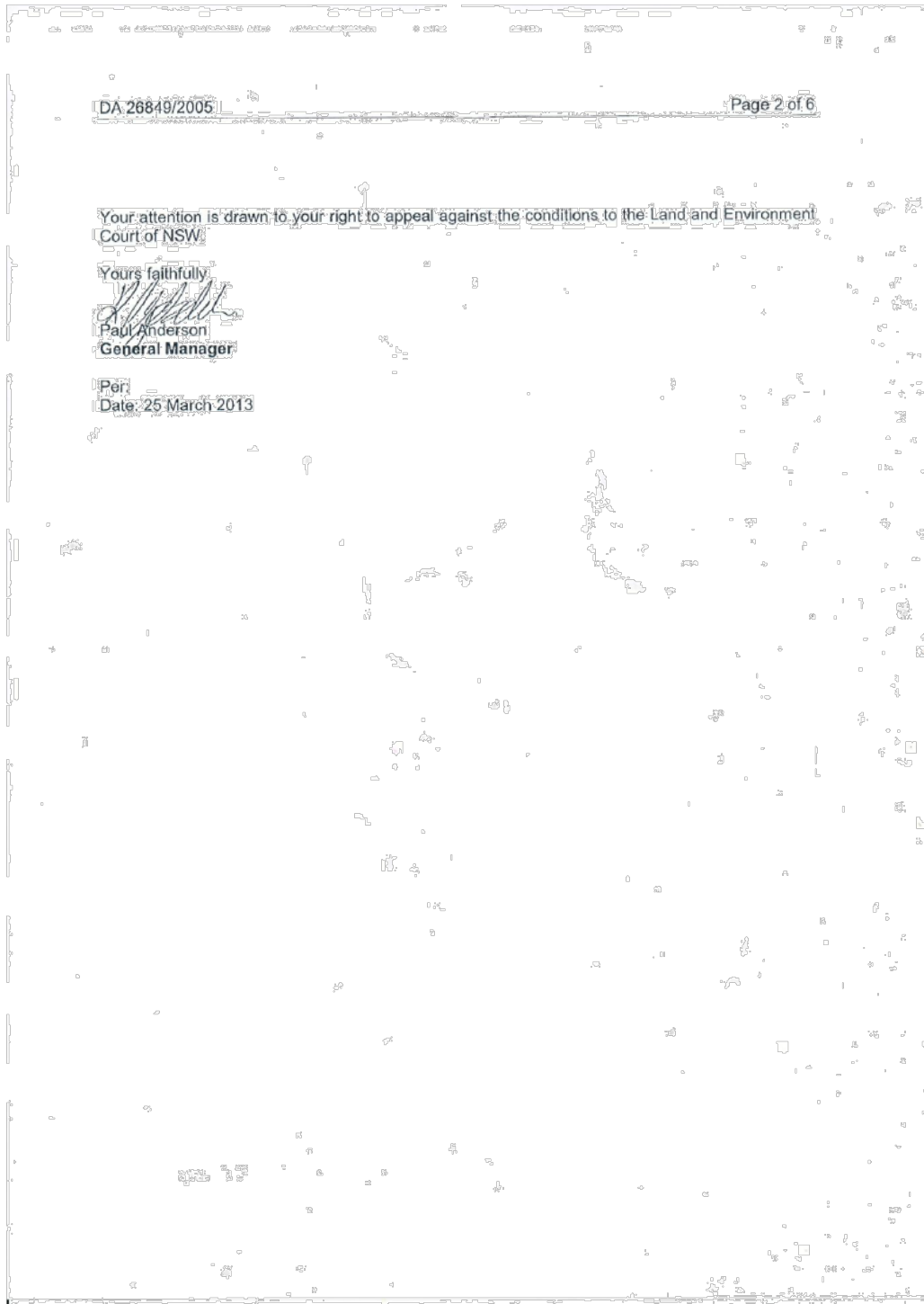
Drawing	Description	Sheets	Issue	Date
13992	Site Plan	A-01	6	31.01.13
13992	Floor Plans & Roof Plan	A-02	8	31.01.13
13992	Elevations & Section A-A	A-03	6	31.01.13

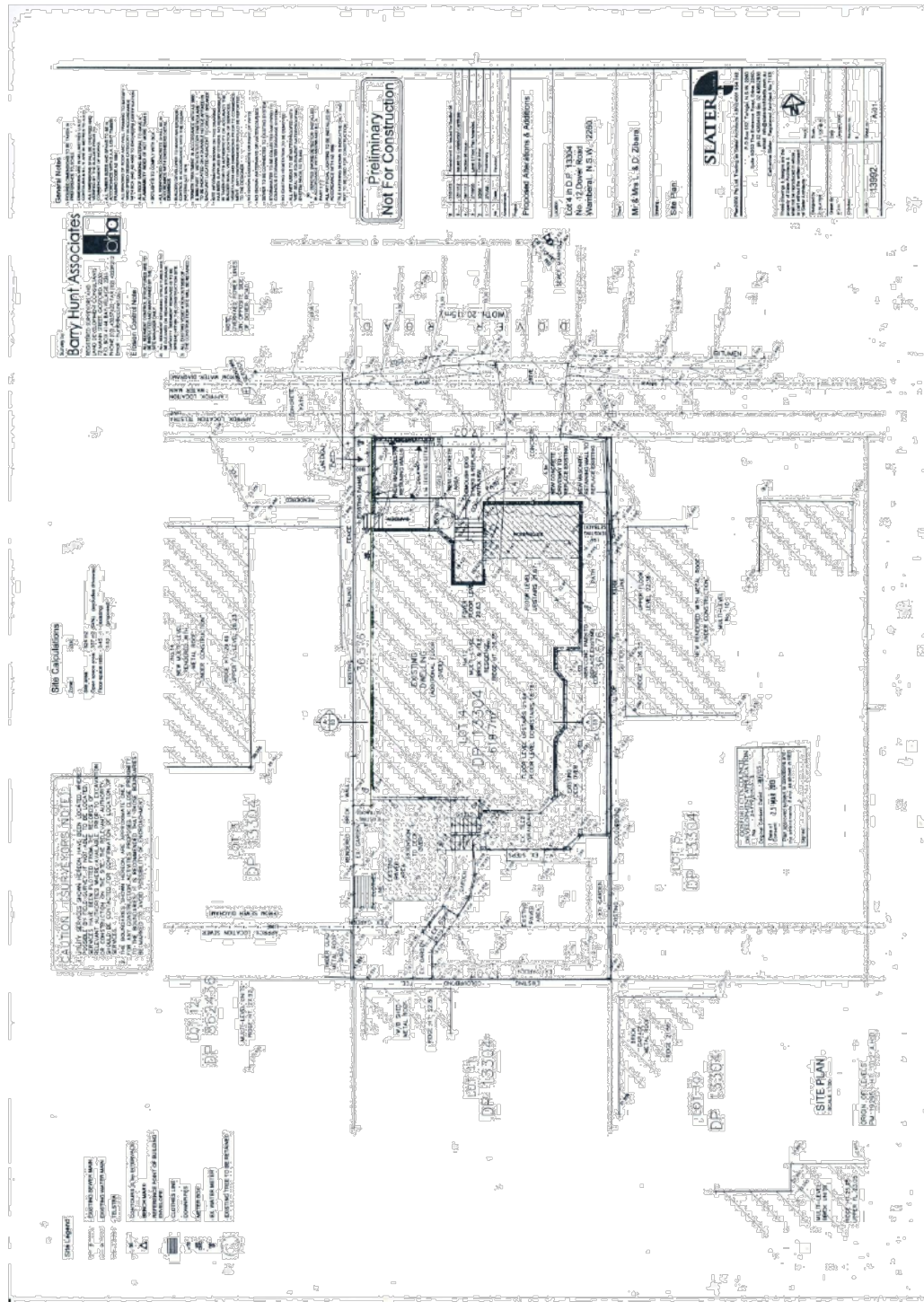
ii The works (if any) that are associated with this amended development consent may require a modified construction certificate in accordance with Clause 148 of the Environmental Planning and Assessment Regulation 2000.

Please note that the approved amendment does not extend the term of the original consent. Attached to this approval is the reproduced consent as amended, Issue No 3.

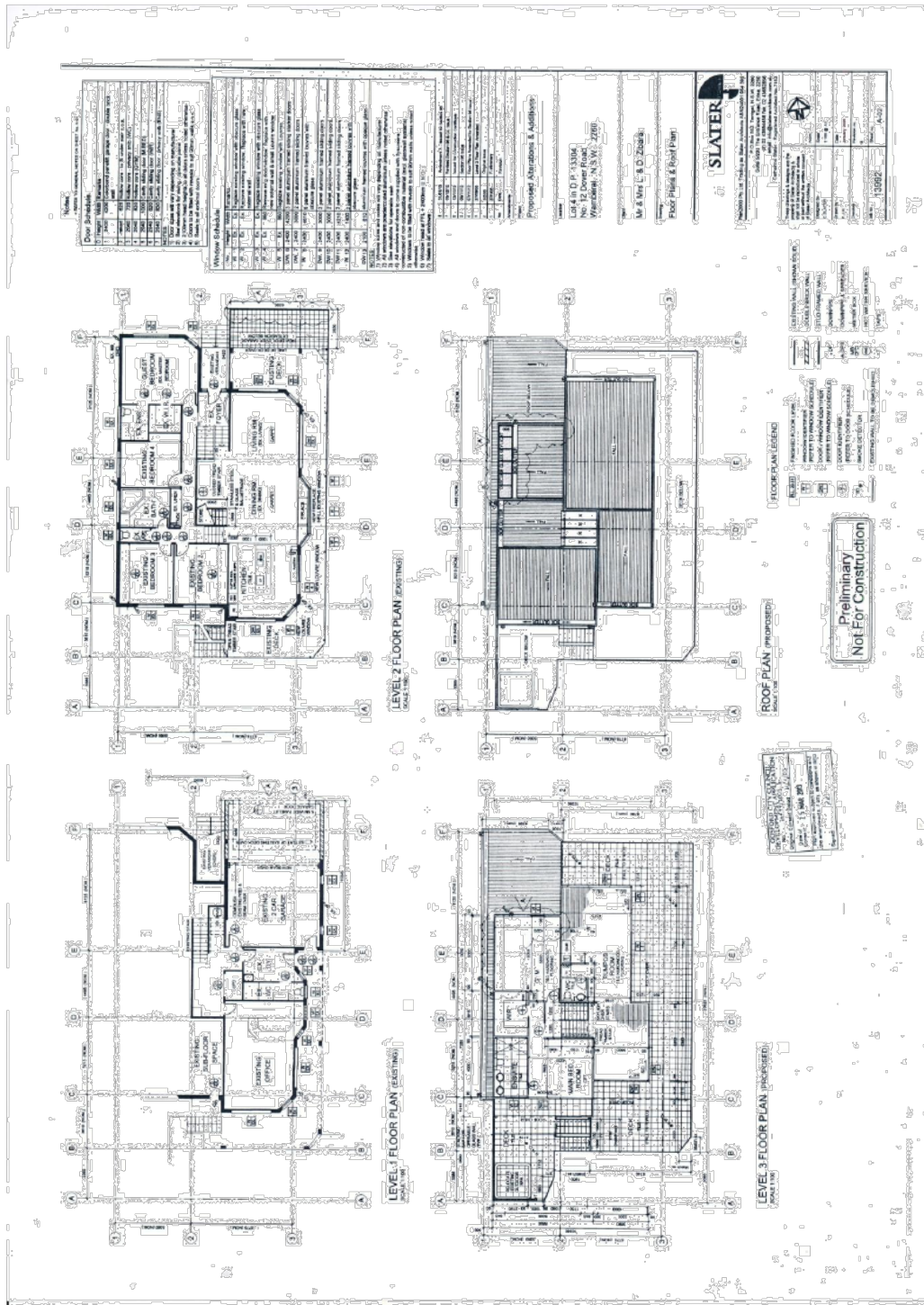
Subject to provisions of Section 96AB of the Environmental Planning and Assessment Act the applicant may make an application seeking a review of this determination providing it is lodged within twenty-eight (28) days of notification.

RECEIVED
27 MAR 2013
BY 13912

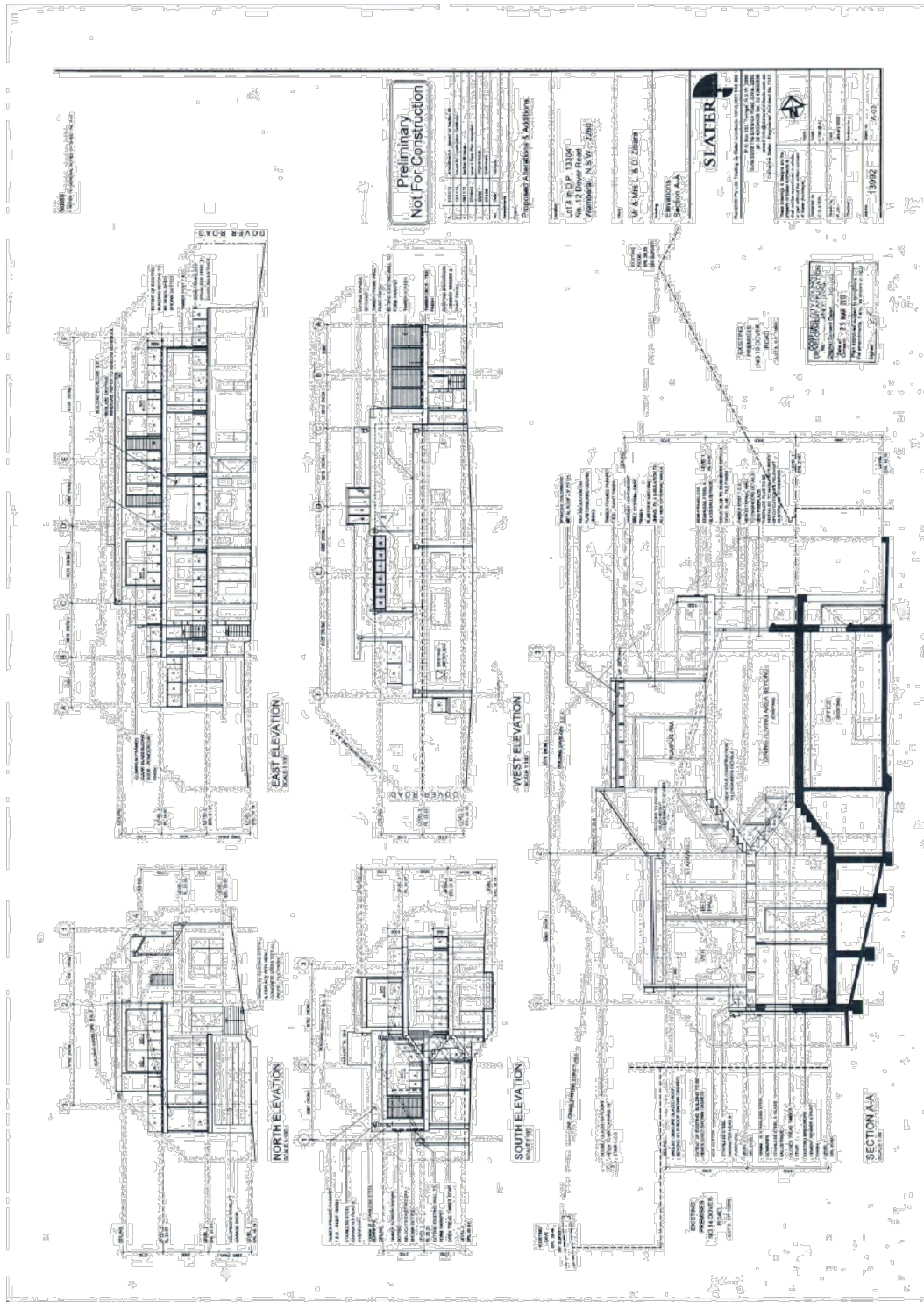




Site Plan.



Floor Plans.



Elevations/Sections.

ANNEXURE B: SITE PHOTOGRAPHS TAKEN FROM THE LEVEL 3 TERRACE.



Photo 1: Level 3 Mid-terrace seating – Looking North-East.



Photo 2: Level 3 Mid Terrace – Looking South-East.



Photo 3: Level 3 South Terrace seating – Looking North-East.



Photo 4: Level 3 South Terrace seating – Looking East.



Photo 5: Level 3 South Terrace seating – Looking East.



Photo 6: Neighbouring residences fronting Prince Street (View south from Level 3).



Photo 7: Standing Level 3 Terrace view – Looking East.



Photo 8: Sitting Level 3 Terrace view – Looking East.



Photo 9: Privacy Screen – No. 10 Dover Road.

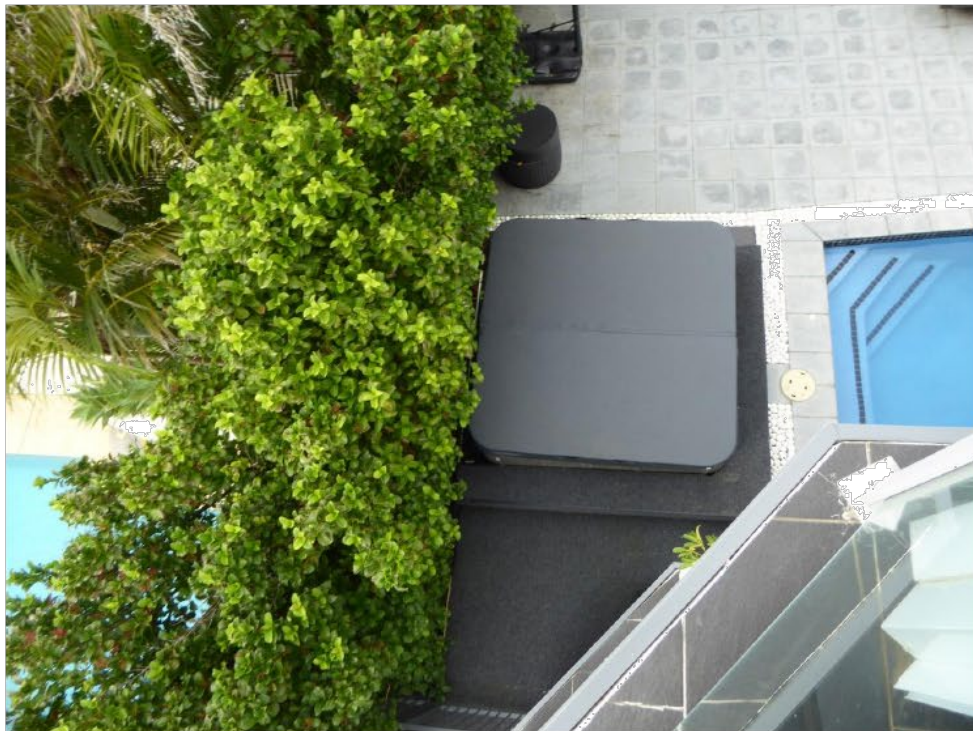


Photo 10: Screening vegetation between Nos. 10 (left) and 12 Dover Road (right).

APPENDIX D: RESPONSE TO PUBLIC SUBMISSIONS.

It is noted from Council's DA tracking link that a total of 32 (redacted) public submissions have been received/published in response to the public notification of DA 60097/2020.

The majority of these are generic submissions made by persons who do not live in close proximity to the subject premises at No. 12 Dover Road, Wamberal and are not therefore potentially impacted by the proposed use of No. 12 Dover Road for short term rental accommodation of up to six (6) bedrooms. Therefore, these submissions should not be given any determining weight.

It is noted that the owners of the neighbouring residence at No. 10 Dover Road have made a submission raising various concerns regarding loss of amenity resulting from noise and overlooking; sleep disturbance; littering; bad behaviour; and various assertions relating to poor complaints handling and property management by the owner of the subject premises.

Doris Wehbe (formerly Zibara) has prepared an email response to the various statements and assertions made in the submission from the owners of No. 10 Dover Road. This email response, dated 9th February 2021 is made available to Council under separate cover.

The following responses are made to the principal points raised in public submissions:

- **Maximum Number of resident guests at any one time:** The accompanying *Plan of Management/House Rules* provides that the maximum number of guests that may reside at the property at any one time must not exceed 2 adult persons per bedroom (i.e. up to 6 available bedrooms and a maximum of 12 adult persons), per the requirements of Council's letter of the 8th February 2021.

If children of guests are also residing at the property, the total number of residents permitted is 10 adults within five of the available double bedrooms and up to 6 children within the available 'bunk' Bedroom 4.

This requirement can be imposed by consent condition if required by Council.

- **Management of Guest Behaviour:** The accompanying *Plan of Management/House Rules* provides rules for guest behaviour, which, if breached will be grounds for termination of the holiday rental agreement and guest eviction. Guests are advised of the requirements of the *Code of Conduct for Short Term Rentals in NSW*, introduced by the NSW Government, which came into effect on 18th December 2020.
- **Excessive Noise/sleep disturbance:** The accompanying *Plan of Management/House Rules* includes a Noise Policy. Guests must be mindful of the proximity of neighbouring properties and that they are holidaying in a residential area.

The Host strictly applies a 'NO PARTY' policy under the Holiday Rental Agreement, meaning that there can be no parties; wedding events or functions of any kind. This Policy is to be strictly applied in the interest of protecting the amenity of neighbouring residents from noise disturbance and anti-social behaviour. The property is not available for rent for any 'Schoolies' related group.

In order to mitigate the adverse impacts of audible noise on the amenity of neighbours, all guests must comply with the following requirements in relation to amplified sound devices and the use of outdoor deck/verandah/terrace areas, swimming pool and SPA:

(i) The operation of **amplified sound devices** from the property by any guest is restricted to the following hours:

- Fridays and Saturdays – 8.00am to 10.00pm; and
- Monday – Thursday, Sunday and Public Holidays – 8.00am to 9.00pm.

(ii) The use of **outdoor deck/verandah/terrace areas, swimming pool and SPA** by any guest is restricted to the following hours:

- Friday and Saturdays – 7.00am to 10.00pm;
- Monday – Thursday – 7.00am to 9.00pm; and
- Sunday and Public Holidays – 8.00am to 9.00pm.

These requirements can be imposed by consent condition if required by Council.

- **Car Parking:** The accompanying *Plan of Management/House Rules* provides for on-site car parking for 4 cars, with additional kerbside parking for 2 cars available at the street front. This arrangement complies with the GDCP 2013 – Chapter 3.14 requirement for no more than 6 on-site car spaces. This arrangement does not have any adverse traffic or public safety impacts.
- **Waste Management/littering:** The accompanying *Plan of Management/House Rules* provides guest requirements for waste management, storage and collection in a manner which avoids the potential for littering of the public street or neighbouring properties.
- **Change to Character of the locality:** The built form/character of the locality does not change as the proposed development does not involve any new building construction. The use of existing dwelling houses for the purpose of short term rental accommodation (up to 6 bedrooms) is permitted with consent under Gosford Local Environmental Plan 2014 and supported by NSW Government Policy to facilitate the provision of short term rental accommodation in holiday areas.

Doug Sneddon
22nd February 2021.



doug sneddon
planning pty ltd.

STATEMENT OF ENVIRONMENTAL EFFECTS

**PROPOSED USE OF AN EXISTING SIX (6) BEDROOM DWELLING HOUSE FOR
'SHORT TERM RENTAL ACCOMMODATION' ON LOT 4 DP 13304,
NO. 12 DOVER ROAD, WAMBERAL.**

PREPARED FOR MRS. DORIS ZIBARA

NOVEMBER 2020

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Lisarow NSW 2250
TEL: 02 4328 3851
FAX: 02 4328 4050
MOB: 0408 432 838

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Statement of Environmental Effects: Proposed use of an existing dwelling house on Lot 4 DP 13304, No. 12 Dover Road, Wamberal, for the purpose of ‘short term rental accommodation’.

Doug Sneddon Planning Pty Ltd – November 2020.

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Statement of Environmental Effects: Proposed use of an existing dwelling house on Lot 4 DP 13304, No. 12 Dover Road, Wamberal, for the purpose of ‘short term rental accommodation’.

Doug Sneddon Planning Pty Ltd – November 2020.

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Statement of Environmental Effects: Proposed use of an existing dwelling house on Lot 4 DP 13304,
No. 12 Dover Road, Wamberal, for the purpose of 'short term rental accommodation'.

Doug Sneddon Planning Pty Ltd – November 2020.

1. INTRODUCTION.

Doug Sneddon Planning Pty Ltd has been engaged by Mrs Doris Zibara to prepare this Statement of Environmental Effects to accompany a development application to Central Coast Council for the use of an existing dwelling house on Lot 4 DP 13304, No. 12 Dover Road, Wamberal, for the purpose of short term rental accommodation. The proposal does not involve any construction work or alterations to the existing dwelling house.

This Statement of Environmental Effects addresses relevant matters under Section 4.15 (1) of the Environmental Planning and Assessment Act; State Environmental Planning Policies; Gosford Local Environmental Plan 2014; and Gosford Development Control Plan 2013.

2. SITE DESCRIPTION.

The subject land is described as Lot 4 DP 13304, No. 12 Dover Road, Wamberal.

- a Locality Plan is provided at Figure 1;
- a Site Aerial Photograph is provided at Figure 2;
- a Site Plan is at Figure 3;
- a zoning map is provided at Figure 4; and
- site photographs are provided in Appendix A.

The subject land has an area of 619.70m² with a frontage to Dover Road of 17.07m; side boundaries of 36.576m; and a rear beachfront boundary of 17.07m.

Erected on the subject property is a dwelling house (Development Consent 26849/2005) and swimming pool. A copy of the NSW Swimming Pool Register – Certificate of Compliance is provided in Appendix B.

The dwelling has six (6) bedrooms and is currently used for short term rental accommodation on the basis that four (4) bedrooms are available for rental occupation. The remaining two bedrooms are locked and unavailable for rental.

Multi-level dwelling houses adjoin the subject land on its eastern, western and southern boundaries.

The land does not contain any native vegetation or fauna habitat and is not affected by easements.

All urban services, including reticulated water and sewer, are available to the land.

3. DESCRIPTION OF THE PROPOSED DEVELOPMENT.

The proposed development involves the proposed use of the existing dwelling (six (6) bedrooms) house and its amenities for '*short term rental accommodation*'.

No demolition, construction or building alteration works are proposed.

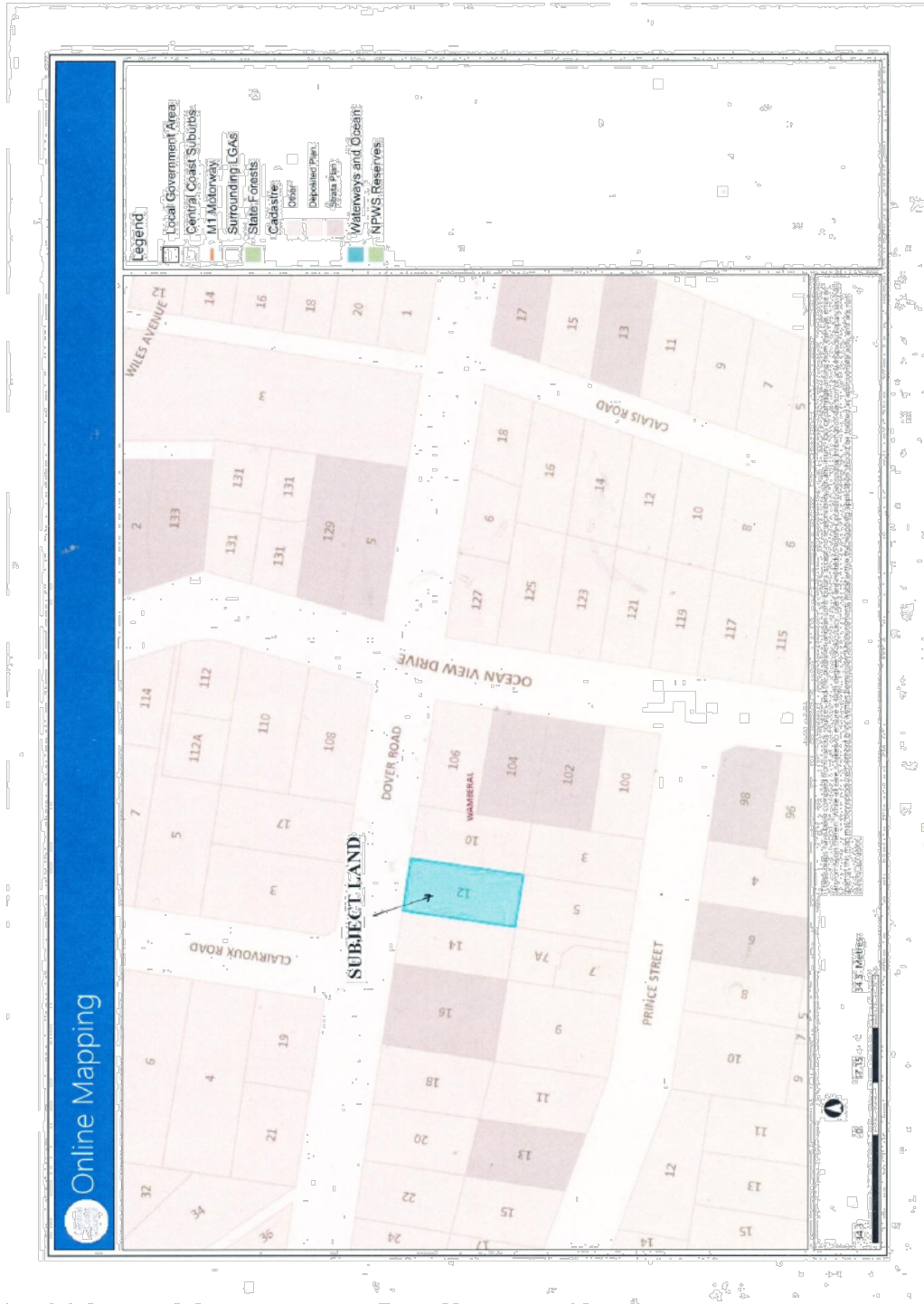


Figure 1: Locality Plan.

Statement of Environmental Effects: Proposed use of an existing dwelling house on Lot 4 DP 13304, No. 12 Dover Road, Wamberal, for the purpose of 'short term rental accommodation'.

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Figure 2: Site Aerial Photograph.

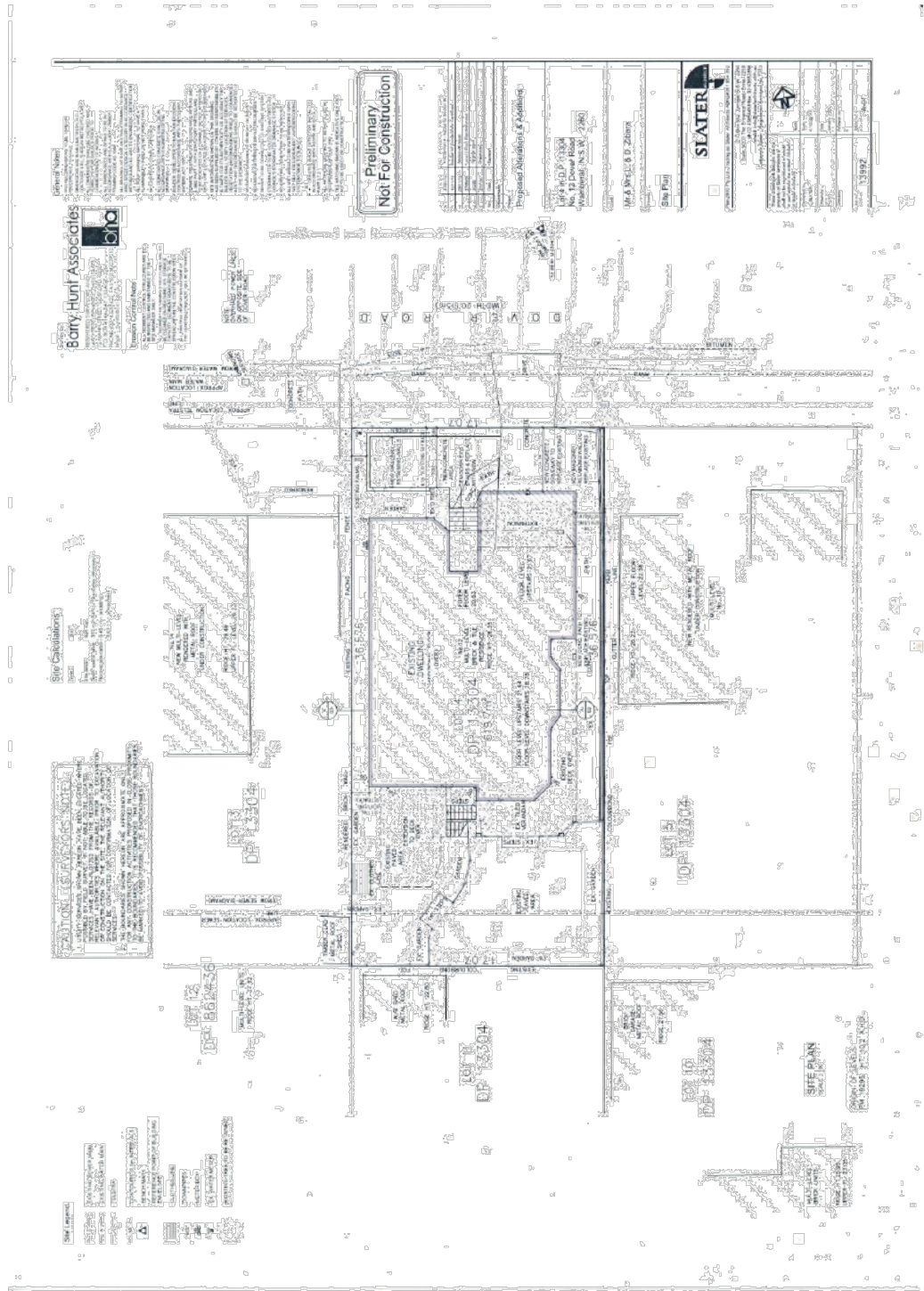


Figure 3: Site Plan;

Statement of Environmental Effects: Proposed use of an existing dwelling house on Lot 4 DP 13304, No. 12 Dover Road, Wamberal, for the purpose of 'short term rental accommodation'.

Doug Sneddon Planning Pty Ltd – November 2020.



Figure 4: Zoning Map (LEP 2014).

4. COMPLIANCE OF THE PROPOSED DEVELOPMENT WITH PLANNING CONTROLS.

4.1 STATE ENVIRONMENTAL PLANNING POLICIES.

4.1.1 State Environmental Planning Policy No. 55 – Remediation of Land.

Clause 7 of State Environmental Planning Policy No. 55 – Remediation of Land requires a consent authority not to consent to the carrying out of any development on land unless it considers whether the land is contaminated.

The subject land has been long been zoned and used for residential purposes and has not been subject to contamination from a previous land use, or purpose referred to in Table 1 of the “Contaminated Land Planning Guidelines”. It is evident therefore that the land has not been subject to contamination from previous use.

4.1.2 State Environmental Planning Policy (Coastal Management) 2018.

The subject land is mapped as being located within the “Coastal Environment Area” and the “Coastal Land Use Area” to which the following provisions of Divisions 3, 4 and 5 of *State Environmental Planning Policy (Coastal Management) 2018* apply.

(i) Division 3 – ‘Coastal Environment Area’.

The following provisions of Division 3 of SEPP (Coastal Management) 2018 apply to the consent authority’s consideration of a development application on the subject land:

“13 Development on land within the coastal environment area

- (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,*
 - (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.*
- (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.*
- (3) *This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005”.*

Assessment: This Statement of Environmental Effects demonstrates that the proposed development does not cause an adverse impact on the matters required to be considered under Clause 13 (1) (a) – (g) or Clause 13 (2) (a) – (c) of SEPP (Coastal Management) 2018:

- The proposed development has no adverse impact on the integrity or resilience of the biophysical, hydrological or ecological environment;
- The proposed development has no adverse impact upon coastal environmental values or natural coastal processes;
- The proposed development has no adverse impact on the water quality of the marine estate;
- The proposed development has no adverse impact on marine vegetation; native vegetation/fauna and their habitats; undeveloped headlands; or rock platforms;
- The proposed development has no adverse impact on the public amenity of Wamberal Beach; public access to the coastal foreshore; or on the use of the surf zone;
- The proposed development has no adverse impact on Aboriginal cultural heritage, practices or places; and
- The proposed development is designed and sited to avoid hazards associated with coastal processes.

(ii) Division 4 – ‘Coastal Land Use Area’.

The following provisions of Division 4 of SEPP (Coastal Management) 2018 apply to the consent authority’s consideration of a development application on the subject land:

“14 Development on land within the coastal use area

(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,

(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, and

(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.

(2) This clause does not apply to land within the Foreshores and Waterways Area within the meaning of Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005.”

Assessment: This Statement of Environmental Effects demonstrates that the proposed development does not cause an adverse impact on the matters required to be considered by the consent authority under Clause 14 (1) (a) of SEPP (Coastal Management) 2018:

- The proposed development does not have an adverse impact on existing safe public access to the coastal foreshore;
- The proposed development does not cause overshadowing; wind funnelling; or the loss of views from public places to the foreshore;
- The proposed development will not be visually prominent and will not have an adverse impact on the scenic amenity of the coastal foreshore;

- The proposed development has no adverse impact on Aboriginal cultural heritage, practices or places; and
- The proposed development has no adverse impact on the cultural or built environment heritage.

(iii) Division 5 – General.

The following provisions of Division 5 of SEPP (Coastal Management) 2018 apply to the consent authority's consideration of a development application on the subject land:

“15 Development in coastal zone generally—development not to increase risk of coastal hazards

Development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land.

16 Development in coastal zone generally—coastal management programs to be considered

Development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.”

Assessment: The proposed development will not cause increased risk of coastal hazards on any land.

4.1.3 Other State Environmental Planning Policies.

There are no other State Environmental Planning Policies applicable to development of the subject land:

- State Environmental Planning Policy No. 19 – Urban Bushland, does not apply to the subject land as it does not contain a public reserve, nor is it adjacent to a public reserve containing bushland;
- there are no State Environmental Planning Policy No. 26 – Littoral Rainforests on the subject land; and
- State Environmental Planning Policy (Koala Habitat Protection) 2019 is not applicable to the subject land

4.2 CENTRAL COAST REGIONAL STRATEGY 2006 – 2031.

There are no regional strategies which impose prohibitions, restrictions or development standards on the proposed development.

The proposed development is consistent with the strategic directions of the Central Coast Regional Strategy, supporting the development of a compact urban form; the efficient use of zoned residential land and existing infrastructure services; the provision of a diversity of housing types within the City of Gosford; and the provision of tourist accommodation on the Central Coast.

4.3 GOSFORD LOCAL ENVIRONMENTAL PLAN 2014.

This development application is made under the provisions of Gosford Local Environmental Plan 2014.

4.3.1 Zoning.

Under Gosford Local Environmental Plan 2014 (LEP 2014), the subject land is zoned *R2 Low Density Residential*. A copy of the zoning map is provided at Figure 5.

For the purposes of LEP 2014 the proposed development is defined as a '*short term rental accommodation*'.

Clause 7.6 of LEP 2014 permits the use of a dwelling containing 5 or 6 bedrooms for '*short term rental accommodation*', with the consent of Council"

"7.6 Short-term rental accommodation

(1) The objective of this clause is to require development consent for the temporary use of dwellings containing 5 or 6 bedrooms as short-term rental accommodation.

(2) Despite any other provision of this Plan, development consent may be granted for the use of a dwelling containing 5 or 6 bedrooms as short-term rental accommodation".

4.3.2 Zone Objectives.

Clause 2.3 (2) of LEP 2014 provides that the consent authority must have regard to the objectives for development in a zone when determining a development application in respect to land within the zone.

The following assessment demonstrates that the proposed development is consistent with the objectives of the *R2 Low Density Residential* zone applying to the subject land and the proposed development:

- *"To provide for the housing needs of the community within a low density residential environment."*

Assessment: The proposed development provides for the housing needs of the community within the surrounding low density residential environment.

- *"To enable other land uses that provide facilities or services to meet the day to day needs of residents."*

Not applicable: The proposed development does not involve non-residential use.

- *"To ensure that development is compatible with the desired character of the zone".*

Assessment: As demonstrated in this Statement of Environmental Effects, the proposed development is compatible with the statement of desired character for the subject locality contained in Chapter 2.1 of Gosford DCP 2013.

- *"To encourage best practice in the design of low density residential development".*

Not Applicable: The proposed development does not involve any new construction.

- *"To promote ecologically, socially and economically sustainable development and the need for, and value of, biodiversity in Gosford".*

Assessment: As demonstrated in this Statement of Environmental Effects, the proposed development is ecologically, socially and economically sustainable. The subject land has no biodiversity values warranting protection.

- *"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".*

Not Applicable: The proposed development does not involve non-residential use.

4.3.3 Development Standards.

There are no development standards applicable to the proposed development as the development proposal relates to the use of an existing dwelling.

4.3.4 Clause 5.10 - Heritage conservation.

The subject land is not identified or listed in Schedule 5 of LEP 2014 as containing a heritage item or being located within a heritage conservation area.

Consequently the provisions of Clause 5.10 of LEP 2014 are not applicable to the assessment of this development application.

4.3.5 Clause 7.1 – Acid Sulfate Soils.

The subject land is mapped on the LEP 2014 *Acid Sulfate Soils Map Sheet ASS_017B* as 'Class 5'. The proposed development does not involve any ground disturbance and does not require the submission of an Acid Sulfate Soils Management Plan.

4.4 GOSFORD DEVELOPMENT CONTROL PLAN 2013.

4.4.1 CHAPTER 2.1 - Character.

Gosford DCP 2013 - Chapter 2.1 Character requires development applications to demonstrate consistency or compatibility with development objectives contained within the relevant "Statements of Desired Character" provided in Part 2.

The subject land is located within Character Place "Wamberal 6 – Open Woodland Hillsides".

As the proposed development does not involve any construction or building alterations, the desired character statement has no applicability to the assessment of this development application.

4.4.2 CHAPTER 2.2 – Scenic Quality.

The aim of DCP 2013 – Chapter 2.2 is to provide more detail with regard to the interpretation of management of the scenic quality of the former City of Gosford.

The objectives of the chapter are:

- (i) to provide a detailed assessment of Gosford's landscape character which highlights the diversity between and within landscape units;*
- (ii) to detail the components of that landscape character;*
- (iii) to provide a comparative ranking of the landscapes; and*
- (iv) to develop appropriate guidelines for the management of the landscape character.*

DCP 2013 Chapter 2.2 presents guidelines for the management of the former City of Gosford's landscape character. The DCP is required to be taken into consideration by the council where development applications will have an impact on the scenic quality of an area.

For the purposes of Chapter 2.2, the subject land is located within the "North Coastal Geographic Unit – Forrester's Beach - Wamberal Landscape Unit".

As the proposed development does not involve any change to the existing physical character of development on the subject land, it will not have an impact on the scenic quality of the area.

4.4.3 CHAPTER 3.1 - Dwelling Houses, Secondary Dwellings and Ancillary Development.

Gosford DCP 2013 - Chapter 3.1 provides detailed guidelines for the development of land for single dwelling houses and ancillary structures. Chapter 3.1 *aims to protect and enhance the amenity, scenic quality, character and environmental sensitivity of new and existing residential, rural and environmental land areas by:*

- *Encouraging development which is compatible with the existing or desired future character of the area*
- *Promoting standards of design which are functional and achieve a high level of amenity and aesthetic quality*
- *Encouraging residential development appropriate to the context of the local area*
- *Promoting sustainable development.*

As the proposed development does not involve any change to the physical form of the existing dwelling house erected on the subject land, the design guidelines contained in DCP 2013 – Chapter 3.1 have no practical relevance to Council’s assessment of this development application.

4.4.4 CHAPTER 6.3 – Erosion and Sedimentation Control.

DCP 2013 - Chapter 6.3 applies to any activity that involves, or could involve:

- disturbance of, or placing fill on, the soil surface, and/or changes to the contours of the land; or
- changing the rate and/or volume of runoff flowing over land or directly/indirectly entering receiving waters.

The Council's goal is to help achieve a healthy, productive and diverse catchment. Erosion of soil as a result of disturbance or mismanagement of land is inconsistent with this goal.

As the proposed development does not involve any ground disturbance, the requirements of DCP 2013 - Chapter 6.3 have no practical relevance to the Council’s assessment of this development application.

4.4.5 CHAPTER 6.7 – Water Cycle Management.

The purpose of DCP 2013 - Chapter 6.7 is to minimise the impact of development on the natural predevelopment water cycle.

As the proposed development does not involve any change to the existing dwelling house erected on the land and does not involve any increase in impervious site coverage, the design requirements of DCP 2013 – Chapter 6.7 – Water Cycle Management have no practical relevance to Council’s assessment of this development application.

4.4.6 CHAPTER 7.1 – Car Parking.

(i) **Vehicular Access:** Vehicular access to the subject land is via an existing driveway from Dover Road. No change is proposed to this arrangement.

(ii) **Traffic Generation/road capacity/car parking:** The proposed use of the existing 6 bedroom dwelling house for short term rental accommodation will not increase traffic generation beyond the capacity of the local road network, cause congestion, or adversely affect road safety. Vehicles are able to manoeuvre within the site to enable vehicles to exit the site in a forward direction.

The site provides sufficient car parking to accommodate the minimum car parking rate required for a dwelling house by DCP 2013 (i.e. 2 spaces). The existing dwelling provides parking on-site for up to 4 cars.

4.4.7 CHAPTER 7.2 – Waste Management.

As the proposed development does not involve any demolition or building work and does not require any change to the Council's existing domestic garbage pick-up arrangements, it is not considered necessary to submit a waste management plan with this development application.

The site is provided with 2x 240 litre bins (one red/one yellow) for collection by Council's contractor.

5. MATTERS FOR CONSIDERATION UNDER SECTION 4.15 (1) OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979.

The proposed development has the potential to impact the environment in a number of ways. This section of the Statement of Environmental Effects assesses the potential development impacts in accordance with the provisions of Section 4.15 (1) (a – e) of the Environmental Planning and Assessment Act, 1979.

5.1 *“Section 4.15 (1) (a) (i), (iii), (iiia) and (iv): “The provisions of an environmental planning instrument; proposed instrument; Development Control Plan; planning agreement; or regulation that applies to the land”.*

An assessment demonstrating the consistency of the proposed development with the relevant provisions and development guidelines of applicable State Environmental Planning Policies; Gosford Local Environmental Plan 2014; and Gosford Development Control Plan 2013, is provided in sections 4.1 - 4.4 of this Statement.

5.2 *“SECTION 4.15 (1) (a) (ii): Any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)”.*

Draft Central Coast Local Environmental Plan 2018 (DLEP 2018) and Draft Central Coast Development Control Plan 2018 (DDCP 2018) have been publicly exhibited.

DLEP 2018 proposes to retain the *R2 Low Density Residential* zone over the subject land and continue the permissibility of the erection of a dwelling house on the subject land.

Neither DLEP 2018 nor DDCP 2018 proposes any prohibitions, restrictions or design/development guidelines that would prevent this development application from being approved by Council.

5.3 “SECTION 4.15 (1) (b): The likely impacts of that development, including environmental impacts on both the natural and built environment, and social and economic impacts in the locality”.

5.3.1. Topography/Geology.

There are not site topographical or geological constraints preventing approval of the proposed development.

5.3.2 Flora and Fauna.

There is no native vegetation or fauna habitat on the subject land and accordingly, the proposed development has no adverse impact on any native flora, fauna, wildlife corridors or critical habitat in the locality.

5.3.3 Soil Disturbance and Sediment Control.

The proposed use of the existing dwelling for short term rental accommodation does not involve any construction work or ground disturbance.

5.3.4 Drainage and Stormwater Management.

The proposed use of the existing dwelling for short term rental accommodation does not involve any change to existing stormwater management arrangements and does not involve the direction of any stormwater run-off onto neighbouring properties.

5.3.5 Access, Traffic Generation and Car Parking.

(i) Vehicular Access: Vehicular access to the subject land is via an existing driveway from Dover Road. No change is proposed to this arrangement.

(ii) Traffic Generation/road capacity/car parking: The proposed use of the existing 6 bedroom dwelling house for short term rental accommodation will not increase traffic generation beyond the capacity of the local road network, cause congestion, or adversely affect road safety. Vehicles are able to manoeuvre within the site to enable vehicles to exit the site in a forward direction.

The site provides sufficient car parking to accommodate the minimum car parking rate required by DCP 2013 (2 spaces). The site is able to accommodate off street parking for 4 cars.

5.3.6 Utility Services.

All utility services, including reticulated water and sewer, electricity and telephone services are available to the subject land and have the capacity to service the proposed development.

5.3.7 Scenic Quality/Streetscape Impact.

As the proposed development does not involve any change to the physical form of the existing dwelling house erected on the subject land, the proposed use of the dwelling for the purpose of short term rental accommodation will not have any streetscape or scenic visual impact.

5.3.8 Potential impacts on neighbouring dwellings.

The Site Plan at Figure 3 shows the relationship of the subject land to its neighbouring properties: The subject land:

- shares its eastern boundary with No. 10 Dover Road (multi-level dwelling house);
- shares its western boundary with No. 14 Dover Road (multi-level dwelling house);
- shares its southern boundary with No. 5 Prince Street (multi-level dwelling house).

The potential impacts of the proposed development on its neighbours relate principally to amenity impacts such as noise and loss of privacy.

On the 28th October 2020 NSW Fair Trading gazetted a *Code of Conduct for the Short-term Accommodation Industry* to address a number of issues associated with this form of accommodation, noting:

“Despite the economic benefits that can flow to local economies and homeowners using their property for short-term rental accommodation, there can be amenity impacts on residential neighbours resulting from inconsiderate or anti-social behaviour by some short-term rental occupants. It is important to ensure that our laws continue to support local economies while ensuring residential neighbours can enjoy the amenity of their homes without unreasonable disturbance. This code of conduct responds to this need by establishing behavioural obligations for short-term rental accommodation participants.

In recent years, there has been an increasing focus on the regulation of the short-term rental industry around the world. In June 2018, the NSW Government announced that there would be a new regulatory framework to manage short-term rental accommodation. The key elements of the framework are:

- *a state-wide planning framework to achieve consistency and certainty across local planning controls;*

- *a code of conduct to apply to online accommodation platforms, letting agents, facilitators, hosts and guests;*
- *changes to strata laws to allow owners corporations to adopt by-laws that prohibit non-resident lot owners from offering short term rentals;*
- *a mandatory short-term rental accommodation premises register.*

This code of conduct is mandatory and applies to all short-term rental accommodation industry participants.

The principal objectives of this code are to:

- (a) set out the rights and obligations of short-term rental accommodation industry participants;*
- (b) provide for resolution of disputes and complaints about the conduct of short-term rental accommodation industry participants;*
- (c) outline the compliance and enforcement approach that applies to contraventions of the code by short-term rental accommodation industry participants;*
- (d) facilitate the oversight of the short-term rental accommodation industry’.*

Once fully operational (from 18th December 2020), this Code of Conduct will provide a regulated framework for the operation of short term rental accommodation, including dispute resolution with neighbours.

In conjunction with the current regime of renting up to a maximum of four bedrooms within the subject premises, the owner provides clear instructions/house rules to guests, which include:

- instructions on how to access the property;
- to be aware of amenity impacts on neighbours;
- a 10pm limit on noise;
- strictly no parties; and
- no spa use after 10.00pm.

Adherence to the house rules will minimise potential adverse impacts on the amenity of neighbours. However, ultimately compliance of both hosts and guests with the requirements of the NSW *Code of Conduct for the Short-term Rental Accommodation Industry* provides a structured and regulated management response to issues that may arise in regard to amenity or other impacts that the proposed development may have on neighbours.

5.3.9 Cultural Heritage.

The subject land has been used for residential purposes for an extensive period of time and the site has not been identified as being significant for Aboriginal cultural heritage, or European Heritage significance.

5.3.10 Social and Economic Effects.

The proposed development will be beneficial in terms of its social and economic effects, as it will provide short term tourist accommodation, be ideally located with walking distance of Wamberal Beach and all retail/commercial services are available in nearby Terrigal Village Centre.

5.4 “SECTION 4.15 (1) (c): The suitability of the site for the proposed development”.

The proposed development raises no adverse impacts or consequences in regard to the principles of Ecologically Sustainable Development and is considered to be an appropriate use of the land in terms of social, economic and environmental criteria.

This Statement of Environmental Effects demonstrates that the siting and design of the proposed development is appropriate to the site.

In terms of the **Environmental Protection and Diversity Conservation Act (1999)** the proposed development will not have any impact on any matter of national environmental significance.

5.5 “SECTION 4.15 (1) (d): Any Submissions Made in Accordance With the Act or the Regulations”.

No public submissions have been received in relation to the proposed development as it has not yet been publicly notified.

5.6 “SECTION 4.15 (1) (e): The Public Interest”.

The proposed development does not raise any matter which may be regarded as contrary to the public interest and which would prevent the application from being approved. The proposal will generate social and economic benefits for the community; will not have any adverse impact on the natural environment; and will not unreasonably impact neighbouring properties.

6. CONCLUSION.

This Statement of Environmental Effects demonstrates that the proposed use of the existing dwelling house located on Lot 4 DP 13304, No. 12 Dover Road, Wamberal, for the purpose of short term rental accommodation has minimal environmental impact and the subject land is environmentally suitable for the proposed development.

Central Coast Council is requested to grant consent to the proposed development pursuant to the provisions of Gosford Local Environmental Plan 2014.

Doug Sneddon
4th November 2020.

APPENDIX A: SITE PHOTOGRAPHS.

Statement of Environmental Effects: Proposed use of an existing dwelling house on Lot 4 DP 13304,
No. 12 Dover Road, Wamberal, for the purpose of 'short term rental accommodation'.

Doug Sneddon Planning Pty Ltd – November 2020.



Photograph 1: Subject Dwelling – Streetview 1.



Photograph 2: Subject Dwelling – Streetview 2.



Photograph 3: Existing Waste Store.

APPENDIX B: SWIMMING POOL – CERTIFICATE OF COMPLIANCE.

Statement of Environmental Effects: Proposed use of an existing dwelling house on Lot 4 DP 13304,
No. 12 Dover Road, Wamberal, for the purpose of 'short term rental accommodation'.

Doug Sneddon Planning Pty Ltd – November 2020.



Item No: 4.1
Title: Section 8.2 Review of Determination -
DA/162/2020 - Mixed use development - 135-136
Tuggerah Pde, Long Jetty

Department: Environment and Planning

22 April 2021 Local Planning Panel Meeting

Reference: DA/162/2020 - D14456429
Author: Erin Murphy, Senior Development Planner
Manager: Emily Goodworth, Section Manager, Development Assessment
Approver: Andrew Roach, Unit Manager, Development Assessment

Summary

An application has been received under Section 8.2(1)(a) of the *Environmental Planning and Assessment Act, 1979 (the Act)* for the consent authority to review its decision on the refusal of Development Application 162/2020 for a proposed mixed-use building at 135-136 Tuggerah Parade, Long Jetty. This report re-examines the issues associated with Development Application 162/2020 with particular regard to supporting documentation and amended plans submitted with the Section 8.2 Review.

The Application was refused by the Local Planning Panel at its meeting of 17 September 2020. In accordance with the provisions of Clause 8.3(5) the *Environmental Planning and Assessment Act 1979*, the Review of Determination must also be determined by the Local Planning Panel. In addition, the *Local Planning Panels Operational Direction* (endorsed by the Minister on 30 June 2020) states that: '*the determination of a review application from a panel decision shall be determined by different members of the panel to those who made the original determination.*' (Section 2.1)

The reasons for refusal are summarised as follows:

- Permissibility - development did not meet the definition of shop top housing
- Non-compliance with Height of Building control, excessive bulk and scale
- Does not meet the objectives of the B2 Local Centre zone, does not respond to character of the area and provides poor activation at ground floor
- The proposal does not comply with the maximum 1.5:1 Floor Space Ratio of the WLEP 2013
- Flooding
- Stormwater quality
- Does not adequately address the provisions of State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development) (design quality, context, neighbourhood character, built form and character, density, amenity and safety)
- Does not satisfactorily achieve the objectives and design criteria of the Apartment Design Guide (solar access, building separation and privacy, deep soil landscaping, façade treatment, unit layouts)

4.1 Section 8.2 Review of Determination - DA/162/2020 - Mixed use development - 135-136 Tuggerah Pde, Long Jetty (contd)

- Inadequate Car parking
- Does not adequately address the provisions of State Environmental Planning Policy (Coastal Management) 2018
- Insufficient information (BASIX, loading dock management, waste, demolition, levels, acoustic report, plan of management, social impacts, driveways profiles)

The application has been examined having regard for the matters for consideration detailed in Section 4.15 and Section 8.3 of the *Environmental Planning & Assessment Act 1979* and other statutory requirements, with the issues requiring attention and consideration being addressed in the report.

The application proposes minor changes to the development originally considered, including the removal of three ground floor residential apartments. The proposal, as amended, satisfactorily addresses the issue of permissibility, but fails to provide adequate justification or additional information to address the remaining reasons for refusal, including compliance with Building Height and Floor Space Ratio (FSR) controls.

Applicant	Mr Christopher Baker (Thrum Architects)
Owner	Mr GG Smith and Mrs K Smith
Application No	DA/162/2020
Description of Land	Lot 2 DP 571978, Pt Lot 37 Sec 1 DP 13225, Paradise Tourist Park, 135-136 Tuggerah Parade, LONG JETTY NSW 2261
Proposed Development	Mixed-use building comprising 21 dwellings which are shop top housing, tourist and visitor accommodation (serviced apartments), commercial premises, food and drink premises (café), function centre, basement parking and associated works.
Site Area	1480m ²
Zoning	B2 Local Centre
Existing Use	Caravan Park (Paradise Tourist Park)
Employment Generation	Unknown
Estimated Value	\$11,611,000

Recommendation

- 1 That the Local Planning Panel refuse the Section 8.2(1)(a) review of determination for Development Application DA/162/2020 for a proposed mixed use building at 135-136 Tuggerah Parade, Long Jetty, subject to the reasons for refusal detailed in the schedule attached to the report, and having regard to the matters for consideration detailed in Sections 8.2 and 4.15 of the Environmental Planning and Assessment Act 1979.***

4.1 Section 8.2 Review of Determination - DA/162/2020 - Mixed use development - 135-136 Tuggerah Pde, Long Jetty (contd)

Key Issues

- Consistency with zone objectives
- Variations to height and floor space ratio development standards
- Bulk, scale and architectural presentation and how it relates to the character of the area
- State Environmental Planning Policy 65 and the Apartment Design Guide, including non-compliant building separation, amenity, visual and acoustic privacy, safety and security
- Ground floor uses and activation
- Acid Sulfate Soil Management
- Car Parking
- Insufficient information in regard to waste, vehicle manoeuvring, acoustic impacts and management of impacts and conflicts between uses proposed both within and adjacent to the site.

Precis:

Proposed Development	A mixed-use building comprising 21 dwellings which are shop top housing, tourist and visitor accommodation (serviced apartments), commercial premises, food and drink premises (café), function centre, basement parking and associated works.
Permissibility and Zoning	The site is zoned B2 Local Centre under <i>Wyong Local Environmental Plan 2013</i> (WLEP 2013). The following are permissible uses within the zone: <ul style="list-style-type: none"> • business premises • commercial premises • function centre • retail premises • shop top housing • tourist and visitor accommodation
Relevant Legislation	<ul style="list-style-type: none"> • <i>Environmental Planning & Assessment Act 1979 (EP&A Act)</i> • <i>Environmental Planning & Assessment Regulation 2000 (EP&A Regulation)</i> • <i>State Environmental Planning Policy No. 65 (SEPP 65)</i> • <i>Apartment Design Guide (ADG)</i> • <i>State Environmental Planning Policy (Coastal Management) 2018 (SEPP CM)</i> • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX)</i> • <i>State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)</i> • <i>Wyong Local Environmental Plan 2013 (WLEP 2013)</i> • <i>Draft Central Coast Local Environmental Plan 2018</i>

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	<ul style="list-style-type: none"> • <i>Draft Housing Diversity State Environmental Planning Policy (Housing Diversity SEPP)</i> • <i>Draft Design and Place State Environmental Planning Policy (Design and Place SEPP)</i> • <i>Wyong Development Control Plan 2013 (WDCP 2013)</i>
Current Use	Caravan Park (Paradise Tourist Park)
Integrated Development	No
Submissions	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% or 1.39m

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 – 16.67 % (1.75:1)*

*It is noted that the Gross Floor Area (GFA) diagrams incorrectly exclude ground floor waste rooms from GFA as well as part of the residential foyer.

The Site and Surrounds

The subject site is a corner site that comprises two lots with a combined frontage of 30.3m to Tuggerah Parade and a frontage of 52.9m to Pacific Street. The site has an average width of 30.5m and a combined area of 1,480m². The topography of the site is flat. The site is part of Paradise Tourist Park.

Uses surrounding the site are predominantly residential with a mix of low scale one and two storey residential dwelling houses. 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.

The site is zoned *B2 Local Centre* under the provisions of the *Wyong Local Environmental Plan 2013* (WLEP 2013). There is a zone transition to the south of the site on the opposite side of

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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.



Figure 1 - Aerial view of subject site (left) and locality aerial view with land zoning (right)



Figure 2 - Aerial photograph



Figure 3 – Site as viewed from corner of Tuggerah Parade and Pacific Street facing north east

Background

Development application 162/2020 was considered by the Local Planning Panel at its meeting of 17 September 2020. This application was for a five storey mixed-use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café), function centre, basement parking and associated works.

DA/162/2020 was refused development consent by the Local Planning Panel.

The reasons for refusal at that meeting are summarised below:

- Permissibility - development did not meet the definition of shop top housing
- Non-compliance with Height of Building control, excessive bulk and scale
- Does not meet the objectives of the B2 Local Centre zone, does not respond to character of the area and provides poor activation at ground floor
- The proposal does not comply with the maximum 1.5:1 Floor Space Ratio of the WLEP 2013
- Flood issues
- Stormwater quality issues
- Does not adequately address the provisions of State Environmental Planning Policy 65 (Design Quality of Residential Apartment Development) (design quality, context, neighbourhood character, built form and character, density, amenity and safety)

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- Does not satisfactorily achieve the objectives and design criteria of the Apartment Design Guide (solar access, building separation and privacy, deep soil landscaping, façade treatment, unit layouts).
- Inadequate Car parking
- Does not adequately address the provisions of State Environmental Planning Policy (Coastal Management) 2018
- Insufficient information (BASIX, loading dock management, waste, demolition, levels, acoustic report, plan of management, social impacts, driveways profiles)

The reasons for refusal and applicant's response to these reasons are included under the 'Applicant's Response to Reasons for Refusal' heading below.

The Proposed Development

The s8.2 proposal comprises the construction of a mixed-use building comprising 21 "apartments" (as depicted on the architectural plans), mention of serviced apartments (tourist and visitor accommodation), commercial premises, food and drink premises (café), a commercial multi-functional tenancy (as depicted on the plans) /function centre (as stated in the letter accompanying the s.8.2 application), basement parking and associated works.

The application includes amended architectural plans.

The amended proposal maintains the overall design approach, bulk, scale, built form and general configuration, and comprises the following:

- Removal of 3 ground floor apartments and floor area replaced with commercial/office tenancies (residential apartments reduce from 23 to 21)
- Enlargement of the alfresco terrace and landscaped setback off Tuggerah Parade
- Increased deep-soil landscaping at south western corner of site, with minor amendments to basement below
- Relocated and increased size of the set of entrance doors to residential entrance foyer
- Enlarged residential foyer and commercial foyer
- Deletion of the set of entry steps from the middle of the southern Pacific Street frontage
- Slight reduction in basement footprint and "reversed" circulation arrangements to a generally clockwise direction
- Amendments to western elevation facade

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- New plant room area and void over commercial foyer below at Level 1
- Reconfiguration of waste servicing/storage area

The amended plans retain the inclusions, features and general configuration of the original building and thus, the proposal remains substantially the same as that initially proposed as per the provisions of Section 8.3(3) of the *Environmental Planning & Assessment Act, 1979*.

The s8.2 application proposes a development comprising:

- Demolition or removal of existing permanent van sites and structures onsite;
- Construction of a 5 storey mixed-use development over two buildings containing:
 - Café 73.93m²
 - Commercial 'Multi-function' tenancy 190m²,
 - Commercial tenancies 20.01m², 51.05m² and 84.97m²
 - 2 x 1 bedroom dwellings
 - 11 x 2 bedroom dwellings
 - 8 x 3 bedroom dwellings
 - 38 parking spaces and storage and plant rooms within the one level of basement
 - Communal open space for the residential units at ground floor
 - Commercial Rooftop terrace - with cabana /servery 32.22sqm
- Lot consolidation

The number or location of the serviced apartments are not detailed in the submission or shown on the architectural plans.

4.1

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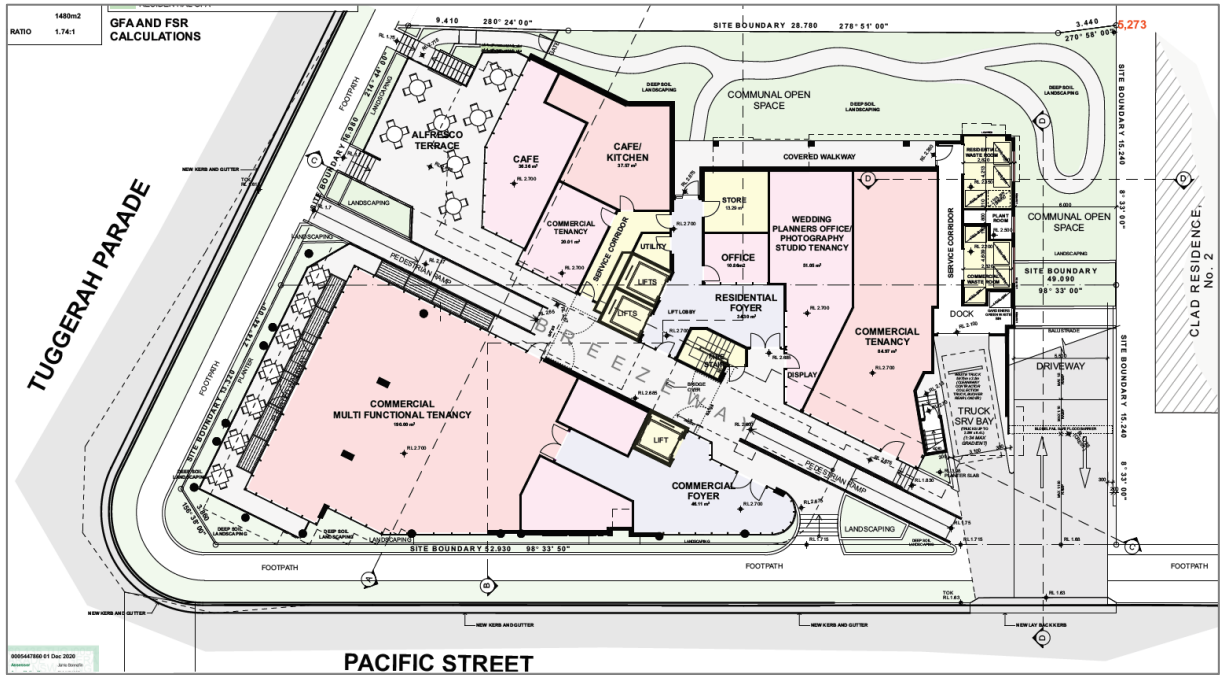


Figure 4 – Site / Ground Floor Plan



Figure 5 – South / Pacific Street elevation



Figure 6 – West / Tuggerah Parade Elevation

It is noted that no sample board or material and color schedule has been provided.

Applicant's Response to Reasons for Refusal

The applicant has provided a response to each of the reasons for refusal which have been included below, with Council's comment, as follows:

Reason for Refusal – Permissibility

- 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.**

Applicants response

It was incorrect to assert that the development did not meet the definition of "shop top housing" and to characterise the proposal as residential accommodation. It was incorrect to

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make that assertion and that characterisation because the building, as submitted, was for a mixed-use development comprising component parts that accorded to permitted use definitions.

The permissibility of "shop top housing", as part of a Mixed-Use Development in the B2 Local Centre zone, as was specifically contemplated in the scheme as originally submitted and was confirmed in the affirmative in the matter of Hrsto V Canterbury City Council. That decision established that "shop top housing" need be "above" i.e. higher than, but not necessarily vertically above, retail or business premises. The inclusion of serviced apartments at the ground floor level did not diminish the Council's power to approve the application as "serviced apartments" were and remain permitted in the zone.

Commercial premises and function centres as separately defined uses are specifically permitted in the B2 Local Centres zone which applies to the land.

The proposal is, was and remains permissible in the B2 Local Centres zone which permits, inter alia, a variety of uses including retail, business, entertainment, shop top housing and residential accommodation to fulfil the objectives of the zone.

For abundant caution and to remove all doubt as to permissibility, amended plans attached to this Application for Review replace all ground floor space with business tenancies (business premises) and thus, the residential components above are all capable of inclusion and approval as either "shop top housing" and/or "serviced apartments".

As stated above, the categorisation of the building as residential accommodation and identification of the development as not being permissible in the B2 Local Centre zone is incorrect and not sustainable as a reason for refusal.

Comment

Despite the submission from the applicant that all ground floor space would now be business premises, the amended plans still identify additional separately defined uses under the LEP such as a function centre and food and drink premises.

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 dwelling/s must be in the *same building* as the ground floor retail premises or business premises *but need not be directly or immediately above ground floor retail premises or business premises.*

The original proposal failed to nominate the location of the residential units and serviced apartments within the development. In addition, all apartments presented the same in relation to configuration and therefore it could not be distinguished which apartments may be used for which purposed. In this regard, it was unclear whether residential units were

proposed on the ground floor and therefore whether the proposed development met the requirements of shop top housing.

While the building is configured to be in 2 'parts', north and south, it is connected by a shared basement and 2 enclosed bridges at levels two and four. There are no longer apartments/units proposed on the ground level. Taking the view that the proposal is a single building and not two separate buildings, all apartments are now located above the ground floor with the ground floor area being nominated for retail and business premises, as such, the issue of permissibility, with regard to properly satisfying the requirements for shop top housing, has been resolved.

It is noted that the Section 8.2 Review application still does not clearly identify the ratio or location of serviced apartments to residential dwellings which presents other issues in relation to layout, amenity, security etc.

Reason for Refusal – Height of Buildings

- 2. 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. A Clause 4.6 written contravention request has not been lodged and accordingly there is no power to approve the application. Further, 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 and contrary to the objectives of the standard resulting in unacceptable scale, bulk, form and amenity concerns to neighbouring properties. 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.**

As 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*. A Clause 4.6 written contravention request has not been lodged and accordingly there is no power to approve the application.

Further, the height of the building at 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 and contrary to the objectives of the standard resulting in unacceptable scale, bulk, form and amenity concerns to neighbouring properties.

Applicants response

This Application for Review, by addressing the highest most point as identified by the architectural drawings at RL 19.00, addresses the height departure (at a maximum of about 1.4 metres over a small percentage of the site in context via the attached Clause 4.6 submission).

The building at large, and when viewed from any proximate location within the public domain, will present as a building of 16 metres or less above natural ground other than if measured forensically and with the aid of survey instruments.

The building does not give rise to the exaggerated concerns as advanced in the report to the Panel as contributing "... to an unsympathetic development form that is not appropriate in the context of directly adjoining and nearby development sites and contrary to the objectives of the standard resulting in unacceptable scale, bulk, form and amenity concerns to neighbouring properties..."

Reference to the Clause 4.6 submission attached to the Application for Review will confirm that the buildings height is as contemplated and planned for by the statutory controls devised and applied consistent with the Council's stated objective in relation to the future built environment for the locality as contained within the development standards which apply to the locality; a locality intended to accommodate development punctuating the existing lineal city/ribbon development that otherwise dominates Long Jetty by reinforcing a local node at the confluence of Pacific Street, Tuggerah Parade and The Entrance Road; a feature prominent in the urban design parameters extrapolated from past investigations.

The omission of a written submission/request under Clause 4.6 of the Wyong Local Environmental Plan 2013, seeking variation to strict compliance with the height control was an oversight that might have been overcome had the courtesy of a request been extended by the Council's Assessment Team Members to the Applicant, particularly given the de minimis nature of the departure

Comment

The amended proposal still results in a departure to the mapped building height under Wyong Local Environmental Plan 2013 of 1.39m or 8.7%.

The written request has not identified sufficient environmental planning grounds and it is considered that the variation to the Height of Buildings development standard is not in the public interest because it is not consistent with the objectives of the development standard and the objectives for the zone.

The submitted clause 4.6 request regarding the variation to height is discussed in detail below.

Reason for Refusal – B2 zone objectives and Floor Space Ratio

3. The development does not achieve the zone objectives of the B2 Local Centre zoning of Wyong Local Environmental Plan 2013.

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, including a zone and height interface area. Unarticulated elevations, 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.

The development does not have sufficient regard for ground floor activation. The level changes are inappropriately 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.

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.

- a) 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.
- b) 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 or that there are sufficient environmental planning grounds to justify contravening the standard.
- c) 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)).

Applicants response

The argument and reasons for refusal contained under Point 3 and Sub Clauses a), b) and c) of the Notice of Determination are addressed by this further submission together with revisions and refinements to the architectural plans adjusting the ground floor commercial tenancy arrangements, reducing floor area and separating commercial activities from residential space above.

Adjustment to building design also includes reduction of unit numbers and consequent further reduction in floor space. The application, as amended, is supported further by an additional submission under the provisions of Clause 4.6 of the Wyong Local Environmental Plan 2013, addressing floor space ratio.

Asserting that "The development does not achieve the zone objectives of the B2 Local Centre zoning of Wyong Local Environmental Plan 2013", the author of the report to the Central Coast Local Planning Panel did not fully inform the Panel Members of the particulars of the objectives of the B2 Local Centre zone. Those objectives are recited below and relevant commentary is provided.

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.**

Comment - Identified by the Council as a locality which affords particular opportunity and recognised by the Proponents as a commercial opportunity for entertainment and hospitality enterprises, the ground floor space has been reimagined and expanded. Now incorporating improved commercial tenancies embedding compliant access and service arrangements, the whole of the ground floor provides a range of retail, business and entertainment opportunities; opportunities providing enhanced access to, of and over the public domain from alfresco terrace and dining and café venues. Those venues will provide employment opportunities while serving the needs of people who live in, work in and visit the local area.

- **To encourage employment opportunities in accessible locations.**

Comment - The amended plans expanding the space devoted to retail business and entertainment opportunities enhance contemporaneous employment generation prospects associated with what might be generally described as "tourism" noting that serviced apartments in the upper levels would likely complement the traditional holiday demand for accommodation and consequent job creation both on and off-site. Similarly, hospitality venues and allied uses will give rise to the generation of full-time, part-time and casual employment opportunities.

• To maximise public transport patronage and encourage walking and cycling.

Comment - As pointed out in the Statement of Environmental Effects which accompanied the application, skilful articulation of the ground floor breezeway provides a compliant, accessible through-site connection. That feature has been retained to ensure activation of both street frontages and connectivity to public transport infrastructure within the alignment of The Entrance Road and to walking and cycling infrastructure within the alignment of Tuggerah Parade and the foreshore reserve adjacent to the west.

• To permit residential accommodation while maintaining active retail, business and other non-residential uses at street level.

Comment - The proposal satisfies the residential inclusion of the objectives by accommodating a variety of residential accommodation in the upper levels. While the amended architectural plans reduce by two the number of apartments, the range and variety of residential inclusions continues to satisfy the residential accommodation objective.

Perhaps not appreciated in the assessment of the proposal, the obligation on the designer to comply with minimum finished floor levels in a locality affected by the 1% AEP event, required a solution other than that typically encountered in such localities i.e. the "zig zag" pedestrian ramp that, while satisfying accessible provisions, typically compromises activation of street frontages.

The manner in which the architectural design provides compliant and accessible connectivity is a most meritorious feature of the proposal.

Activation of the street frontage has been enhanced in the amended drawings by enlargement of the alfresco terrace off Tuggerah Parade and retention of the integrated through-site pedestrian ramp. That ramp provides an identifiable and conveniently accessible entry to the building from both frontages and providing access to the body of the building from the "lower" street frontage and connectivity to the at grade easternmost end of the pedestrian ramp/breezeway.

The Tuggerah Parade/ Pacific Street intersection retains the elevated and activated street frontage walkway/alfresco space, together with additional landscaping creating a seamless transition from the public to the private domain while accommodating the necessary elevation of the ground floor tenancy (necessary in order to comply with the mandatory 1% AEP finished floor level, as specified by Council).

Activation of the street frontage is achieved through the integration of five separate and dedicated entry points providing a through-site link. That link directs pedestrian traffic to and through the property from the north-south transit corridor on The Entrance Road to the cycleway and pedestrian infrastructure in Tuggerah Parade.

Consistent with the identification of the need to establish a commercial node in this location,

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as is provided for by the site specific zone provisions, the concentration of the building mass reinforces the Tuggerah Parade/Pacific Street intersection in a manner consistent with Central Coast Council's philosophy in terms of urban design evident in locations within the LGA including West Street/Morris Street, Umina Beach, the Terrigal CBD and of course, the Long Jetty/The Entrance conurbation.

• To minimise conflict between land uses within the zone and land uses within adjoining zones.

Comment - Land to the immediate east of the subject site benefits from the same zone as the property the subject of the application. That land is likely, in the fullness of time, to be developed in a manner consistent with the desired built form, as is encouraged by the existing zone and urban design parameters.

The land to the north of the subject site is also within the B2 Local Centres zone and currently supports an ageing three storey residential flat building. That asset may attract future upgrade or redevelopment particularly given the vintage of the asset and the opportunity presented for redevelopment in the B2 Local Centres zone. In the interim, optimum horizontal separation between the building proposed and that to the north has been achieved by the location of the communal open space in the north and eastern quadrant of the subject site. The location of fenestrations on the northern elevation ensures that overlooking potential is managed by either the placement of bedroom or utility rooms in closer proximity to the property boundary with optimum and compliant horizontal separation of 6 metres elsewhere.

Land to the south and the opposite side of Pacific Street houses the active component of 'Paradise Park', the existing and future use of which remains uncompromised by the development proposed. That land is zoned R2 Low Density Residential and may, in the fullness of time, attract redevelopment subject naturally to separate application(s).

Land to the west and on the opposite side of Tuggerah Parade lies within the RE1 Public Recreation zone the objectives of which are similarly uncompromised by the proposal. We understand that no objections were received by the Council in its exhibition of the proposal which is evidence that there was no conflict identified or brought to the Council's attention by adjacent property owners/occupiers.

The plans, as revised by Thrum Architects and attached to the Application for Review, incorporate further articulation and an expanded palette of materials particularly with respect to the northernmost wall, with generous and variable off-sets from the common boundary.

This reason for refusal does not identify nor articulate the nature of the conflict between the land uses "within the zone" which presumably refers to the B2 Local Centre zone which applies to the subject land and to that which adjoins to the north and to the east.

Bullet point No. 5 of the Zone Objectives addresses at least in part the manner in which the interface of the subject site and the adjoining development to the north, being a residential flat

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building over three storeys, existing prior to the introduction of the B2 Local Centre zone which now applies.

There is no sustainable argument given that the Architectural plans embed articulation to all elevations and in particular that to the north with variable setbacks measured horizontally, a broad palette of materials and carefully located fenestrations to manage potential overlooking and removing any practical concern with respect to overbearing visual impact.

When viewed from the R2 Low Density Residential zoned land to the south on the opposite side of Pacific Street, the development the subject of this application will present as "a lively and interesting building character with an appropriate ... character" (see Seaside Property Developments Pty Ltd V Wyong Shire Council) a decision in the Land & Environment Court directed to and addressing inter alia, the interface of different zones.

There is no impact fatal to this development arising as a consequence of off-site impacts on either the adjoining B2 Local Centres zoned land, nor that R2 Low Density Residential land to the south, impacted to a minor degree at mid-winter by minor overshadowing.

Land to the west, within the RE1 Public Recreation zone, remains unaffected by the development, but will be part of the borrowed landscape enjoyed by future owners, occupiers and clients of the commercial components.

The ground floor is required to be elevated above natural ground in order to comply with the Council directive with respect to finished floor levels in the 1% AEP impacted zone. Activation of the ground floor is achieved by the incorporation of alfresco dining and entertainment opportunities, serviced and accessible by integrated pedestrian access from both street frontages. The extent of activation of street frontages has been enhanced by the amended plans tabled with this Application for Review with increased space devoted to alfresco dining and additional landscaping between the street alignment and the building.

It is incomprehensible that the Planning Panel would accept an argument that suggests that the ground floor arrangements do not encourage the movement of people through and around the site in a way that supports the function of non-residential uses as active uses.

The implication (is perhaps only one interpretation of the criticism advanced) is that the proposal ought to accommodate traditional "lock up shops" with traditional shop fronts but somehow accessed by "zig zag" footway or other device yet imagined.

The requirement that the Ground Floor be highly elevated by more than 1m above the existing street footpath as prescribed by flood controls, creates a natural vertical barrier which prevents any conventional type of pedestrian shop frontage activation relationship with the street. The Disability Discrimination Act makes it necessary that this corner site have no less than two accessible ramp systems located along its street frontages. If the required access ramps were configured in conventional zig-zag type configurations as commonly allowed by Council elsewhere, they would perversely, as a result, hinder activation, rather than enhance activation.

The severity of this vertical barrier problem has been addressed by this development's innovative solution of rejecting use of zig-zag type ramps which are functional enemies of activation, but rather a dynamic configuration of ramps which not only allow users to walk forward in the direction they want to walk anyway, but also in a manner that encourages their usage to optimise pedestrian activation of the raised commercial ground floor of this development (forced to be elevated by flood controls). The result is that the design delivers a viable ground floor that is optimally activated and sustainable.

The floor space ratio of the building has been reduced slightly to (about) 1.75:1. The amendments to the design, inter alia, increase the alfresco space and enhance the permeability" of the ground floor retail (which, by necessity) sits at a finished floor level at RL 2.7 – 500mm above the 1% AEP... The building maintains acceptable bulk in spite of its variation to FSR, due in part to its capable design incorporating quality levels of articulation with deep visual relief, and "clip on" lightweight features. The apparent size, scale and bulk of the development is very effectively ameliorated by the distinct spatial division of the envelopes on the site.

The division of the development into two separate and distinct building forms rather than one larger global one, provided deep relief articulation between the positive elements. The result being delivery of quality building forms that are visually scaled-down in size and apparent bulk, whilst still presenting as entirely consistent with the 5 storey height promoted by the Zoning.

Additionally, the site planning arrangements incorporate the widely accepted principle of reinforcing commercial corner locations, optimising horizontal separation from adjacent commercially zoned properties. The lower level separation of serviced apartment accommodation from adjoining residential maintains an appropriate relationship with adjoining buildings while integration of an expanded mix of commercial serviced apartments and shop top housing fulfils the B2 zone objectives.

The public interest being well-served as a consequence of inclusion of generous commercial space capable of accommodating function centre activities, together with allied commercial uses all of which complement employment generation opportunities with obvious social and public benefits.

Comment

The development does not achieve the zone objectives of the B2 Local Centre zoning. This is discussed in more detail under the 'Wyong Local Environmental Plan 2013 – Zoning and Permissibility' heading of this report.

The proposed commercial foyer and 'commercial multi-functional tenancy'/ 'function centre' do not achieve the zone objective of providing active retail, business and other non-residential uses at street level.

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The proposal does not demonstrate that it achieves the zone objective of minimising conflict between land uses within the zone and land uses within adjoining zones. Insufficient information has been provided in regard to the number and location of serviced apartments and how they will be managed.

Commercial floor space and a function centre are proposed at both the ground floor and within the rooftop cabana and open space. No detail is provided in relation to the hours of operation, number of patrons, potential noise sources or the management of potential amenity conflicts with the proposed residential apartments or adjoining sites.

The proposed amendments to the original design of the development are considered minor and relate to the ground floor configuration with the upper levels remaining the same except for the introduction of a commercial element on the roof terrace area. Overall, the building remains incompatible with the character of the surrounding locality and fails to relate to its context.

The applicant has amended the layout of the ground floor in an attempt to increase ground floor activation by increasing the outdoor dining 'terrace' of the café on Tuggerah Parade and introducing an outdoor dining area in the form of a terrace off the commercial multi-functional tenancy (as depicted on the plans)/ function centre (as described in the s.8.2 accompanying letter to the application) on the corner of Tuggerah Parade and Pacific Street. However, the proposed 'commercial multi-functional tenancy' (or 'function centre') use remains in the same location and is not considered to be a sufficiently activating use for this important corner site. Moreover, the replacement of a previously proposed commercial tenancy on the Pacific Street frontage with the commercial foyer further reduces the activation opportunities along Pacific Street.

The overall design approach of the diagonal alleyway and pedestrian ramps thorough the development would continue to 'diffuse' pedestrian activity away from street frontages – without apparent benefit to commercial operators.

The narrow alleyway between the two building forms does not reduce the visual impact of the built form, with the development from most vantage points being viewed and read as a single building mass.

Council's FSR maps identify the site with a maximum FSR of 1.5:1. The FSR has been reduced from 1.78:1 to 1.75:1, or 60sqm. The submitted Clause 4.6 request in regard to FSR is assessed below.

The written request has not identified how compliance with the standard is unreasonable or unnecessary or that there are sufficient environmental planning grounds to justify a variation to the development standard. Council is not satisfied that the variation to the FSR 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.

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It is important to note that the gross floor area (GFA) calculations do not accurately depict GFA, with areas that should be included, being excluded from calculations.

The definition of GFA, as defined in Wyong Local Environmental Plan (WLEP) 2013, is as follows:

gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and
- (b) habitable rooms in a basement or an attic, and
- (c) any shop, auditorium, cinema, and the like, in a basement or attic, but excludes—
- (d) any area for common vertical circulation, such as lifts and stairs, and
- (e) any basement—
 - (i) storage, and
 - (ii) vehicular access, loading areas, garbage and services, and
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and
- (h) any space used for the loading or unloading of goods (including access to it), and
- (i) terraces and balconies with outer walls less than 1.4 metres high, and
- (j) voids above a floor at the level of a storey or storey above.

Areas of circulation in front of the lifts and in hallways have been excluded in some areas when they form part of the floor area. While common *vertical* circulation, such as lifts and stairs, can be excluded, horizontal circulation, such as hallways, cannot be excluded. In addition, the area of stairs between single units have been excluded at both levels, not just the voids. Stairs within a single unit are not 'common' vertical circulation and are not excluded from GFA. These areas are shown circled in red in Figure 7.

As such, the applicant's FSR calculations are inaccurate and the clause 4.6 written request is based on a lesser figure than should be calculated.

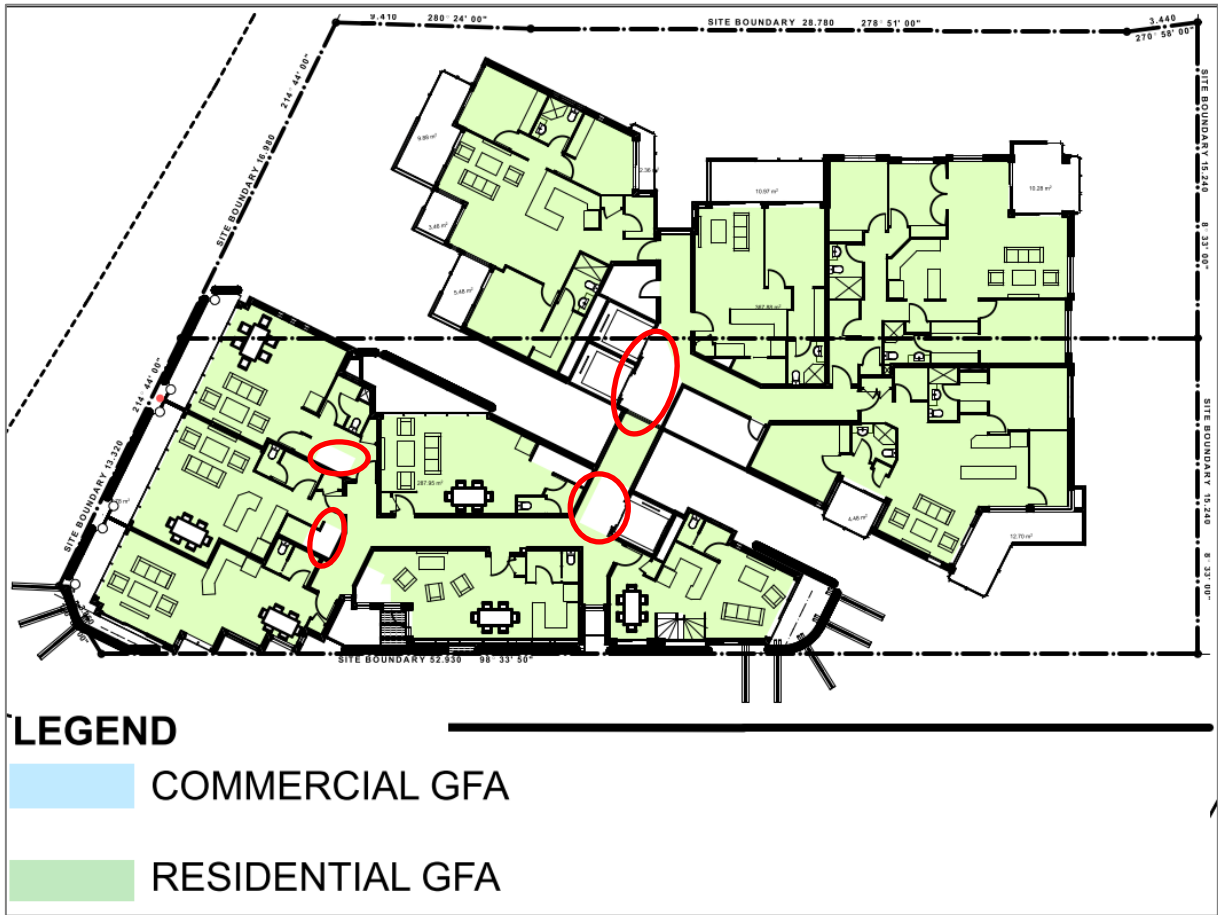


Figure 7 – GFA Diagram extract

Reason for Refusal - Flooding

5. 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.

Applicants response

With respect to climate change, the Cubo Consulting Flood Assessment and Water Cycle Management Plan which accompanied the application, specifically addressed climate change at Clause 5.3.7.

It is widely accepted that the science surrounding climate change and the debate relating to sea level rise continues. For example, the Elected Body of Central Coast Council at its meeting held

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on Monday 26th October 2020, debated the "pros and cons" of a training wall on the southern side of The Entrance Channel and the means to mitigate both flooding and beach erosion within the Tuggerah Lakes system and adjacent to The Entrance Channel. That debate included advice that a "broad" channel opening may effectively and perpetually reduce lake levels by between 300-400mm and expose the shallow shoreline for extended periods.

To the extent necessary and to the extent possible, climate change has been addressed.

"Shelter in place" while identified as an option for residents (given the finished floor levels of 2.7AHD being 500mm above the 1% AEP and PMF levels) will provide satisfactory refuge. Under Clause 5.3.3 of the Cubo Consulting report, while identifying refuge as an option, also identifies the fact that the site does have a suitable egress to flood free land generally east of the site where maximum depth of flood (storage) water with negligible velocity would not exceed 0.5m.

To the extent necessary, the application identifies that the proposal provides both safe refuge above the PMF and, allows for safe egress from the site.

Comment

A review of the original flooding assessment has resulted in council accepting the findings of the Cubo Consulting report with regard to climate change, particularly in the absence of an adopted climate change action plan.

Council's Climate Change Policy (CCP 2018) (adopted July 2019) recognises the need to address climate change impacts on development. A climate change action plan, which includes a sea level rise policy, is currently being prepared by Council as part of the broader framework for climate change planning. The timeframe for the finalisation/formal adoption of the document is unknown at this stage.

Council's current position on climate change is to include climate change consideration within the 0.5m freeboard allowance for planning purposes. A future Floodplain Risk Management Study and Plans, prepared by Flooding Consultants, will provide the basis for providing direction regarding climate change considerations (sea level rise and increased rainfall intensities) to be adopted in the flood modelling and planning, based on the Council's adopted climate change and sea level rise policy.

The applicant applied for, and received, a Flood Level Certificate (dated 15 October 2019) that provides a design flood level of the 1% AEP (100 year) of 2.2m AHD, a freeboard of 0.5m and a minimum habitable floor level of 2.7m AHD. It's also noted that the PMF is 2.7m AHD also. The proposed development complies with these flood levels.

Although shelter in place is not a position considered acceptable by Council, a low hazard safe evacuation route to the east can be achieved in a 1% AEP event therefore, flooding risk can be appropriately managed.

The applicant has now appropriately addressed the flooding and the proposal is considered satisfactory regarding clause 7.2 of WLEP 2013.

Reason for Refusal – Stormwater Quality

- 6. 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.**

Applicants response

Stormwater management is as provided for in both the architectural and engineering plans accompanying the application. Plans incorporate a 10,000 litre rainwater tank for water storage and reuse in non-potable (irrigation) applications. The receiving waters within the Tuggerah Lake are literally metres from the site, removing the need or practicality of on-site detention. Irrespective of that, all stormwater exiting the site will do so via “wet detention” in either pits or tanks as indicated graphically within the Cubo Consulting plans submitted with the application.

The vehicular access arrangements are designed to exclude flood waters, manage rainwater and designed to comply with relevant (AS2890) requirements.

The application does adequately address the matters raised by Clause 7.9 of the Wyong Local Environmental Plan, 2013.

Comment

A review of the information provided with the s.8.2 application has satisfied council that an on-site stormwater detention and drainage system is not required due to the close proximity of the receiving downstream system. The pollutant loads generated from the development will not significantly affect the quality of stormwater runoff leaving the site as most of the impervious areas on the site consist of roof and landscaped areas that are not considered pollutant generating land uses.

The basement carpark is covered and drains to a sump pit. The stormwater drainage plan has proposed pit filter inserts within surface inlet pits and a sediment control pit at the boundary as treatment measures to address water quality for the development. The development connects to Council’s existing street stormwater drainage system and discharges to Gross Pollutant Traps (GPT’s) installed by Council to treat stormwater runoff from the local catchment.

It is considered that applicant has appropriately considered and addressed water quality for the proposed development. Accordingly, the proposal is satisfactory with regard to clause 7.9 of WLEP 2013.

Reason for Refusal – SEPP 65 Design Principles

- 7. 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), including design quality, context, neighbourhood character, built form and character, density, amenity and safety.**

Applicants response

The writer has a contrary view to that enunciated in reason for refusal No. 7 and accepts the design innovations of Thrum Architects as consistent with and/or superior to the design quality principles and objectives of the "Apartment Design Guide".

For example, the design incorporates a diagonal through-site connection integrating safe, compliant and accessible pedestrian path with ground floor reception and commercial elements. That path contributes to the activation of both street frontages, an element enhanced particularly in the amended plans via the incorporation of additional "alfresco" space and a permeable frontage to the full extent of the property from Tuggerah Parade to and around the corner into Pacific Street.

That "permeability" is enhanced by the incorporation of five separate pedestrian access points, one providing integrated access from the basement via a stair to the ground level communal space and then to Tuggerah Parade; a second providing direct stair access to the alfresco terrace; a third via the pedestrian ramp providing compliant and accessible access to the central breezeway, residential foyer, café alfresco and other commercial tenancies. A fourth entry point off Pacific Street provides a "grand" stair of particular utility for wedding party arrival; an entry point immediately adjacent to the confluence of the controlled vehicular access and pedestrian ramp adjacent to the north easternmost corner of the site affording compliant emergency egress (with maximum depth of 0.5m in the PMF – a depth permitting Ambulance or other emergency vehicle access to that point and/or pedestrian egress).

With respect to "design quality" and in addition to BCA compliance requirements, the building design integrates natural synergies in the commercial component with complementary "serviced apartment" accommodation and/or shop top housing opportunities with a variety of floor plans and inclusions devoid of any "cookie cutter" element of design.

Separation of the building component parts via the three dimensional through-site connection embeds an air of spaciousness, light and ventilation and activity. The multi-faceted

northernmost elevation embeds articulation and provides an attractive elevation to neighbouring properties, while the light-weight attachments and architectural features to the southernmost building component, both reinforces the commercial corner, integrates perimeter landscaping with the public domain and maintains physical separation from the north and east.

With a "glass half full" perspective, the reader in review of this Application for Review, is encouraged to take a broader perspective and appreciate the buildings inclusions, not the least of which is compliance with the required minimum finished floor level.

That perspective will assist the reader in appreciation of the design inclusions with respect to:-

Context

The buildings inclusions, orientation and design reflect the identified opportunities under the zone provisions taking advantage of the north and north-western exposure for alfresco dining while protecting that venue from "out of season" impacts from the south. In the master planning process, it was made a particular design priority that the alfresco cafe tenancy not be placed on the street corner, but kept well away from the adverse exposure to southern winds there. The northern location selected for it fronting Tuggerah Parade, will deliver sustainable year round comfortable and viable usage.

Neighbourhood Character

Town planning controls and objectives contemplate and indeed encourage a transition from the existing neighbourhood character (typified by a mixture of ageing residential and holiday accommodation). The proposed building is consistent with the five-storey building element, scale and bulk contemplated for the precinct and housing a complementary mix of uses.

Built Form and Character

The five-storey scale of development is consistent with that contemplated in the statutory controls. The built form as designed, presents as two separate building elements separated by an intervening "open to the sky" three-dimensional open space which both integrates pedestrian access, and acts as a highly effective visual marker of that place of access.

Consistent with the ambition to establish a "node" to the lineal city of the Long Jetty ribbon development, the buildings-built form anchors the future connectivity of the site to the Pacific Street and The Entrance Road intersection.

In the process that led Council strategic planners to cement the 'B2 Local Centres' zoning as being the most appropriate for this particular site, it would have been recognised that the whole of this 3km long western side of the peninsula, is comprised of an uninterrupted continuous ribbon of low rise residential usage, of a type that under-serves (and under-utilizes) the major community asset there, being the very large recreational lake shore parkland along that strip.

The B2 Zoning on this site clearly recognises and promotes the town need for a nodal focus of higher density and commercially oriented building forms to be placed in this strategically important location, in order to address & reflect the importance of this community shore line

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asset, in a synergistic position that also couples functionally at its closest point with the Long Jetty town Centre.

Density

While generally compliant and achieving the height ambitions of five storeys, the buildings design skilfully accommodates floor space marginally above the statutory provision.

Amenity

The proposal improves existing amenity by removal of underperforming assets and replacement with a building which enhances residential amenity via the provision of a variety of apartment designs and by management, the inclusion of serviced apartment and permanent residential accommodation.

Regarding Amenity, refer to information and analysis provided:

- under heading of 'Principle 7 on page 16 below,*
- in various items on page 27 below.*

Safety

The design incorporates CPTED principles via the incorporation of perpetual commercial attendance during business hours and to the extent now ubiquitous, incorporates motion activated lighting and CCTV coverage of all common areas in addition to the provision of appropriate design inclusions throughout (inclusive of basement carpark and service areas).

The Architect has reaffirmed that in the design of this development, the ten SEPP 65 design principles, as reflected in the NSW Design Guide have been observed, addressed. They are:

Principle 1: Context

The context of the site of the subject development is compatible and contextually appropriate for the type of building proposed, for the following reasons:

- The site is located very close to (and on the west edge of) the Long Jetty commercial town centre.*
- It is located in a sector of Long jetty that is a precinct in transition,*
- It is in a strategic location where there is a large expanse of vegetated public reserve recreation land located directly opposite.*
- It is a corner site fronting relatively under-utilised streets.*
- It is a nodal location being at the closest corner site to an iconic 'long jetty' in Tuggerah Lake opposite,*
- The site is located on a pedestrian bee-line / most convenient pedestrian route between the main high street of Long jetty town centre, and that 'long jetty' wharf.*
- The Zoning for the site is 'B2 Local Centres' which includes promotion of building envelopes of 5 storeys.*

For the above reasons, the importance and sensitivity of the site is recognised, and acknowledged to be warranting of a building of quality that contributes to the desired future

character of the area.

Principle 2: Scale

As described above, the site is in a precinct in transition. It is also a sector immediately adjacent to the Long Jetty town centre that already has a mix of apartment building, tourist parks, and commercial and residential buildings.

On the north side of the site is a three-storey apartment building, which is of approximately 50 years age.

On the east side, there is low scale residential building of even older vintage, which in view of that land's B2 Local centres zoning, would be not unlikely to be redeveloped in the future.

The size and scale of the building proposed by this application, is commensurate with the other recently developed multi-level apartment & mixed-use buildings located in other lake frontage locations along Tuggerah Parade with a 'town centre' zoning.

As is noted under 'context' on the preceding page above, the positioning of this development on its prominent street corner site, which is on the direct public pedestrian route linking between the heart of the Long Jetty town centre and the 'long jetty' wharf, is one that is deserving of reinforcement both architecturally and as a streetscape node. Accordingly, the development has been given a scale that provides an appropriate level of both visual and place-making strength.

Principle 3: Built Form

In macro composition, the built form of the subject development is comprised of two principle envelopes:

- (i) The predominantly four storey high 'commercially' themed portion of the building envelope located toward the south west (corner) sector of the site.*
- (ii) The five storey high 'residential' themed portion of the building envelope located toward the north east sector of the site.*

The philosophy for the design for this development, recognised that its function and content embraced two different main categories of use, being:

- a) commercial components of the building, including: café / multi- purpose commercial function room / retail / and serviced apartments.*
- b) Residential components, being residential apartments.*

The master planning created two separated building forms, as a response to the two categories. The two separated envelopes, then allowed the design of the building forms to better embody two differentiated design themes.

By composing of the building forms in this separated manner helped contribute to the character of the streetscape in a layered and more diverse manner, as well as ameliorate the effects of the scale of the built form on the public domain.

The creation of two separated building forms rather than a single larger one, also provided increased opportunity deep relief articulation between the positive envelopes.

The deep /breezeway' open space achieved between the two envelopes (and associated wide forecourts provided at each end), gives the following benefits:

- functional engagement and perceptual enrichment for pedestrians – macro visual relief within the streetscape*
- breaking up of building forms to reduce scale and perceived scale.*
- differentiation between built forms to allow them to better express the category of use within,*

The combination of the above built form treatments, help deliver an engaging building with articulation and appropriate scale, that contributes sensitively to the character of the streetscape, and the identity of the public domain in a high quality manner, in this sector of the Long Jetty town centre.

The design composition of the proposed built forms is carefully calibrated to respond in a visually respectful and complementary manner to the neighbouring sites.

Principle 4: Density

The density of this development has been formulated to arrive at a size calibrated as being optimum for this site and its context.

The building is located on a east/west elongated site situated on the north side of a wide public street, such that it does not cast any winter midday shadows on adjacent properties. The heights designed for the building, being of 4 storey and 5 storey envelopes, are given good physical separation distances from adjacent existing buildings.

One of the building forms is predominately 4 storey, whilst the other is 5 storey, both being within the number of stories envisaged by this zoning.

The benign nature of the density of this development is also confirmed by the large open space landscaped setback areas that are provided on site to the eastern and northern boundaries.

The density achieved, is commensurate with other similar mixed use residential and commercial developments fronting Tuggerah parade constructed in recent years, and is assessed as being appropriate for this site in particular, given its unique context.

Principle 5: Resource Energy & Water Efficiency

The following measures adopted in the design of the development will deliver ongoing high value and sustainable outcomes in energy and resource use efficiency.

- Water harvesting: Water harvested from roof surfaces and stored for reticulation reuse on irrigating gardens, and planters, and for car wash purposes as well as for wash down of exterior hard surfaces.*
- Performance / low E grade glazing to all external windows and other glazing.*

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- *Awnings & pergolas in various high exposure areas.*
- *Various vertical shading fenestration elements on the east / west facades*
- *Roof slab soffit thermal insulation blanketing.*
- *External walls thermally rated construction.*

The development will also satisfy the relevant BASIX and Section J compliance certificate statutory requirements for energy and other forms of resources efficiency.

Principle 6: Landscape

The design has endeavoured to observe and respect the sites existing natural and cultural features in a responsible and creative manner.

Generously sized landscaped areas have been provided in the design at Ground level, including in the large deep-soil communal open space areas located on the north and east rear sides. In addition, quality landscaping has been provided to the large roof top terrace communal open space.

The Amended set of Drawings which were submitted for the development prior to the issue of the notice of determination, contained modifications to the landscaping which:

- *further increased the size of soft landscaping areas,*
- *further increased deep-soil zones at ground level, including larger deep soil vegetation at street level, at the front of the building.*
- *and further enhanced landscaped planters at the roof-top terrace areas, to increase levels of privacy, and also options for intimate group behavior settings.*

Principle 7: Amenity

The design of the development achieves provision of good levels of design amenity. These have been designed to comply with the requirements of the NSW Residential Flat Guide benchmarks guidelines code.

The physical, spatial, and environmental aspects have been designed to be consistent with a quality development through the high importance being placed on the following in the design process:

- *appropriate room dimensions, optimal room shapes*
- *sunlight access*
- *natural ventilation*
- *visual privacy*
- *levels of acoustic separation*
- *storage*
- *the quality of indoor and outdoor spaces, efficient planning,*
- *quality provision of service areas*
- *and amenity of neighbours*

Detail description of these various aspects is provided in preceding sections.

Principle 8: Safety and Security

The principles of good design for a development's safety and security have been applied to the project.

The range of passive measures employed to optimise the levels of safety and security in and around the development include:

- natural overlooking surveillance of communal spaces*
- natural overlooking surveillance opportunities of public spaces*
- whilst achieving good levels of internal privacy for residents*
- minimising any non-visible or poorly lit areas*
- provision of clear and safe building access points*
- locked access control to the residential carpark and the residential communal spaces*
- locked after hours gates to the central pedestrian breezeway*
- separated lift lobbies for residential and commercial*
- providing quality public spaces*
- appropriate lighting*
- clear definition between public and private spaces.*

Principle 9: Social Dimensions

The social context and also the social needs of the local community, have been observed and responded to by the development in the way it has been formulated and designed.

Criteria including: the spectrum of user lifestyles, affordability principles, market need, and access to local social facilities, have all been factors applied to the design and make-up of the project.

Another social dimension aspect which this development has taken into account, is that this sector of the Long Jetty town centre is a precinct in transition.

The measures addressing social dimensions that are reflected in the final design, include:

- The broad variety of both serviced, & permanent residential apartment types and sizes provided,*
- A number of small one-bedroom apartments contributing to the stock of more affordable housing availability,*
- The mixed nature of the development in that it fosters a broad-based work / & living micro community setting,*
- Provision of large and well-focussed communal open space areas, to provide a wide range of high quality outdoor social settings for residents.*
- Allocation within the project for a café /restaurant tenancy.*

Principle 10: Aesthetics

Contributing to the external aesthetics conveyed by the development is the care taken in the design process to arrive at:

- *Appropriate façade proportioning,*
- *Articulation of elements,*
- *Division of apparent massing,*
- *Visual texturing,*
- *Colours composition.*

All of these aspects should contribute to the aesthetics of a building being able to respond to the context of the building in the environment.

In the streetscape context, the design solution has given quality visual differentiation and modulation of the envelopes, and also to the elemental language on their facades. They have been designed to respond directly to the context, scale, and nature of this site's location.

Regarding the range aesthetic considerations for the building as will be perceived from street level, the design has employed the following visual principles:

- *contribute to the character of the streetscape in a layered and more diverse manner, as well as ameliorate the effects of the scale of the built form on the public domain.*
- *creation of two separated building forms rather than a single larger one, providing deep relief articulation between the positive envelopes.*
- *functional engagement and perceptual enrichment for pedestrians*
- *macro visual relief within the streetscape*
- *breaking up of building forms to reduce scale and perceived scale.*
- *differentiation between built forms to allow them to better express the category of use within,*
- *the commercial envelope, being treated with a subtle nautical theming in its architectural language, and*
- *the residential envelope, being given a more conventionally residential theming in its architectural language.*

The above measures combine to assist in the improved proportioning of the building's parts, to reduce its apparent scale, and articulating it with elements and visual cues on the façades, giving it quality aesthetics and properly relatable on a human scale.

Comment

It is again noted that the number or location of the referenced serviced apartments are not specified on the amended architectural plans or review of determination statement.

The applicant has provided commentary on the Design Quality Principles as included in Schedule 1 of SEPP 65 (noting that they have referenced the historic 10 principles rather than the current 9 principles), however, the s.8.2 application does not contain an updated design

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verification statement from the registered architect having regard for the amended proposal. The applicant has still failed to provide any written consideration of the objectives or design criteria specified by the Apartment Design Guide.

Clause 30(2) of SEPP 65 states that 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 (ADG) for the relevant design criteria.

Similarly, Clause 50 (1A) and (1AB) of the *Environmental Planning and Assessment Regulation 2000* requires a development application to include a statement by the qualified designer, and that the statement must:

- (a) verify that he or she designed, or directed the design, of the development, and*
- (b) provide an explanation that verifies how the development—*
 - (i) addresses how the design quality principles are achieved, and*
 - (ii) demonstrates, in terms of the Apartment Design Guide, how the objectives in Parts 3 and 4 of that guide have been achieved.*

The minor amendments to the proposal have not adequately addressed the issues raised with the original development application with regard to the design quality principles including design quality, context, neighbourhood character, built form and character, density, amenity and safety.

The objectives for mixed use developments outlined in the ADG include the need for the development to address the street, provide active frontages, provide for diverse activities and uses and avoiding blank walls at the ground level. The amended proposal is still proposing a function centre (as stated in the s.8.2 application statement) which is not considered to generate adequate commercial activity, and the proposal now incorporates a commercial foyer, both of which are not considered to adequately activate either street frontage given the anticipated intermittent use of the function centre and the very nature of a commercial foyer. Only three uses are identified on the frontage. The café is considered an acceptable activating ground floor use, however, the function centre (depicted as a 'commercial multi-functional tenancy' on the plans) and commercial foyer are not.

Moreover, the ADG requires the safety and amenity of residents to be maximized within the design of a mixed use development. In this regard, residential circulation areas should be clearly defined and may include:

- residential entries separated from commercial entries and directly accessible from the street;

The residential entry is provided in the middle of the building via the breezeway. The residential foyer can be accessed by an office space, service corridor and storage area. The residential entry is not accessed directly from the street.

- commercial service areas separated from residential components;

The service corridor for the café, a commercial tenancy, nominated office space, storage area and utility room, including the access to the unsecured communal open space area, all have access to the residential foyer and lifts which access the apartments in the upper levels.

- residential car parking and communal facilities are separated and secured;

The residential car parking area is combined with the visitor and staff parking within the basement. There is no area in the basement that is secured for residents and it is unclear if there is parking in the basement for the serviced apartments as the parking spaces are nominated as resident, visitor or staff.

The communal open space area is not secure and can be accessed by the café or a general public entry from Tuggerah Parade located on the north western corner of the site.

- security at entries and safe pedestrian routes are provided;

The pedestrian routes for residents are shared by the commercial/retail premises proposed on the ground floor and their visitors, and visitors to the serviced apartments.

- concealment opportunities are avoided; and

The design has tried to minimize concealment opportunities in the amended design with the reconfiguration of the ground floor area on the northern side of the breezeway however, concern is still raised with the proposed narrow diagonal alley layout which remains with limited sight lines and shared use between the residential and non-residential uses.

- landscaped communal open space provided at podium or roof levels.

Whilst a roof top communal open space has been provided, the amended plans have introduced a commercial element to the area which is considered undesirable and contrary to the provision of secure access for residents within the development.

Reason for Refusal - Apartment Design Guide

- 8. The proposal does not satisfactorily achieve the objectives and design criteria of the Apartment Design Guide, including**
- a) insufficient solar access (only 61%), Ground floor communal open space which is extensively shadowed,**
 - b) Inadequate building separation and privacy impacts to neighbouring properties and 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,**
 - c) insufficient deep soil landscaping, façade treatment, unit layout and space planning.**

Applicants response

The quantities of direct solar radiation that will be received in the ground floor communal open space receives are of a high standard for this category of mixed use development on land in the zoning of 'B2 Local Centres'. The ground floor communal open space is positioned on the north side of the building's long axis, and so its design optimises the capture and enjoyment of the solar radiation entering the site. It is the existing adjacent building located on the neighbouring site to the north which will be a source of some shading to parts of the communal open space at some times of the year.

It is important to note that residents of this development will enjoy a variety of open space options, including that of the very large and underutilised foreshore parkland located on its doorstep immediately opposite.

The building provides excellent separation distances from those on neighbouring properties, and within the development itself, every apartment has been individually designed and detailed with windows and balconies oriented away from each other, to meet the quality levels of separation and privacy from others as advocated by the NSW Apartment Design Guide.

Regarding way-finding, and the pedestrian breezeway and commercial and residential access, the amended plans which were submitted have enhanced the separation and prominence and legibility arrangements of the pedestrian entrances, by the following measures:

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- *Substantially increased the size of the set of entrance doors to residential entrance foyer, and substantially increased the size of the foyer itself,*
- *Moved the location of the residential entrance to be east of the fire stairwell, (from its former location to the west of the stairwell), which places it closer to the main pedestrian approach route from the street, so that it is positioned prominently at the arrival point at the top of the pedestrian ramp.*
- *Making the main entrance doors now in direct sight line from the main entrance steps, and also visible from the street,*
- *And by the deletion of the other set of entry steps from the middle of the southern street frontage (on the former plans), which were adversely distracting prominence and legibility away from the main set of entrance steps from Pacific St. This reinforces the status of these steps and accompanying accessible ramp, making it read unambiguously as the main entrance.*

Regarding deep soil landscaping, facade treatment and unit layout space planning, the following is noted:

As covered under heading 'Principle 6' on the preceding pages, the Amended set of Drawings submitted for the development contain modifications further increasing deep-soil zones at ground level, including larger deep soil vegetation at street level, at the front of the building. The development incorporates generous quantities of deep soil landscaping, which exceed those that are normally provided in zone B2 Local Centres sites, and which also exceed the quantities provided in similar multi-storey mixed use developments approved fronting Tuggerah Lake.

Refer to notes covered under headings 'Principle 3' and 'Principle 10' on the preceding pages, regarding facade treatment.

Regarding unit layout space planning, the internal layouts within both categories of apartments, being the serviced apartments and also the permanent residential apartments, contain good quality space planning. The internal layout of each apartment including the furniture options displayed, demonstrate spaces which are liveable, practical, and space efficient, commensurate with the standards in the marketplace for modern comfortable serviced and non-serviced residential apartments.

Comment

An independent architect reviewed solar access to the apartments as part of the assessment of the original proposal, in line with the requirements of SEPP 65. This review found solar access to be unsatisfactory, with only 61% (14/23) of the proposed apartments achieving 3 hours of solar access mid-winter. This amount of sunlight falls significantly short of the ADG's design criteria (70%).

The proposal, as amended, results in two less units at ground floor with no other changes at the upper floors. Accordingly, 67% (14/21) of units now achieve 3 hours of solar access mid-winter.

No amendments have been made to the location of the residential communal open space at ground level. It remains located at a part of the site that is heavily impacted by the neighbouring residential flat building at 134 Tuggerah Parade and is overshadowed between 9am and 3pm during the midwinter solstice. However, in the context of the adjacent foreshore reserve, residents would have adequate access to recreation areas with solar access.

No changes have been made to the building separation. Significant variations to building separation requirements to the north and east remain, particularly at the 5th storey which requires 9m separation between habitable rooms /balconies and rear and side boundaries, and where a maximum of 6m and minimum of 2m is proposed. The applicant has not quantified, acknowledged or justified the non-compliances with the building separation objectives or design criteria for building separation and privacy of the Apartment Design Guide.

Privacy to the south-facing bedrooms in the neighbouring apartment building at No.134 Tuggerah Parade have not been addressed. Significant privacy impacts remain, primarily as a result of building separation distances between neighbouring bedroom windows and balconies.

Adequate visual and acoustic privacy between apartments within the development still has not been achieved in the design, as many apartments continue to be exposed to cross-viewing between windows of habitable rooms or balconies.

The narrow diagonal alley layout remains with limited sight lines and remains shared between the residential and non-residential uses.

The independent architect identified the following issues with the apartment layouts, in addition to other amenity issues:

- *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.*
- *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.*
- *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.*

No changes to the internal layouts of the units have been proposed in this review of determination, with no discussion of these issues presented by the applicant.

4.1 Section 8.2 Review of Determination - DA/162/2020 - Mixed use development - 135-136 Tuggerah Pde, Long Jetty (contd)

The proposal, as amended, provides some minor amendments to the basement to allow for some additional deep soil planting, as shown outlined in red at Figure 8. These amendments do not provide significant opportunities for deep soil planting at the Pacific Street frontage that would assist in providing an appropriate character and transition in scale at a zone interface with the adjacent R2 Low Density Residential zoned land. It is noted that no amended landscape plan has been provided.

The documentation does not satisfactorily address the objectives and design criteria of the Apartment Design Guide.

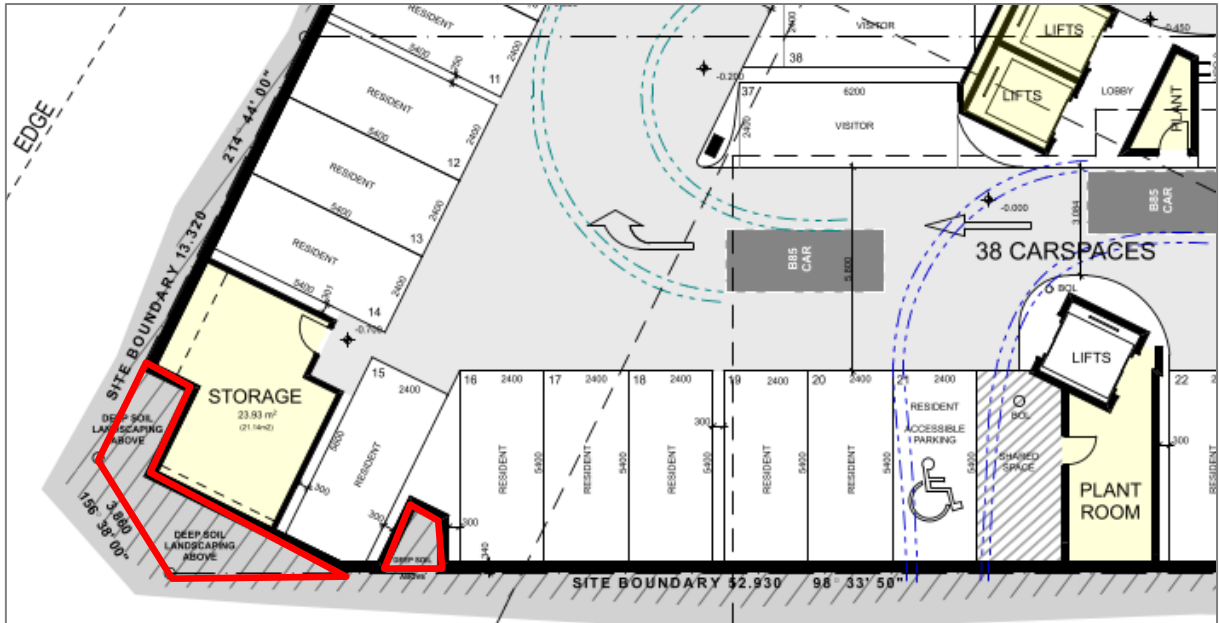


Figure 8 – Basement Level – additional deep soil area

Reason for Refusal – Car Parking

- 9. Car parking is inadequate for the intended uses, nor does it provide required accessible spaces.**

Applicants response

This is an incorrect assertion and ignores the advice tabled with the application prepared by traffic consultants – SECA. In any event, plans amended and furnished to the Council prior to its issue of determination "reversed" the circulation arrangements to a generally clockwise direction of traffic.

All residential demand for carparking was and is accommodated on-site, inclusive of "accessible spaces" as detailed on plans.

4.1 Section 8.2 Review of Determination - DA/162/2020 - Mixed use development - 135-136 Tuggerah Pde, Long Jetty (contd)

On the submitted amended set of drawings, additional dimensions and other information was added, fully demonstrating the compliance of the car spaces and their dimensions, including the compliance of the aiseways and accessible spaces.

Parking within the public domain is well catered for and anticipated by inclusion in recent civil works and upgrade to the full extent of Tuggerah Parade.

Comment

The amended plans indicate the provision of a total of 38 car spaces within the basement. These spaces include four stacked spaces that are not in accordance with the requirements of Chapter 2.11 of the WDCP 2013. Discounting these spaces reduces the provision of onsite parking spaces to a total of 34 spaces.

The s.8.2 review of determination application does not include an updated Traffic and Parking report. The Traffic Impact Assessment submitted with the original application references the parking requirements of both the WDCP 2013 and the *RMS Guide to Traffic Generating Developments*. The proposal does not meet the locational requirements of 3J-1 of the ADG that sets minimum car parking requirements. As such, car parking should be provided in accordance with WDCP 2013 and not the *Guide to Traffic Generating Developments*. If the applicant seeks to rely on the RMS Guide then adequate justification must be provided. The s.8.2 Review has not provided such justification.

WDCP 2013 Chapter 2.11 Parking and Access requires 27 spaces for the residential component, plus five visitor spaces which results in a total of 32 spaces required for the residential component of the development (noting that in the absence of any specifically nominated serviced apartments on the architectural plans or within the s.8.2 statement, the car parking has been based on residential car parking rates).

The café (73.9m²), 'Multi-function' tenancy (190m²) and rooftop commercial cabana /servery (32.2m²) are classified as 'Restaurant and Function Centre' and require 15 spaces per 100m² of GFA, requiring a total of 45 spaces plus one servicing space.

The commercial tenancies (20.01m², 51.05m² and 84.97m²) are classified as Business/ Office premises and require 1 space per 40m² of GFA, resulting in a requirement of four spaces, plus one servicing space.

Having regard for the above, the total number of car parking spaces required for the development is 81 spaces plus 2 servicing spaces. This results in a 48 space or 54% variation which is considered unacceptable and not supported.

In relation to the accessible spaces, the plans have been amended to be compliant (or can be conditioned so that they comply prior to the release of any Construction Certificate).

Reason for Refusal – SEPP (Coastal Management) 2018

10. The proposal does not adequately address the provisions of State Environmental Planning Policy (Coastal Management) 2018 related to visual amenity for a highly visible coastal location, bulk and scale and stormwater management.

Applicants response

Rather than particularising observations, the author simply asserts that the proposal would result in an unsatisfactory visual amenity in a highly visible coastal location.

It is a reasonable assumption that Council, as the author of the Statutory Controls which permit buildings of five storeys in this locality, gave at least some consideration of the potential visual impact of buildings of that scale in the machinations that led to the development of those Statutory Controls which permit development opportunity to five storeys. Any critical comment of the visual amenity and scenic qualities must thus be considered in the context of the anticipated development likely to occur.

The visual amenity and scenic qualities of this particular part of the coastline is observed:-

- from the foreshore aligning Tuggerah Parade;*
- from the body of Tuggerah Lake; and*
- from the western foreshore.*

When considered in the context of the visual contribution to landscape that a building of the scale contemplated by and indeed encouraged by the Statutory Development Controls makes, it is difficult to see how the author of the report's assertion that "the proposal would result in an unsatisfactory visual amenity in a highly visible coastal location" could be sustained.

In close proximity from the public domain in either of the public streets which the site fronts, the building will contribute to the streetscape in a manner consistent with the urban design controls applicable which includes publicly accessible commercial facilities and residential inclusions.

From localities immediately adjacent and to the north and south within the public foreshore reserve on the western side of Tuggerah Parade, the buildings presence will diminish with distance/horizontal separation.

Viewed in the context of the built "backdrop", being a combination of residential and commercial buildings in the existing and developed residential/commercial estate, the buildings impact must be considered against that which exists on the adjoining land to the north (three storeys). It must also be considered in the context of that which is planned to replace adjoining and adjacent developments to a similar scale to that contemplated and planned for by the adoption of the development controls which apply.

4.1 Section 8.2 Review of Determination - DA/162/2020 - Mixed use development - 135-136 Tuggerah Pde, Long Jetty (contd)

When viewed from Tuggerah Lake and vantage points further west and to the south, the impact of the skilfully designed building diminishes with distance and may contribute to the skyline in a manner consistent with that contemplated by the planning investigations that led to the implementation of the zoning provisions that permit the development.

To be visible above the foreshore vegetation, an observer would need to adopt a position approximating the distance from the foreshore of the iconic structure from which the locality derives its name. Closer than that distance the "parallax" effect of the foreshore vegetation progressively reduces the exposure of the building (built to five storeys as contemplated in the zone controls). The skyline from such a location reveals the communications tower at Long Jetty in the distance and existing public buildings in the foreshore.

There is no identifiable "headland" for the extent of the foreshore considered immediately relevant to the proposal.

When objectively considered in the context of the elements of the existing landscape, the variable proximity of any observer (near or far) and the published aims and objectives of the zone and the subordinate controls which apply, there is no sustainable argument that the proposal results in an unsatisfactory visual amenity in a highly visible coastal location. No reliance ought to be placed on the separate discussion under SEPP 65 in relation to the visual assessment test of State Environmental Planning Policy (Coastal Management) 2018.

Comment

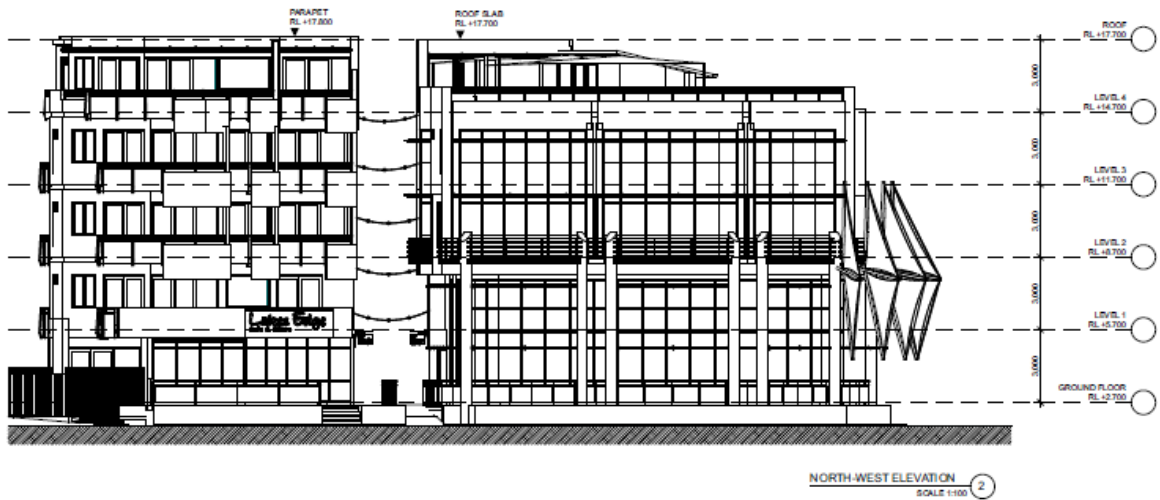
The site is identified under the State Environmental Planning Policy (Coastal Management) 2018 as being located within a coastal use area (CUA). Any development on land identified as a CUA is required to be in accordance with Clause 14 – Development on land within the coastal use area. Clause 14(1)(a) includes matters for consideration that the consent authority must take into account in order to grant consent. The statement accompanying the Section 8.2 review of determination responds to Clause 14 as detailed above.

Despite the submission made by the applicant, it is still considered the proposal would result in an unsatisfactory visual amenity in a highly visible coastal location. 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.

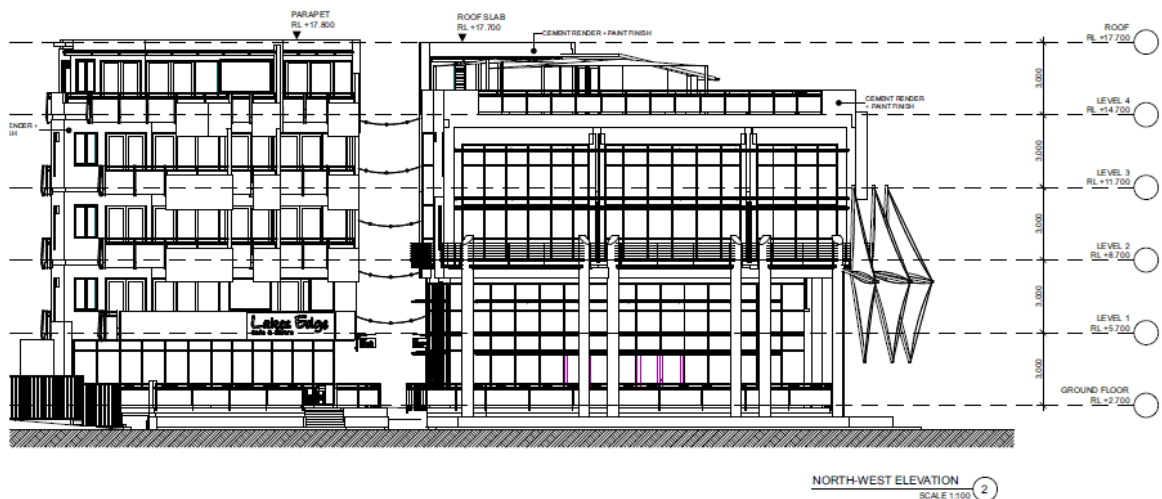
As depicted in the south west elevation of the original and amended proposal (refer proceeding figures), the proposed building would have an overbearing impact on the lakeside reserve as its bulk, scale and massing makes the building appear bigger than necessary. As per the urban design comments received for the original application, which are still applicable for the amended proposal given the minimal changes made to the design, the 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

4.1 Section 8.2 Review of Determination - DA/162/2020 - Mixed use development - 135-136 Tuggerah Pde, Long Jetty (contd)

architectural character, all contribute to the bulk, scale and size of the development which is considered incompatible with the current and desired coastal and built environment.



Above: Original proposal -elevation to the Tuggerah Lakes



Above: Amended proposal- elevation to Tuggerah Lakes

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:

- 13) (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,*
 - (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.*
- (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.*

The applicant has not addressed this clause in either the original development application or the Section 8.2 review of determination application. This issue was detailed in the assessment report for the original application.

The previous assessment raised concerns with 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 did not provide sufficient stormwater quality information to demonstrate that the proposal will not have an adverse impact on the water quality of the lake.

The information received as part of the s.8.2 application has demonstrated that the pollutant loads generated from the development will not significantly affect the quality of stormwater runoff leaving the site, therefore, it is considered the provisions of Clause 13 have been satisfied.

Given there have been minimal changes to the overall design of the development, the original reason for refusal relating to the impacts on visual amenity of the coastal location, as per the provisions of clause 14, remain.

Reason for Refusal – Insufficient Information

11. Insufficient information:

a) A valid BASIX Certificate has not been submitted and waste management is not demonstrated to meet Chapter 3.1 of Wyong Development Control Plan 2013 and the former Wyong Shire Council Waste Control Guidelines.

b) A Loading Dock Management Strategy as referred to in the Traffic Impact Assessment report by Seca Solution has not been provided.

c) Demolition details are inconclusive or not clearly indicated There is insufficient information including levels at the Tuggerah Parade property boundary.

d) There is no acoustic report. A plan of management has not been submitted to address the amenity conflicts arising from tourist and visitor accommodation onto permanent residential apartments, nor the intended use or operation of the proposed “function space”.

e) 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.

f) No longitudinal driveway profile has been provided, nor dimensioned basement plans.

Applicants response

BASIX and Waste

An updated BASIX Certificate addressing the amended plans is to supplement this Application for Review.

Architectural plans identify separate residential and commercial waste storage room accessible by covered walkway with bins deliverable for collection from the common loading bay designed to accommodate infrequent rear loading by comb lifter of waste and recyclables.

If more particularised details with respect to BASIX Certification and/or identification of operational aspects of the loading arrangements were warranted and a request made by Council, then that request would have been met to the extent necessary.

Loading Dock Management Strategy

A building of twenty-three apartments (now twenty-one apartments) together with commercial content will likely require the appointment of a Building Superintendent. The Building Superintendent's duties would in normal circumstances include routine and regular maintenance of common space as well as routine and regular maintenance of the fixtures, fittings and furnishings within the common space as well as management of regular services not limited to, but including the coordination of deliveries and waste collection. It is not an unusual circumstance for building owners and for that matter, consent authorities, to rely on the practical application of such maintenance arrangements and, if a Loading Dock Management Strategy was outstanding, then that same communication and/or a condition of consent might have addressed that shortcoming. We do not consider a Loading Dock Management Strategy relevant at this stage, but should Council see an advantage, then the Council might attach an appropriate condition of consent requiring same.

Demolition and Levels

It is, was and remains self-evident that all existing improvements require removal and/or demolition. The existing elements on site are almost entirely of a prefabricated modular nature, of a type that do not require demolition. Given that it would be environmentally irresponsible and cost irrational to demolish them, they will be transported off site in module and half module form.

While most of the assets will be "bodily removed" and redeployed elsewhere, the small quantity of insitu elements such as pavement slabs and minor footings will require excavation and removal. Concrete slabs and footings, once excavated, would be directed to concrete recycling together with any masonry (bricks or concrete blocks) and earthenware/ceramic pipes.

Survey information which was relied on in the compilation of the architectural plans is reproduced at least in part on the Site Analysis Plan which identifies inter alia, the extent of the existing concrete driveway with level details throughout and particularly, along the full frontage of both Tuggerah Parade and Pacific Street.

Those RLs confirm the generally level nature of the site from 1.38AHD in the north westernmost corner; 1.39AHD in the south westernmost corner and 1.48AHD in the south easternmost corner.

Acoustic Report and Plan of Management

No acoustic report was commissioned, nor was a Plan of Management considered necessary.

4.1 Section 8.2 Review of Determination - DA/162/2020 - Mixed use development - 135-136 Tuggerah Pde, Long Jetty (contd)

The management of mixed-use buildings is a matter of long-term management and for Body Corporate consideration. Any "amenity" conflicts apprehended by the Council may have been dealt with if particularised.

In any event, it is the obligation on the ownership and management structure via Body Corporate provisions to ensure that "neighbourly relations" are managed and maintained via the implementation and policing of use and occupation provisions for both visitors to and permanent residents of the serviced apartments and shop top housing elements of the building.

The use and occupation of the commercial space in either single or multiple tenancies is a matter for commercial resolution; resolution which would include the implementation of appropriate measures with respect to shared use of the common facilities inclusive of the loading dock; discrete and separate use of the commercial and residential garbage facilities; shared use and access to common facilities including the parking space, milling areas, pedestrian lobby and alfresco space as might be experienced in any mixed use building, tourist or otherwise.

For abundant clarity, we advise that the intended use of the function centre is function centre as defined in the Wyong Local Environmental Plan, 2013. If it is that the Council requires particular details of the function centre use and operation, then it as the consent authority, has the benefit of the ability to attach a condition of consent requiring formal and separate approval for the use and occupation of the commercial components of the building.

Social Impact Assessment – loss of affordable housing

No Social Impact Assessment is warranted as there are no current tenants within the site the subject of the application and as a consequence there is no loss of affordable housing, nor obligation on the proponent in that regard. It is mischievous to include this reason for refusal in the absence of any request for information and thus, denying the Applicant from addressing this and other shortcomings during assessment and prior to determination.

Longitudinal Driveway Profile

Sufficiently clear plans and long sections with centreline levels describing the driveway servicing the basement were included in the original lodgement set. Traffic Consultants (SECA) confirm its suitability and consistency with relevant design standards. We are aware that long sections are sometimes preferred with both internal and external design levels incorporated.

Had that been requested during the assessment period, then that detail could have been furnished. In any event, the Council can be satisfied that vehicular access to, from, in and about the basement is adequately accommodated, drained and protected from inundation in 1% AEP flood events.

On the amended set of drawings, additional dimensions and other supplementary plan information has been added, to fully demonstrate the compliance of the driveway gradients

4.1 Section 8.2 Review of Determination - DA/162/2020 - Mixed use development - 135-136 Tuggerah Pde, Long Jetty (contd)

along the internal (shortest edge) of the car ramp. The dimensions and RLs along the inside edge of the ramp provide a superior level of mathematical certainty as to the compliance of these ramp gradients, than the alternative of a long section along that edge would do.

Comment

BASIX

A valid BASIX Report has now been provided.

Waste

The particulars of the issues with waste were fully detailed in the Assessment Report (See pages 30 and 36-39 of **Attachment 7** Original Development Assessment Report). The Waste Management Plan lodged with the original application was inadequate for the scale of the proposed development. The Assessment Report stated that an Operational Waste Management Strategy to identify resident, tenant, and caretaker responsibilities is required as well as the provision of the Loading Dock Management Strategy as referred to in the Traffic Impact Assessment report by Seca Solution in so far as it relates to waste servicing, particularly as the proposal requires the servicing of waste by the reversing of the waste collection vehicle at an angle into the development, across the main driveway to the development.

The Section 8.2A plans indicates "Waste Truck 5.975m x 2.5m (Cleanaway Contractor Collection Truck, Bucher Rear Loader)", which suggest a different waste arrangement from that proposed under the original application. The amended plans also show relocated and reconfigured waste rooms. However, there is no discussion of this within the statement accompanying the Section 8.2 application and no updated Waste Management Plan has been provided.

The proposal does not provide sufficient information to address proposed changes to waste management for the proposal. The applicant has not adequately addressed Chapter 3.1 of WDCP 2013 or the Wyong Shire Council Waste Control Guidelines.

A Loading Dock Management Strategy

The Traffic Impact Assessment submitted with the original application notes "*Due to the constrained nature of the site the loading bay shall require service vehicles to reverse into the site and exit in a forward direction. This shall be subject to a loading dock management plan.*" The applicant has suggested that deliveries and waste collection would be managed by a building superintendent and that a Loading Dock Management Strategy is not relevant at this stage and could be conditioned. The applicant's own traffic consultant, Seca Solution, has recommended this strategy and the applicant has declined to provide the information prior to determination.

4.1 Section 8.2 Review of Determination - DA/162/2020 - Mixed use development - 135-136 Tuggerah Pde, Long Jetty (contd)

Given the design of the development and location of the loading bay, a Loading Dock Management Strategy is considered relevant and necessary prior to determination so as to satisfy the consent authority that the proposed reversing into the driveway will be achieved and managed and the development can be adequately serviced.

Demolition and Levels

As detailed in the original assessment report it was noted that the demolition details are incomplete regarding if existing structures on site are to be relocated or removed as waste, which would then inform the construction waste management plans.

The applicant has stated that: *"The existing elements on site are almost entirely of a prefabricated modular nature, of a type that do not require demolition. Given that it would be environmentally irresponsible and cost irrational to demolish them, they will be transported off site in module and half module form... and redeployed elsewhere"*. However, no details of where these 'modules' will be taken or how they will be re-use or recycled have been provided. While not being 'demolished' in the typical sense, the 'modules' are nevertheless materials that must be removed from the site and consideration of where and how they may be re-used or recycled should form part of the Waste Management Plan.

The amended plans have provided additional levels from the survey plan and this matter has been resolved.

Acoustic Report and Plan of Management

The s.8.2 application has not provided an acoustic report to address the acoustic impact of the development including air conditioning plant, conflicts between uses (residential, serviced apartments, function centre, commercial/retail) and the commercial rooftop cabana, both within the development and to neighbouring properties.

Insufficient detail has been provided in relation to the proposed serviced apartments (tourist and visitor accommodation). It is not indicated on the plans or within the statement where the serviced apartments are located, or how they will be managed. A Plan of Management has not been submitted to address the amenity or safety conflicts arising from tourist and visitor accommodation onto permanent residential apartments on the subject and neighbouring sites.

If the proposed function centre is to provide for weddings, parties and other such gatherings, insufficient detail has been provided in relation to its operation, particularly its hours of operation, how potential conflicts with the residential apartments will be managed etc. A plan of management, and a carefully designed development, is the most appropriate way of satisfying the consent authority that different uses within a mixed use development can be managed and the amenity, particularly of residents and adjoining development, will not be impacted upon.

4.1 **Section 8.2 Review of Determination - DA/162/2020 - Mixed use development - 135-136 Tuggerah Pde, Long Jetty (contd)**

The applicant has not sought to address or provide any further information to address this issue, advising this matter for consideration can be deferred for the consideration of future management. As the concerns by assessment staff directly relate to matters for consideration under s.4.15 of the EP&A Act, it is not considered reasonable to defer this information.

Social Impact Assessment – loss of affordable housing

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) but has advised that there are no current tenants and therefore there will be no impacts as it is not a current source of affordable housing accommodation within the community.

Longitudinal Driveway Profile

Councils Senior Development Engineer has reviewed the amended plans of the driveway profile (long-section), and confirmed they appear to be compliant with the grade transition and headroom requirements of AS2890.1 & 6.

However Councils Senior Development Engineer has identified that the two-way curved ramp providing access to the basement carpark does not currently comply with the minimum standard requirements of AS2890.1. The proposal has also failed to demonstrate that two vehicles can pass each other on the curved sections of the ramp on the plans (i.e. via turning templates) or commented on this in the Traffic Report provided by consultant (i.e. SECA solutions) (see **reason for refusal 9**).

Assessment:

Having regard for Sections 8.2 and 8.3 and 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 the following key issues, which are elaborated upon for the Local Planning Panel's information. Any tables relating to plans or policies are provided as an attachment.

Section 8.2 of the *Environmental Planning and Assessment Act 1979*

Clause 8.2 (1) (a) of the EP&A Act 1979 allows for the determination of an application by a local planning panel to be subject to a review under this Division.

Clause 8.3 (3) allows for the applicant to amend the proposed development and *the "consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development"*. The amended plans retain the inclusions, features and general configuration of the original building and it is considered

4.1 Section 8.2 Review of Determination - DA/162/2020 - Mixed use development - 135-136 Tuggerah Pde, Long Jetty (contd)

that the proposal remains substantially the same as that for which refusal was granted on 17 September 2020.

Clause 8.3(5) states that *"the review of a determination or decision made by a local planning panel is also to be conducted by the panel"*

Moreover, the Local Planning Panel best practice notes recommend the local planning panel reviewing the decision is comprised of different members that made the original decision. This panel is to be called the Decision Review Panel of the Central Coast Council local planning panel."

Wyong Local Environmental Plan 2013 – Zoning and Permissibility

The subject site is zoned B2 – Local Centre under *Wyong Local Environmental Plan 2013* (WLEP 2013). The proposed development is a mixed-use development and includes the following uses:

- business premises
- commercial premises
- function centre
- food and drink premises (retail premises)
- shop top housing (residential accommodation)
- serviced apartment (tourist and visitor accommodation)

The following definitions under WLEP 2013 are relevant to the proposal:

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.

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.

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

Note: Food and drink premises are a type of retail 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.

The proposed development is for a mixed-use building comprising 21 dwellings which are shop top housing, tourist and visitor accommodation (serviced apartments), commercial premises, food and drink premises (café), function centre, basement parking and associated works.

The development as proposed is permissible within the B2 zone.

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 dwelling/s must be in the *same building* as the ground floor retail premises or business premises *but need not be directly or immediately above ground floor retail premises or business premises*.

While the building is configured to be in 2 'parts', north and south, it is connected by a shared basement and 2 enclosed bridges at levels two and four. Taking the view that the

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proposal is a single building and not two separate buildings, the residential portion of the proposal can be characterised as shop top housing as there are business and retail premises (being the café, and commercial/office space that could be let as business premises) on the ground floor.

It is noted that the application as originally lodged, and now as amended as part of the Section 8.2 review, does not clearly identify the number or location of the proposed serviced apartments.

Having regard for Clause 2.3 of WLEP, 2013 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 has been considered against the B2 zone objectives. The proposal does provide a café at ground floor, which is an appropriate active, retail use. The remaining tenancies are shown on the architectural plans as:

- Commercial Multi-Functional Tenancy (or 'function centre' use as stated in the letter accompanying the s.8.2 application)
- Commercial tenancy x 2
- Wedding Planning Office/Photography Studio tenancy
- Office and Store within residential foyer
- 2 x undefined areas adjacent to the commercial foyer and Commercial Multi-Functional Tenancy

While the applicant states that "the ground floor provides a range of retail, business and entertainment opportunities", this is not reflected in the plans. While commercial premises and function centers are permissible within the zone, they are not considered to be appropriate use for the street level given the zone objective to maintain active uses at street level. 'Commercial' use is an umbrella term that covers a range of uses, including office use, which would not provide appropriate activation. Similarly the 'Commercial Multi-Functional Tenancy' (or 'function centre' use as stated in the letter accompanying the s.8.2 application) will provide activation and use at limited times only, and will not generally be 'open to the public' in the way other activating retail or business uses would, but will be limited to serve the people at any one function at a time.

The proposal has not demonstrated how it will minimise conflict between land uses within the site and B2 zone as well as the adjacent R2 Low Density Residential. Insufficient

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information has been provided in regard to the number and location of serviced apartments and how they will be managed. The applicant's submission refers to serviced apartments, however, the number or location of the serviced apartments are not detailed in the s.8.2 review of determination submission or shown on the architectural plans.

Commercial premises and a function centre are proposed at both the ground floor and within the rooftop cabana and open space. No detail is provided in relation to the hours of operation, number of patrons, potential noise sources or how any potential amenity conflicts with the residential apartments can be managed. A plan of management has not been submitted to address the amenity conflicts arising from tourist and visitor accommodation (serviced apartments), function centre and commercial premises onto permanent residential apartments and neighbouring residential uses.

The inconsistency of the proposal with the *B2 Local Centre zone* objectives is identified in recommended **reason for refusal 3**.

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. Council's height maps identify the site with a maximum building height of 16m. The proposal has a maximum height of 17.39m to the lift overrun. A variation request having regard to Clause 4.6 (Exceptions to Development Standards) of WLEP 2013 has been provided and is contained within **Attachment 5**.

Consideration of the Clause 4.6 Submission is included below.

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 **reason for refusal 1**).

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 proposal has an FSR of 1.75:1.

A variation request having regard to Clause 4.6 (Exceptions to Development Standards) of WLEP 2013 has been provided and is contained within **Attachment 6**.

Consideration of the Clause 4.6 Submission is included below.

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 (see **reason for refusal 2**).

Wyong Local Environmental Plan 2013 Clause 4.6 – Exceptions to Development Standards – Building Height

The proposed development breaches Clause 4.3 Height of Buildings development standard contained within WLEP 2013. The maximum permitted building height is 16m. The development proposes a building height of 17.39m, which represents a 1.39m or 8.7% variation.

The objectives of Clause 4.6 are to:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Unreasonable or Unnecessary and Environmental Planning Grounds

In accordance with Clause 4.6(4) (a) (i), development consent must not be granted for a development that contravenes a development standard unless:

- The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated in subclause (3).

Subclause 3 of Clause 4.6 provides:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The Clause 4.6 request submitted by the applicant (refer to **Attachment 5**) states how strict compliance with the development standards is unreasonable or unnecessary and how there

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are sufficient environmental planning grounds to justify the contravention, is summarised below:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

- *Strict compliance with the standard in this case is unreasonable because of the necessity for a building in this location to adopt a minimum finished floor level 500mm above the nominated 1% AEP level in order to satisfy Council's requirement for development in flood fringe localities.*
- *It is also unreasonable to force mathematic compliance of the standard given that the overall building roof complies with the numerical requirements, with only parapet and lift overruns exceeding the standard.*
- *It is unnecessary for the proposal to comply strictly with the standard as the departure does not compromise amenity either on or off-site, containing shadows primarily within the street alignments.*
- *Similarly, strict compliance (for "compliance sake") is unnecessary because of the absence of any manifestation or negative impact arising from the non-compliance.*
- *The height control contemplates five storeys. The proposal is five storeys. The departure, minor in any event, does not compromise the desired future character of the locality, nor detract from residential amenity.*

4.6(3)(b) Whether there are sufficient environmental planning grounds to justify contravening the development standard.

- *No precedent arises.*
- *No off-site deleterious effects or impacts occur as a consequence of the variation in relation to height.*
- *No weight can be placed (as within the report and the reasons for refusal) on the alleged visual amenity impacts of the building because that argument is not able to be sustained. It cannot be sustained because it is impossible to observe the building from the lake or the foreshore.*
- *In streetscape terms, the physical aspects of the building are consistent with the five-storey development promoted for the area.*
- *At the streetscape level, the elements of the building (lift overruns) which cause the maximum exceedance from height (8.6%) is concealed from view by "parallax" i.e. the*

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topmost part of the building (lift overruns) will not be visible from an observer in the footway of streets adjacent to the site.

The written request has not identified sufficient or any specific environmental planning grounds. The absence of impact, of itself, is not a sufficient environmental planning ground. This is discussed in further detail below.

Consistency with Standard and Zone Objectives and the Public Interest

In accordance with Clause 4.6(4) (a) (ii), development consent must not be granted for a development that contravenes a development standard unless:

- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

The objectives of the height of building standard are:

- (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 applicant's written request states that the development meets the objectives of the height of building standard as:

- *Buildings along the ridge following the alignment of The Entrance Road, when constructed to 16 metres, will appear proportionally higher in the landscape given the natural elevation. The building the subject of this application, which marginally exceeds the height provision, does so in satisfaction of the minimum finished floor level requirements but will still appear lower in the landscape given the natural topography of the precinct.*
- *The planning strategy for the locality embeds controls which are aimed at accommodating five storey redevelopment which is intended to typify the desired future built environment. The desired future character of the locality is one which will reflect the broad range of uses as provided for in the B2 Local Centres zone, as does the proposal.*
- *The height of the building being in part marginally above the statutory provision, does not compromise the amenity of neighbouring properties as a consequence of bulk, access to sunlight, privacy or views.*

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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 local centre and a series of nearby small-scale buildings of short to medium term future character. In relation to the height of buildings objectives, the proposal does not achieve a compatible scale that is appropriate for the site and it does not sufficiently integrate with the streetscape and character of the area.

The proposed building appears bigger than desirable or necessary for this prominent location due to the height, mass and scale of the building form, unsatisfactory articulation, commercial character of the façade and insufficient street setbacks, which do not support landscaping of a suitable scale. The breaches of parapet and lift over-run contribute to this unsympathetic development form.

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.*

Whilst the applicant has discussed the reasons why they believe the proposed development is consistent with the objectives of the zone they have failed to address the objectives of the zone in their written request. 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.

Council is not satisfied that the variation to the Height of Buildings 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 (see **reason for refusal 1**).

Concurrence of the Planning Secretary

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In accordance with Clause 4.6(4) (b) (ii), development consent must not be granted for a development that contravenes a development standard unless the concurrence of the Planning Secretary has been obtained.

In accordance with Clause 4.5 (5) in deciding whether to grant concurrence, the Planning Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

Planning Circular PS 20-002 issued 5 May 2020 states that Council may assume the concurrence of the Secretary of the NSW Department of Planning Industry & Environment when considering exceptions to development standards under clause 4.6. The Council (through the Local Planning Panel) is therefore empowered to determine the application. However, as the variation is not supported assumed concurrence of the Secretary is not required in this instance.

Wyong Local Environmental Plan 2013 Clause 4.6 – Exceptions to Development Standards – Floor Space Ratio

The proposed development breaches Clause 4.4 Floor Space Ratio (FSR) development standard contained within WLEP 2013. The maximum permitted FSR is 1.5:1. The development proposes an FSR of 1.75:1 which represents a 360sqm or 16.67% variation.

The objectives of Clause 4.6 are to:

- (c) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (d) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Unreasonable or Unnecessary and Environmental Planning Grounds

In accordance with Clause 4.6(4) (a) (i), development consent must not be granted for a development that contravenes a development standard unless:

- The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated in subclause (3).

Subclause 3 of Clause 4.6 provides:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

The Clause 4.6 request submitted by the applicant (refer to **Attachment 6**) states how strict compliance with the development standards is unreasonable or unnecessary and how there are sufficient environmental planning grounds to justify the contravention, is summarised below:

4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

- *Mathematical compliance might be better achieved by reduction of the number of dwellings. It might also be better achieved via removal of the majority of the space devoted to "function centre" activities.*
- *The consequence of any further reduction in the number of accommodation suites (down from 23 to 21) and/or any reduction in commercial content would reduce the commercial viability of the project and potentially deny local employment opportunities in an area of acknowledged high unemployment.*
- *The proponent and the Applicant/Architect have given particular consideration to the commercial opportunities and, rather than compromise the sites potential with unominated and untenable "lock-up" shops, identified and made provision for unique opportunities to accommodate synergistic viable retail space and consequent employment generating opportunities together with high quality housing above.*
- *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 but does facilitate employment generation by inclusion of specially designed ground floor retail and business premises.*
- *Strict compliance is unnecessary because impacts on amenity do not arise as a consequence of the skilful design adopted providing basement parking, compliant finished floor levels for all commercial and habitable space, permeable retail frontage and superior compliant access throughout.*

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- *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.*

4.6(3)(b) Whether there are sufficient environmental planning grounds to justify contravening the development standard.

- *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.*

The proposal has an FSR that exceeds the maximum FSR stipulated by Clause 4.4 of WLEP 2013 by a substantial 360m², this is the equivalent to five two-bedroom apartments.

The applicant's justification does not demonstrate how compliance is unreasonable and unnecessary, stating that any further reduction in floor space would impact financial viability and that 'good design' is achieved despite the non-compliance and that there are no other impacts. The applicant has not detailed any particular circumstances of either the site or proposed development to the site or how a better outcome is achieved for and from the development.

The impacts of additional bulk that results from the additional FSR remain. As per Council's urban design consultant's previous comments, and given there have been no significant changes to the design and resultant bulk and scale, 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 is inappropriately bulky.

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. 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 any significant deep soil planting at the Pacific Street frontage that would assist in providing an appropriate character and transition in scale at a zone interface with the adjacent *R2 Low Density Residential* zoned land.

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The written request has not identified any specific environmental planning grounds of the departure. The absence of impact, of itself, is not a sufficient environmental planning ground.

Consistency with Standard and Zone Objectives and the Public Interest and

In accordance with Clause 4.6(4) (a) (ii), development consent must not be granted for a development that contravenes a development standard unless:

- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

The objectives of the Floor Space Ratio 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 states that the development meets the objectives of the FSR standard as:

- *The density, bulk and scale of development is encouraged at an overall height of five storeys given the height controls which must be considered contemporaneously with relevant aims, objectives and urban design criteria.*
- *The desired streetscape and character is derived from the zone applicable, the range of uses permitted and the relevant development standards and requirements. Considering the site in the context of the suite of controls applicable and the design outcomes for the locality i.e. to create an east-west node at Long Jetty punctuating The Entrance/Long Jetty lineal city conurbation, results in confirmation that the proposed density, bulk and scale of development integrates with the desired and designed streetscape of the area; an area which must accommodate future development at finished floor levels respecting the 1% AEP flood constraints.*
- *The building in the form submitted integrating vehicular access to sub-basement parking with permeable and active street interface of commercial content with managed residential above, will contribute in a positive manner to the character of the area as is planned.*

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- *This project contributes to local employment generation both within the commercial component as well as the hospitality and maintenance services industries associated with the serviced apartments/tourist accommodation all of which contribute to economic growth*
- *The proposal is to provide additional housing (both permanent and serviced apartments) and does not detract from the availability of affordable housing.*

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. Given the limited changes to the design, bulk and scale the development fails to meet the objectives of Clause 4.4 as per the reasons in the original assessment report, being:

- 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).
- 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 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.
- 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 and do not achieve the required car parking.

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 B2 zone objectives read as follows:

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- *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 applicant's written request has not directly addressed how the development is consistent with the objectives of the 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 zones.

Council is not satisfied that the variation to the FSR 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 (see **reason for refusal 2**).

Concurrence of the Planning Secretary

In accordance with Clause 4.6(4) (b) (ii), development consent must not be granted for a development that contravenes a development standard unless the concurrence of the Planning Secretary has been obtained.

In accordance with Clause 4.5 (5) In deciding whether to grant concurrence, the Planning Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

Planning Circular PS 20-002 issued 5 May 2020 states that Council may assume the concurrence of the Secretary of the NSW Department of Planning Industry & Environment when considering exceptions to development standards under clause 4.6.

The Secretary's concurrence may not be assumed by a delegate of council if the development contravenes a numerical standard by greater than 10%, however This restriction does not

apply to decisions made by independent hearing and assessment panels, formally known as local planning panels.

The Local Planning Panel is therefore empowered to determine the application. However, as the variation is not supported assumed concurrence of the Secretary is not required in this instance.

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.

Clause 7.1(3) states that:

(3) Development consent must not be granted under this clause for the carrying out of works unless an acid sulfate soils management plan has been prepared for the proposed works in accordance with the Acid Sulfate Soils Manual and has been provided to the consent authority.

Clause 7.1(4) states that

- (4) Despite subclause (2), development consent is not required under this clause for the carrying out of works if—*
- (a) a preliminary assessment of the proposed works prepared in accordance with the Acid Sulfate Soils Manual indicates that an acid sulfate soils management plan is not required for the works, and*
 - (b) the preliminary assessment has been provided to the consent authority and the consent authority has confirmed the assessment by notice in writing to the person proposing to carry out the works.*

A Preliminary Acid Sulfate Soil Assessment (as an Appendix to the geotechnical report prepared by JK Geotechnics) had been provided with the original development application. The stated aims of the assessment were to establish whether actual Acid Sulfate Soil or potential Acid Sulfate Soil may be disturbed during the proposed development works, and to assess whether an Acid Sulfate Soil management plan is required.

The report concluded that an Acid Sulfate Soil management plan is required for the proposed development. No Acid Sulfate Soil management plan has been provided. Clause 7.1 of the WLEP 2013 is not addressed within the statement lodged with the 8.2 application. The

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proposal has not adequately addressed Acid Sulfate Soil management and Clause 7.1 of the WLEP 2013, and this forms a new reason for refusal (see **reason for refusal 4**).

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.*

As per the discussion above on flooding, in the absence of an adopted policy and the fact that there is a low hazard safe evacuation route for residents and visitors, the proposal is considered satisfactory with regard to clause 7.2 of WLEP 2013.

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.

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. The pollutant loads generated from the development will not significantly affect the quality of stormwater runoff leaving the site as the majority of impervious areas of the site consists of roof and landscaped areas that are not considered pollutant generating land uses. The basement carpark is covered and drains to a sump pit. The stormwater drainage plan has proposed pit

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filter inserts within surface inlet pits and a sediment control pit at the boundary as treatment measures to address water quality for the development. The development connects to Council's existing street stormwater drainage system and discharges to Gross Pollutant Traps (GPT's) installed by Council to treat stormwater runoff from the local catchment.

Accordingly, the proposal is satisfactory with regard to clause 7.9 of WLEP 2013.

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(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.'*

Clause 50 (1A) and (1AB) of the *Environmental Planning and Assessment Regulation 2000* requires a development application to include a statement by the qualified designer, and that the statement must:

- (a) verify that he or she designed, or directed the design, of the development, and*
- (b) provide an explanation that verifies how the development—*
 - (i) addresses how the design quality principles are achieved, and*
 - (ii) demonstrates, in terms of the Apartment Design Guide, how the objectives in Parts 3 and 4 of that guide have been achieved.*

The amended package received as part of the Section 8.2a review of determination was not accompanied by a Design Verification Statement. It is noted that neither the original application nor the Section 8.2a review of determination application included an assessment by the applicant of the objectives and relevant design criteria specified in the Apartment Design Guide.

The following table considers the proposal against the SEPP 65 design quality principles. Given the limited changes to the overall design, bulk and scale, the assessment remains consistent with the assessment provided in the original assessment report.

Principles	Proposal
Context and neighbourhood character	The proposed building is not sufficiently compatible with character of the surrounding locality. The non-compliant FSR, combined with the split building design, inappropriate commercial architectural character and lack of landscaping is still considered to have an overbearing visual impact upon zone R2 as well as the lakeside reserve.
Built form and scale	The split / two tower design approach creates separation issues both between the two towers on the site as well as the all the sites boundaries. The 2.5m-2.9m separation is not wide enough for the two towers to be read as separate building forms and results in a visually larger bulk and scale. This combined with the FRS exceedance, the distinctly-commercial character and poorly-articulated side and rear elevations and insufficient setbacks results in a visually dominant building that is an inappropriate built form and scale.
Density	Density does not comply with the of Floor Space Ratio development standard of WLEP 2013. The development proposes an FSR of 1.75:1 which represents a 360sqm or 16.67% variation. The non-complying setbacks and inadequate landscaping indicate the application is an overdevelopment of the site.
Sustainability	BASIX and NatHERS certificate supporting the development application confirms compliance with mandatory energy efficiency standards and provides units with an acceptable level natural ventilation and access to natural light.
Landscape	Due to size and location of the proposed basement, there is little potential for deep soil landscaping along the street frontages. The proposal as amended provides some minor amendments to the basement to allow for some additional deep soil planting, however the amendments do not provide significant opportunities for deep soil planting at the Pacific Street frontage that could 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. It is noted that no amended landscape plan has been provided.
Amenity	The layout of the residential units have not been amended and still fail to demonstrate satisfactory amenity with particular regards to setbacks and privacy. The privacy of south-facing bedrooms in the neighbouring apartment to the north would be compromised as the building is setback at points,

	<p>less than the 6m ADG design requirements at levels 1-3 and significantly less than the 9m setback requirement at level 4. This also applies to any future development to the east, with setbacks less than 6m at level 1-3 and significantly less than 9m at level 4.</p> <p>Visual and acoustic privacy issues occur between the two towers, with a minimal 2.5m separation between the split towers. Acoustic and visual privacy issues between the communal rooftop space and residential units has also not been addressed.</p>
Safety	<p>The diagonal alleyway would accommodate both public and private access. This design approach remains an issue in regards to safety. 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 lobby.</p>
Housing diversity and social interaction	<p>The proposal provides an adequate mix of 1, 2 and 3-bedroom units.</p>
Aesthetics	<p>As per the original assessment, the proposed building would present a substantial mass that 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.</p> <p>The 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 R2 zone. In both pavilions, side elevations which would be visible from streets are bland planes without articulation, and would not improve existing streetscape quality.</p>

The proposal seeks variation to a number of design considerations under the ADG. These variations are tabulated in **Attachment 2**.

The most significant numerical variation relates to visual privacy and separation as required by Objective 3F-1 of the ADG. The design criteria require the following separation from boundaries (for habitable rooms and balconies):

- 6m (up to 12m / 4 storeys in height)
- 9m (up to 25m / 5-8 storeys in height)

4.1

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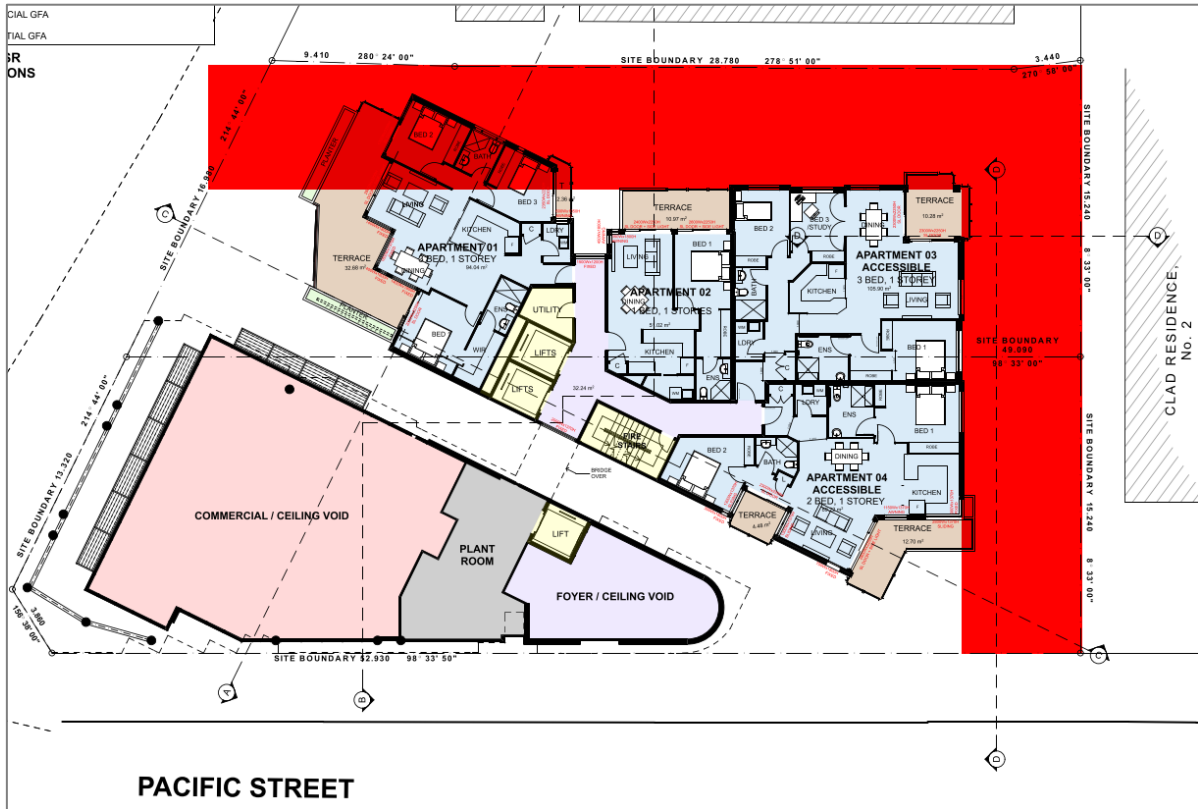


Figure 9 – Areas on non-compliance with half of ADG building separation levels 1 to 4 (6m)

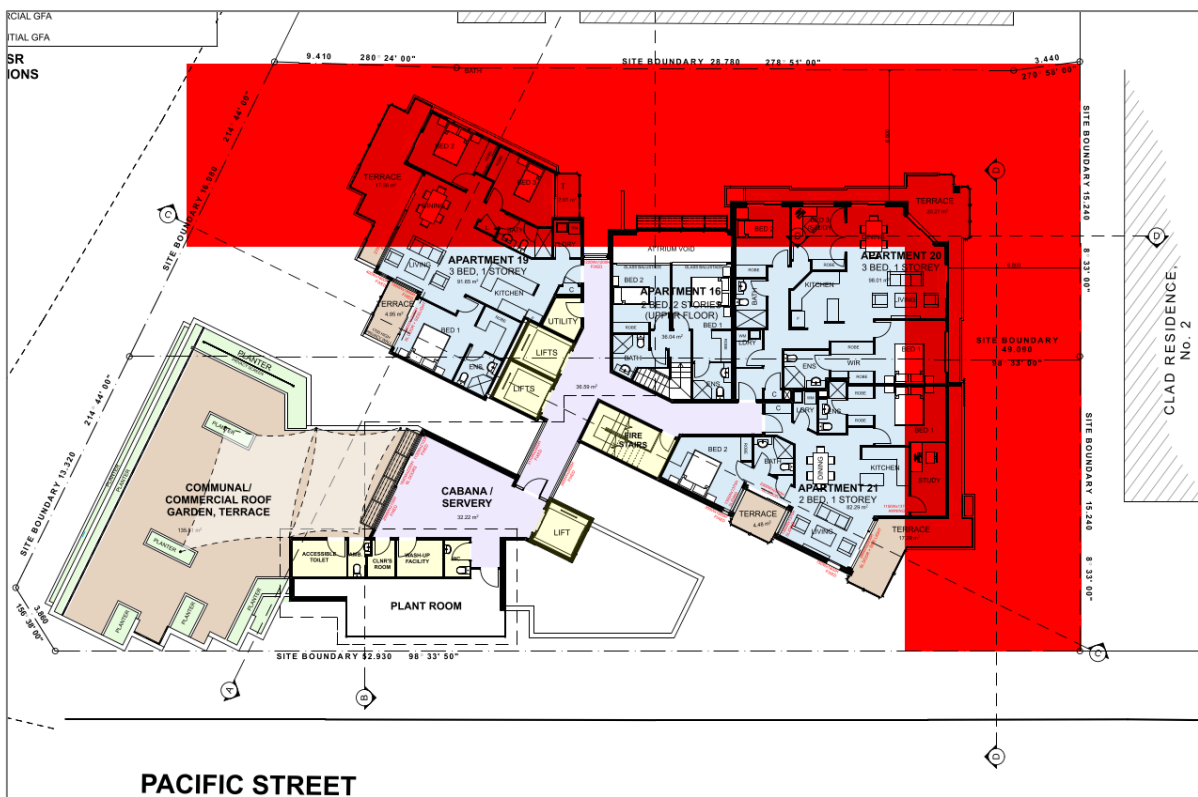


Figure 10 – Areas on non-compliance with half of ADG building separation level 4 (fifth storey) (9m)

As shown in Figures 9 and 10, relatively minor variations occur at the lower levels with balconies within 5.3m of the northern boundary and 5.6m to the eastern boundary (12% variation). These setbacks represent significant variations level 4, where 9m is required, with the same setback as the lower levels and resulting in an up to 3.7m or 41% variation.

The proposal has not demonstrated compliance with the SEPP 65 design quality principles or the objectives of the Apartment Design Guide (see **reasons for refusal 5 and 6**).

State Environmental Planning Policy (Coastal Management) 2018

The site is identified as land to which Coastal Management 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.

The site is identified under the Coastal Management 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,*
 - (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.

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,*
 - (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.*

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.*

The applicant has not addressed this clause in either the original development application or the Section 8.2a review of determination application. This issue was detailed in the assessment report for the original application.

The previous assessment raised concerns with 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 did not provide sufficient stormwater quality information to demonstrate that the proposal will not have an adverse impact on the water quality of the lake.

The information received as part of the s.8.2 application has demonstrated that the pollutant loads generated from the development will not significantly affect the quality of stormwater runoff leaving the site, therefore, it is considered the provisions of Clause 13 have been satisfied.

Given there have been minimal changes to the overall design of the development, the original reason for refusal relating to the impacts on visual amenity of the coastal location, as per the provisions of Clause 14 of State Environmental Planning Policy (Coastal Management) 2018 remains (see **reason for refusal 8**).

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

The application is supported by a BASIX certificate which confirms the proposal will meet the NSW government's requirements for sustainability, if built in accordance with the commitments in the certificate.

The proposal is considered to be consistent with the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

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.

Previous and current use of the land has been for residential and holiday accommodation purposes. The applicant has stated that there is no evidence in either the Council's consents register and/or review of aerial photographs that would indicate previous uses that would result in contamination of the land and/or any further investigations to be executed.

The site is not within an investigation area as referenced by SEPP 55, and has no know non-residential activities or uses that may cause contamination as listed in Table 1 of the 'Managing Land Contamination Planning Guidelines SEPP 55–Remediation of Land' or 'Draft

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Contaminated Land Planning Guidelines'. As such, a preliminary contamination investigation is not deemed necessary and it is considered that the site is suitable for the proposed development with regard to land contamination and the provisions of SEPP 55.

Draft Central Coast Local Environmental Plan 2018

Draft *Central Coast Local Environmental Plan 2018* (Draft CCLEP) was adopted by Council on 14 December 2020 but has not yet been gazetted. Under the provisions of Draft CCLEP, the site retains its *B2 Local Centre* zoning. There are no additional/amended clauses or provisions warranting further discussion.

Draft Housing Diversity State Environmental Planning Policy (Housing Diversity SEPP)

The Department of Planning, Industry and Environment (the Department) is preparing a new SEPP to consolidate and update the Government's housing related policies. This SEPP will consolidate three existing, housing-related SEPPs:

- *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP);*
- *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP); and*
- *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70).*

There are a large number of amendments proposed as part of the consolidated Housing Diversity SEPP, however these changes have no implications to this development proposal.

Draft Design and Place State Environmental Planning Policy (Design and Place SEPP)

The Department of Planning, Industry and Environment (the Department) is preparing a new SEPP to replace and consolidate two existing SEPPs:

- *SEPP No 65 – Design Quality of Residential Apartment Development; and*
- *SEPP (Building Sustainability Index: BASIX) 2004.*

The Design and Place SEPP will establish principles for the design and assessment of places in urban and regional NSW.

At the time of writing this report the Explanation of Intended Effect of the draft Design and Place SEPP was on public exhibition until 31 March 2021. Following this public exhibition, the proposed Design and Place SEPP will be drafted and exhibited in late 2021 for further comment. The draft Design and Place SEPP will include specific considerations and targets that are more broadly proposed than the current Explanation of Intended Effect.

The Explanation of Intended Effect states that the proposed Design and Place SEPP is framed around five guiding principles. These principles aim to deliver healthy and prosperous places

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that support the wellbeing of people, communities and Country, being:

- Design places with beauty and character that people feel proud to belong to
- Design inviting public spaces to support engaged communities
- Design productive and connected places to enable thriving communities
- Design sustainable and green places for the wellbeing of people and the environment
- Design resilient and diverse places for enduring communities

The five guiding principles as reproduced above will replace the nine Design Quality Principles as included in Schedule 1 of SEPP 65, and there are similarities between the two sets of principles. As outlined in this report, the proposal has not demonstrated compliance with the SEPP 65 design quality principles, and equally would not meet the new guiding principles, in particular:

- The proposal does not achieve beauty or an appropriate character - the split building design is read as a single built form from most vantage points, which increase its mass and scale, this, combined with an inappropriate commercial architectural character and lack of landscaping would have an overbearing visual impact upon the R2 zone as well as the lakeside reserve.
- The proposal does not result in a productive and connected place – the overall design approach of the diagonal alleyway and pedestrian ramps thorough the development would ‘diffuse’ pedestrian activity away from street frontages – without apparent benefit to commercial operators. 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.

It is noted that while the draft Design and Place SEPP is relevant to the proposed development, it is in its early stages. Nevertheless, having regard for the five proposed guiding principles, it is considered compliance with the stated guiding principles could not be achieved with the proposed development.

Wyong Development Control Plan 2013 (WDCP 2013)

A summary of compliance with the relevant controls under the Chapter are outlined under the attached table (**Attachment 3**).

Chapter 2.4 – Multiple Dwelling Residential Development of WDCP 2013

Chapter 2.4 of WDCP 2013 applies to the development, however, most of the requirements under the DCP that are relevant to the proposal are overridden by similar controls contained in the ADG.

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 2013. Discounting these spaces reduces the provision of onsite parking spaces to a total of 34 spaces.

The WDCP 2013 requires 27 spaces for the residential component, 5 Visitor spaces. The café (73.9m²), 'Multi-function' tenancy (190m²) and rooftop commercial cabana /servery (32.2m²) are classified as 'Restaurant and Function Centre' and require 15 spaces per 100m² of GFA, requiring a total of 45 spaces plus one servicing space. The commercial tenancies (20.01m², 51.05m² and 84.97m²) are classified as Business/ Office and require 1 space per 40m² of GFA, requiring four spaces, plus one servicing space.

This is a total of 81 spaces and 2 servicing spaces. This results in a 48 space or 54% variation and is unacceptable for a development of this scale and nature see **reason for refusal 7**. The applicant has not provided any comprehensive analysis of parking on site and has only had regard for the residential component of the development. There has been a reliance on the traffic impact assessment prepared by Seca but no justification provided on the variation to the DCP parking requirements as to why it is reasonable or necessary for the consent authority to allow a variation to car parking.

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 original application is inadequate for the scale of the proposed development, and no updated Waste Management Plan has been provided. 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. Contrary to the submission made by the applicant, the Loading Dock Management Strategy, as recommended by their own consultants, is considered reasonable and warranted having regard for the proposed waste servicing arrangements and the design of the development and its location.

Moreover, the location of the waste collection loading area results in a conflict between pedestrians, truck manoeuvring and the driveway entry/exit manoeuvres. This is an issue with

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the design of the development and the applicant has failed to demonstrate how waste servicing will be appropriately managed.

The reason for refusal regarding waste remains (**reason or refusal 9**).

Chapter 5.3 – The Entrance Peninsula of WDCP 2013

WDCP 2013 Chapter 5.3 – The Entrance Peninsula applies to the development. The location specific WDCP 2013 controls that apply to this site are very limited however do take precedent over Chapter 2.4 controls. Largely, the requirements under the WDCP 2013 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:

- *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:

Chapter 5.3 - 3.2.4 Mixed Development in Zones B2, SP3 and RE2 up to six storeys: Frontages to Streets, Lanes and Civic Spaces

The objective of this section is to maintain appropriate amenity and built form and requires new buildings to comprise podium and tower elements. The WDCP 2013 requires that for buildings up to six storeys, tower elements are to be setback from building lines by a minimum of 5m. The proposed development does not have a podium and tower form, rather it proposes sheer sided five storey buildings and the current design has not demonstrated that appropriate amenity, both within and external to the development, can be achieved.

Chapter 5.3 - 3.2.7 Mixed Development in Zones B2, SP3 and RE2: Facing a Side Boundary or a Rear Lane

The WDCP 2013 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 as discussed under the SEPP 65 heading of this report.

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Chapter 5.3 - 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 clause 3.2.8 is to maintain amenity for residents by placing new buildings in a landscaped setback.

The WDCP 2013 requires a setback that is predominantly deep soil where adjoining any residential property, and that podium and basement elements are 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 as shown in Figure 11. The s.8.2 application has not amended the design to allow for additional landscaping in these areas and adequate justification has not been provided as to why it is reasonable to vary this requirement.



Figure 11 – Areas on non-compliance 6m deep soil setback

Chapter 5.3 - Part 4 Design guidelines

The WDCP 2013 includes design guidelines for general development 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*

As discussed in this report the proposal does not provide appropriate active frontage uses, and the diagonal alleyway design approach does not promote or facilitate pedestrian interaction between the site and the public domain (Tuggerah Parade and Pacific Street and the Tuggerah Lake foreshore reserve).

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.

Likely Impacts of the Development:

Built form, scale and character

The site is in an important corner location with interface to existing low scale residential uses, and forms part of an emerging B2 local centre zoning which is adjacent to, and visually prominent from, the public reserve and Tuggerah Lake.

The amended proposal still does not respond appropriately to the existing or desired future character of the area and will adversely impact on the character and amenity of the locality and streetscape.

As detailed in the original assessment the proposal has an overbearing visual impact upon the R2 zone and the lake foreshore reserve as a result of sheer-sided walls, insufficient setbacks, and facades which display an inappropriate commercial architectural character. The narrow alleyway between the two building forms does not reduce the visual impact of the built form, with the development from most vantage points being viewed and read as a single building mass.

While the need for the requirement for the level changes to address the flood constraints on the site is noted, the proposed uses, including the commercial tenancies and the 'commercial multi-functional tenancy' (as depicted on the plans) /function centre (as stated in the letter accompanying the s.8.2 application) do not provide an appropriate level of activation. In addition, the overall design approach of the diagonal alleyway and pedestrian ramps through the development would continue to 'diffuse' pedestrian activity away from street frontages.



Figure 12: 3D perspective showing Tuggerah Parade facade



Figure 13: 3D perspective showing Pacific Street facade

Traffic, transport and parking

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.

As previously discussed, the amended plans indicate the provision of a total of 38 on site spaces including 4 stacked spaces that are not in accordance with the requirements of

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Chapter 2.11 of the WDCP 2013. Discounting these spaces reduces the provision of onsite parking spaces to a total of 34 spaces.

WDCP 2013 Chapter 2.11 Parking and Access requires a total of 81 spaces and 2 servicing spaces. This results in a 48 space or 54% variation and is unacceptable and not supported. In addition to this the proposal has also failed to demonstrate that two vehicles can adequately pass each other on the curved sections of the driveway ramp (**reason for refusal 9**).

Privacy, overlooking and boundary treatments

The proposal does not provide satisfactory visual and acoustic privacy both to existing adjoining development and for dwellings within the proposal. This is primarily as a result of insufficient building separation distances to boundaries and between the two tower forms.

Overshadowing

Shadow diagrams have been prepared for the development between 9:00am and 3:00pm, for 21 June (midwinter) in order to demonstrate a worst-case scenario for solar access and shadow impact on the shortest day of the year. These diagrams result in much the same overshadowing as that which was considered in the original application and determination.

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.



Figure 14: Shadow diagrams for the proposal midwinter at intervals of 9am, midday and 3pm.

Overall, the extent of shadowing impact to neighbouring properties complies with clause 6.3.1 of Chapter 2.4 of WDCP 2013 which requires at least 75% of required private open space areas on adjoining lands to receive at least three hours unobstructed sunlight between the hours of 9 am and 3 pm on June 21 (winter solstice).

Solar Access

Within the development, the proposed commercial rooftop communal open space (cabana) is located so as to receive unobstructed solar access between midday and 3pm midwinter in compliance with the WDCP 2013, however communal open space at ground level is located at a part of the site that is heavily impacted by overshadowing of the neighbouring residential flat building at 134 Tuggerah Parade at all times between 9am and 3pm during the midwinter solstice.

The introduction of a commercial space on the roof terrace area means there is one area of common open space (at ground level) residents can access on site and the question remains as to whether it is reasonable to expect residents to visit the foreshore area to obtain adequate solar access in the public domain.

The amended proposal results in two less units at ground floor with no other changes at the upper floors. This results in now 67% (14/21) of units achieving 3 hours of solar access mid-winter to their apartments. While this does not meet the 70% requirement of the Apartment Design Guide, the proposal has more fundamental design issues by which it should be refused on.

Noise and vibration

An acoustic report has not been provided by the applicant to address the potential acoustic impacts from the development. As per the original assessment report, the following areas of potential acoustic conflict have been identified, and have not been addressed in the Section 8.2 application:

- Acoustic impacts of rooftop air conditioning plant on the ability to achieve acceptable acoustic amenity within the development and adjoining development.

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- The mixed-use nature of the building and the potential conflict between ground floor commercial uses with residential and tourist and visitor accommodation, particularly where units address the diagonal alleyway.
- Use and interface of the driveway, loading dock and garbage collection directly below resident units
- Impact of the use of the commercial rooftop cabana on residential uses within the development and to adjoining properties.

The applicant has not addressed potential acoustic conflicts arising from the development and has not included details of any acoustic attenuation required (**reason for refusal 9**).

Safety, security and crime prevention

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.

The diagonal alleyway would accommodate both public and private access, due to unsatisfactory space planning and design and obstructed/limited sightlines, and informal surveillance would be insufficient to ensure reasonable safety and security for residents (see **reasons for refusal 5 and 6**).

Conflicts of proposed land use

The applicant's submission makes reference to the original proposed apartments on the ground floor as follows: *"the ground floor units and others on the southern side of the building were intended to be managed as serviced apartments."* This was neither detailed on the architectural plans or in any documentation submitted with the original application.

Details on the number and location of the serviced apartments still remain absent in the s.8.2 application.

Commercial premises and a function centre are proposed at both the ground floor and within the rooftop cabana open space. No detail is provided in relation to the hours of operation, number of patrons, potential noise sources or how any potential amenity conflicts with the residential apartments can be managed.

A Plan of Management has not been submitted to address the amenity conflicts arising from tourist and visitor accommodation (serviced apartments), function centre and commercial premises onto permanent residential apartments and neighbouring residential uses. It is not considered reasonable to defer the consideration of these likely impacts to future

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management of the building when these matters could be better addressed as part of the design of the development.

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 (see **reason for refusal 9**).

Flooding, Water Quality, Contamination and Acid sulfate soils

Flooding, Water Quality, Contamination and Acid sulfate soils have been discussed elsewhere in this report.

Economic impacts

The application is not supported based on likely impacts of the development however the economic impacts of the development are not raised as matters 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) but has advised that there are no current tenants and therefore there will be no impacts as it is not a current source of affordable housing accommodation within the community. The application is not supported based on likely impacts of the development however the social impacts of the development are not raised as matters for refusal.

Suitability of the Site for the Development

The site is considered suitable for a form of mixed-use development, subject to the appropriate consideration of the site constraints. However, the proposal has not demonstrated that it has appropriately considered the site constraints or that the site is suitable for the proposed development.

Any Submission made in Accordance with this Act or Regulations

Submissions

The application was publicly exhibited for a period of 28 days from 22 January 2021 to 22 February 2021. 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 the NSW Natural Resources Access Regulator (NRAR), would be required.

Internal Consultation

The Section 8.2 review of determination application has been referred to and reviewed by the following experts in council:

- Engineering – While the majority of the engineering issues have been addressed, vehicle manoeuvring remains outstanding and the application is not supported.
- Engineering - Traffic and Transport – not supported due to vehicle manoeuvring issues.

As there were no substantive changes to the design of the development or additional information provided in regard to Environmental Health, Water and Sewer, Urban Design or Waste services, the application was not referred back to these specialists.

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.

The proposed development does not demonstrate satisfactory Acid Sulfate Soils management. The proposal does not demonstrate 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.

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 Section 306 requirements would be issued under the *Water Management Act 2000* if the proposal was supported.

Planning Agreements

The proposed development is not subject to a planning agreement / draft planning agreement.

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.

Conclusion

This application has been assessed having regard for the matters for consideration under Sections 8.3 and 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 remains unsuitable for the proposed development.

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.

The development does not have sufficient regard for ground floor activation. The proposed function centre use is not a sufficiently activating use for the corner. The overall design approach of the diagonal alleyway and pedestrian ramps through the development would 'diffuse' pedestrian activity away from street frontages – without apparent benefit to commercial operators.

The proposal does not meet the objectives of Clauses 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

4.1 Section 8.2 Review of Determination - DA/162/2020 - Mixed use development - 135-136 Tuggerah Pde, Long Jetty (contd)

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 clause 14 of *State Environmental Planning Policy (Coastal Management) 2018*

The amended application has not provided the information and detail to enable a thorough assessment of the likely impacts of the proposed development.

The proposal is not in the public interest.

Accordingly, it is recommended the previous decision of the Panel be reaffirmed and the application be refused pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

Attachments

1	Reasons for Refusal		D14530089
2	Apartment Design Guide Compliance Table		D14530090
3	DCP & ADG compliance tables		D14530092
4	S8.2A Architectural Plans prepared by Thrum Architects	Provided Under Separate Cover	D14392954
5	Clause 4.6 written request prepared by SJH Planning and Design (Height of Buildings)		D14393075
6	Clause 4.6 written request prepared by SJH Planning and Design (Floor Space Ratio)		D14393078
7	Original Development Assesment Report		D14573850

1. 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.
 - a. 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 and contrary to the objectives of the standard resulting in unacceptable scale, bulk, form and amenity concerns to neighbouring properties. 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.
 - b. 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 or that there are sufficient environmental planning grounds to justify contravening the standard.
 - c. The variation to the Height of Buildings development standard of Clause 4.3 is not in the public interest because it is not consistent with the objectives of the development standard and the objectives for the zone.

2. 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.
 - a. The floor space ratio of the proposal is 1.75:1. 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.
 - b. 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 or that there are sufficient environmental planning grounds to justify contravening the standard.
 - c. 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.

3. The development does not achieve the zone objectives of the B2 Local Centre zoning of Wyong Local Environmental Plan 2013.

The proposed commercial premises and 'commercial multi-functional tenancy' (or 'function centre') do not achieve the zone objective of providing active retail, business and other non-residential uses at street level.

The proposal does not demonstrate that it achieves the zone objective of minimising conflict between land uses within the zone and land uses within adjoining zones. Insufficient information has been provided regarding the number and location of serviced apartments and how they will be managed. Commercial premises and a function centre are proposed at both the ground floor and within the rooftop cabana and open space. No detail is provided in relation to the hours of operation, number of patrons, potential noise sources or how any potential amenity conflicts with the residential apartments on the subject site or neighbouring sites can be managed.

4. The proposal has not addressed Clause 7.1 of the Wyong Local Environmental Plan 2013, which requires the submission of an Acid Sulfate Soil Management Plan.
5. 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), including design quality, context, neighbourhood character, built form and character, density, amenity and safety.
6. The proposal does not satisfactorily achieve the objectives and design criteria of the Apartment Design Guide, including
 - a. Inadequate building separation and privacy impacts to neighbouring properties and within the development, compromised safety and security as a result of the narrow diagonal alley with limited sight lines.
 - b. insufficient deep soil landscaping, façade treatment, unit layout and space planning.
7. Car parking is inadequate for the intended uses and does not comply with Chapter 2.11 Parking and Access of the Wyong Development Control Plan 2013.
8. The proposal does not adequately address the provisions of State Environmental Planning Policy (Coastal Management) 2018 relating to visual amenity for a highly visible coastal location, and the bulk and scale of the development.
9. Insufficient information:

- a. Application has not demonstrated how it meets the requirements of Chapter 3.1 of Wyong Development Control Plan 2013 and the former Wyong Shire Council Waste Control Guidelines.
- b. A Loading Dock Management Strategy as referred to in the Traffic Impact Assessment report by Seca Solution has not been provided.
- c. There is no acoustic report or plan of management has not been submitted to address the amenity conflicts arising from tourist and visitor accommodation onto permanent residential apartments, nor the intended use or operation of the proposed "function space".
- d. Application has not demonstrated that two vehicles can pass each other on the curved sections of the ramp driveway.

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
3A Site analysis		
<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>
3B Orientation		
<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.</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>
3C Public domain interface		

Attachment 2

Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<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 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.
3D Communal and public open space		
<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>	Acceptable	The ground floor communal open space area has poor amenity as it does not receive adequate solar access. However, in the context of the adjacent foreshore reserve, residents would have adequate access to recreation areas with solar access.
<p>Design criteria</p> <ol style="list-style-type: none"> Communal open space has a minimum area equal to 25% of the site (see figure 3D.3) 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) 	NO - but acceptable	<p>370m² is required. The proposal provides 300m² at ground level. The proposal does not achieve >2hrs solar access to 50% of the ground floor space (150 m²).</p> <p>The proposal includes a rooftop terrace (140m²) which receives sun to the entire area throughout the 9am-3pm time period @midwinter, however the space is for commercial use.</p>

Attachment 2

Apartment Design Guide Compliance Table

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.																
<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	-																
3E Deep soil zones																		
<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.																
<p>Design criteria</p> <p>Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site area</th> <th>Minimum dimensions</th> <th>Deep soil zone (% of s area)</th> </tr> </thead> <tbody> <tr> <td>less than 650m²</td> <td>Nil</td> <td>7%</td> </tr> <tr> <td>650m² - 1,500m²</td> <td>3m</td> <td>Minimum 7% with recommended 10%</td> </tr> <tr> <td>greater than 1,500m²</td> <td>6m</td> <td>-</td> </tr> <tr> <td>greater than 1,500m² with significant existing tree cover</td> <td>6m</td> <td>-</td> </tr> </tbody> </table>	Site area	Minimum dimensions	Deep soil zone (% of s area)	less than 650m ²	Nil	7%	650m ² - 1,500m ²	3m	Minimum 7% with recommended 10%	greater than 1,500m ²	6m	-	greater than 1,500m ² with significant existing tree cover	6m	-	YES	The ADG requires 7% (103.6m ²) of deep soil. The proposal provides 173m ² of deep soil planting on the north boundary.	
Site area	Minimum dimensions	Deep soil zone (% of s area)																
less than 650m ²	Nil	7%																
650m ² - 1,500m ²	3m	Minimum 7% with recommended 10%																
greater than 1,500m ²	6m	-																
greater than 1,500m ² with significant existing tree cover	6m	-																

Attachment 2

Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE				
Guideline	Y/N		Comment	
3F Visual privacy				
<i>Objective 3F-1</i>		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				
Design criteria		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:				
Building height	Habitable rooms and balconies	Non-habitable rooms		Proposa
up to 12m (4 storeys)	6m	3m		6m
up to 25m (5-8 storeys)	9m	4.5m		9m
over 25m (9+ storeys)	12m	6m	-	
Note: 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				

Attachment 2

Apartment Design Guide Compliance Table

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 < 12m ADG requirement</p> <p>Proposed windows and balconies are not screened, oriented or designed to avoid or minimise privacy impacts.</p> <p>Apartments within the development are exposed to cross-viewing between windows of habitable rooms and / or balconies.</p>
3G Pedestrian access and entries		
<p><i>Objective 3G-1</i></p> <p>Building entries and pedestrian access connects to and addresses the public domain</p>	YES	The building entry addresses the public domain however, 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><i>Objective 3G-2</i></p> <p>Access, entries and pathways are accessible and easy to identify</p>	YES	Entries are accessible by virtue of the ramps within the diagonal alley.
<p><i>Objective 3G-3</i></p> <p>Large sites provide pedestrian links for access to streets and connection to destinations</p>	YES	The diagonal alley provides multiple pedestrian links to the street, however this is considered unnecessary given the corner location of the site, and diffuses pedestrian activity.
3H Vehicle access		
<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	There is conflict between the diagonal alley (pedestrians) and the basement ramp, and additionally the loading dock area.

Attachment 2

Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<p>Design guidance</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"> the materials and colour palette to minimise visibility from the street security doors or gates at entries that minimise voids in the facade where doors are not provided, the visible interior reflects the facade design and the building services, pipes and ducts are concealed 	YES	The car parking is provided largely within a basement.
3J Bicycle and car parking		
<p>Objective 3J-1</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 48 spaces or a 54% variation to the DCP requirement.
<p>Design criteria</p> <p>1 For development in the following locations:</p> <ul style="list-style-type: none"> on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever 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 48 spaces or a 54% variation to the DCP requirement.
<p>Objective 3J-2</p> <p>Parking and facilities are provided for other modes of transport</p>	YES	Bicycle parking is provided, along with service vehicles.
<p>Objective 3J-3</p> <p>Car park design and access is safe and secure</p>	YES	Car parking is contained within a basement.
<p>Objective 3J-4</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>Objective 3J-5</p> <p>Visual and environmental impacts of on-grade car parking are minimised</p>	YES	No on grade car parking is proposed.

Attachment 2

Apartment Design Guide Compliance Table

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	-
4A Solar and daylight access		
<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>Design criteria</p> <p>1 Living rooms and private open spaces of at least 70% of apartments 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, 67% 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>	Yes	Adequate daylight will be achieved.
<p><i>Objective 4A-3</i></p> <p>Design incorporates shading and glare control, particularly for warmer months</p>	NO	Openings are unshaded.
4B Natural ventilation		
<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	Cross ventilated apartments have been maximised.

Attachment 2

Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE																
Guideline	Y/N	Comment														
<p>Design criteria</p> <p>1 At least 60% of apartments are naturally cross ventilated in the first ni storeys of the building. Apartments at ten storeys or greater are deem to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclose</p> <p>2 Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p>	YES	71% (15/21 units) comply.														
4C Ceiling heights																
<p><i>Objective 4C-1</i></p> <p>Ceiling height achieves sufficient natural ventilation and daylight access</p>	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.														
<p>Design criteria</p> <p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1"> <thead> <tr> <th>Minimum ceiling height for apartment and mixed use buildings</th> <th>Proposa</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor</td> </tr> <tr> <td></td> <td>2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table>	Minimum ceiling height for apartment and mixed use buildings	Proposa	Habitable rooms	2.7m	Non-habitable	2.4m	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	NO	<p>The applicant has provided 3.0m floor to floor heights on all levels. This can achieve the required 2.7m ceiling heights on the residential floors (1-4), subject to correct engineering of the floor slabs.</p> <p>The proposal does not meet the minimum 3.3m floor to ceiling for the ground floor. 3.3m is required for non-residential uses. Compliant ceiling height would lead to further overall building height non-compliance.</p>
Minimum ceiling height for apartment and mixed use buildings	Proposa															
Habitable rooms	2.7m															
Non-habitable	2.4m															
For 2 storey apartments	2.7m for main living area floor															
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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															
<p><i>Objective 4C-2</i></p> <p>Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms</p>	YES	Ceiling height is adequate for levels 1-4.														
<p><i>Objective 4C-3</i></p> <p>Ceiling heights contribute to the flexibility of building use over the life of the building</p>	NO	Ground floor ceiling heights are 3.0m and do not allow for flexibility of use.														

Attachment 2

Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE																	
Guideline	Y/N	Comment															
4D Apartment size and layout																	
<p><i>Objective 4D-1</i></p> <p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity</p>	NO	Layout of some units is poor.															
<p>Design criteria</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>35m²</td> <td>-</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> <td>51m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m² + 5m²</td> <td>72.31m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m² + 5m²</td> <td>91.65m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² 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 ²	-	1 bedroom	50m ²	51m ²	2 bedroom	70m ² + 5m ²	72.31m ²	3 bedroom	90m ² + 5m ²	91.65m ²	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 ²	-															
1 bedroom	50m ²	51m ²															
2 bedroom	70m ² + 5m ²	72.31m ²															
3 bedroom	90m ² + 5m ²	91.65m ²															
<p><i>Objective 4D-2</i></p> <p>Environmental performance of the apartment is maximised</p>	YES	Environmental performance is adequate.															
<p>Design criteria</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.															

Attachment 2

Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE																		
Guideline	Y/N	Comment																
<p><i>Objective 4D-3</i></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.																
<p>Design criteria</p> <p>1 Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</p> <p>2 Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>3 Living rooms or combined living/dining rooms have a minimum width of</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments <p>4 The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	YES	Rooms are adequately sized throughout the development.																
4E Private open space and balconies																		
<p><i>Objective 4E-1</i></p> <p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity</p>	NO	Some apartments have POS with a minimum dimension of less than 2m.																
<p>Design criteria</p> <p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Minimum area</th> <th>Minimum depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p><i>The minimum Balcony depth to be counted as contributing to the balcony area is 1m</i></p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m</p>	Dwelling type	Minimum area	Minimum depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	NO	A number of units have non-compliant balcony sizes where they rely upon areas of balcony that are less than 1m in depth.	
Dwelling type	Minimum area	Minimum depth																
Studio apartments	4m ²	-																
1 bedroom apartments	8m ²	2m																
2 bedroom apartments	10m ²	2m																
3+ bedroom apartments	12m ²	2.4m																

Attachment 2

Apartment Design Guide Compliance Table

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.
4F Common circulation and spaces		
<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>Design criteria</p> <ol style="list-style-type: none"> The maximum number of apartments off a circulation core on a single level is eight For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40 	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.
4G Storage		
<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.

Attachment 2

Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE			
Guideline		Y/N	Comment
Design criteria			The proposal includes dedicated storage cupboard within the apartments.
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:			
Dwelling type	Storage size volume m³	Proposal m³	
Studio apartments	4 m ³	-	
1 bedroom apartments	6 m ³	6 m ³	
2 bedroom apartments	8 m ³	8 m ³	
3+ bedroom apartments	10 m ³	10 m ³	
At least 50% of the required storage is to be located within the apartment			
Objective 4G-2			Additional storage areas are located in the basement.
Additional storage is conveniently located, accessible and nominated for individual apartments			
4H Acoustic privacy			
Objective 4H-1			Habitable rooms and POS are located facing bedrooms within the diagonal alley.
Noise transfer is minimised through the siting of buildings and building layout			
Objective 4H-2			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			
4J Noise and pollution			
Objective 4J-1			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			
Objective 4J-2			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			
4K Apartment mix			

Attachment 2

Apartment Design Guide Compliance Table

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.
4L Ground floor apartments		
<p><i>Objective 4L-1</i></p> <p>Street frontage activity is maximised where ground floor apartments are located</p>	N/A	No ground floor apartments are proposed.
<p><i>Objective 4L-2</i></p> <p>Design of ground floor apartments delivers amenity and safety for residents</p>	N/A	No ground floor apartments are proposed.
4M Facades		
<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.
4 N Roof design		
<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>	NO	The top storey includes large rooftop cabana with communal open space. But this is for the commercial use.
<p><i>Objective 4N-3</i></p> <p>Roof design incorporates sustainability features</p>	NO	The roof does not have overhangs.
4O Landscape design		

Attachment 2

Apartment Design Guide Compliance Table

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.
4P Planting on structures		
<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	-
4Q Universal design		
<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.
4R Adaptive reuse		

Attachment 2

Apartment Design Guide Compliance Table

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	-
4S Mixed use		
<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 diagonal walkway is shared by commercial and residential uses, limited sightlines results in a poor safety outcome. There is no separation of residential and non-residential car parking..
4T Awnings and signage		
<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.
4U Energy efficiency		
<p><i>Objective 4U-3</i></p> <p>Development incorporates passive environmental design</p>	NO	The proposal does not address passive shading. 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.

Attachment 2

Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
4V Water management and conservation		
Objective 4V-1 Potable water use is minimised	YES	A valid BASIX certificate has been provided.
Objective 4V-2 Urban stormwater is treated on site before being discharged to receiving waters	NO	Water quality has not been addressed within the application.
Objective 4V-3 Flood management systems are integrated into site design	YES	Flood mitigation has been incorporated via floor levels and a flood gate to the basement.
4W Waste management		
Objective 4W-1 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.
Objective 4W-2 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
4X Building maintenance		
Objective 4X-1 Building design detail provides protection from weathering	NO	The proposal does not include roof overhangs or window hoods.
Objective 4X-2 Systems and access enable ease of maintenance	NO	The proposal includes large unarticulated sheer facades that are difficult to maintain.
Objective 4X-3 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).

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
Site Area	1480m ²	-	-
Site frontage (Tuggerah/Pacific)	30.3m/52.93m width		
Site Depth	Corner site		
Height (WLEP 2013)	17.39m	16m	No
FSR (WLEP 2013)	1:5:1	1:78:1	No
Setbacks (DCP Ch 5.3)			
- West (Tuggerah Pde)			
1 st -4 th storey	Up to 7m/building, 4.8m/balc	Not specified	N/A
5 th and above	Up to 8m/building, 4.8m balc	Not specified	N/A
- South (Pacific St)			
1 st -4 th storey	Nil	Not specified	N/A
5 th and above	-	-	-
- North and East (side)			
All storeys	1.7m	6 to 9m	No
Parking (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		12 spaces	
1 visitor per 5 units		5 spaces	
-		TOTAL =27	
Business 1 space per 40m ²			
Restaurant and Function		4 spaces (156m ²)	
Centre 15 spaces per 100m ²		1 servicing	
	TOTAL = 34		No
		45 spaces (296m ²)	
		1 Servicing	
		81 spaces and 2 servicing spaces	
- Accessible	2 spaces	1/accessible unit (2 units)	Yes
- Bicycle	10 bike lockers	1 per 3 dwellings (8)	Yes
- Motorcycle spaces	1 spaces	1/50 spaces	Yes
- Washbay (can be visitor space)	1	1 space	Yes
Communal Open Space (DCP Ch 2.4)			
- Min per dwelling	340m ² (14.7m ² /dwelling)	460m ² (20m ² /dwelling)	No
- Min dimension	Min 5m	Min 5m	Yes
- Min 3hrs solar access 9am-3pm @ midwinter	61.7% of area (210m ²)	75% of area (255m ²)	No
(ADG)			
- 25% site area	22% (340m ²)	25% of site (370m ²)	No
- Min dimension 3m	Min dimension 5m	3m	Yes
- minimum of 50% direct sunlight to the principal usable part for	Min 50% solar access midwinter	50%	Yes

Attachment 3

DCP & ADG compliance tables

min 2 hours 9am-3pm @ midwinter			
Private open space Balconies (ADG/DCP): – Min area – Min dimension – Directly accessible from living area – Grade 1:14 Solar access POS (DCP Ch 2.4) (ADG) – rec 3hrs	10.9 ² 9.66m ² 10.2m ² <2m Adjoining living area - <1:14 - 67% (14/21) receive 3 hours 9am-3pm midwinter	8 m ² /1 bed 10m ² /2 bed 12m ² /3 bed 2m Adjoining living area - <1:14 - 70% receive 3 hrs 9am-3pm mid-winter 70%	Yes No No No Yes - Yes - Yes
Cross ventilation (ADG)	71% (15/21 units) comply	60% of units to be naturally cross ventilated	Yes
Solar access (subject site) (ADG) (DCP Ch 2.4)	67% (14 units) 67% (14 units)	70% 75%	No No
Solar access (surrounding site) (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
Accessible dwellings (DCP Ch 2.4) Adaptable (ADG) Universal housing	8% (2 units) - Not identified	10% adaptable (2.3 units) 20% silver level	No - Unknown
Landscaping (DCP Ch.2.4) Landscaping (25%)	15% of site (222m ²)	25% of site (370m ²)	No
Deep soil (DCP Ch 2.4) - 50% of required 25% (ADG) - 7% - Min dimension Nil - Not required in town centre locations	173m ² - 173m ² Nil N/A	12.5% (185m ²) - 7% (151m ²) Nil N/A	No - Yes - -
Apartment size (ADG)	51m ² 72.31m ² 91.65m ²	50m ² for 1 bedroom 70m ² for 2 bedroom 90m ² for 3 bedroom	Yes Yes Yes
Building Separation (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	For Levels 1 – 4: • 12m between habitable rooms/balconies	No

Attachment 3

DCP & ADG compliance tables

	<p>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.</p> <p>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)</p>	<ul style="list-style-type: none"> • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms <p>For levels above 4: 18m between habitable rooms/balconies</p>	
Building depth (ADG)	16.6m @ deepest	12-18m depth from glass to glass	Yes
Units accessed from a single core (ADG)	6 units	Max 8 units at each level	Yes
Storage (DCP Ch 2.4) 1-2 bedrooms 3 or more bedrooms (ADG)	6m ² 8m ² 6m ³ 8m ³ 10m ³	3m ² 6m ² 6m ³ (1 bed) 8m ³ (2 bed) 10m ³ (3 bed)	Yes
Basix Certificate	Certificate NOT provided	BASIX Certificate required	No
Dwelling mix (ADG and DCP Ch 2.4) 1 Bed 2 Bed 3 Bed	2 12 9	Mix required	Yes
Waste storage (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
Desired character mixed use (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).	<ul style="list-style-type: none"> - 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

26th November, 2020.

APPLICATION TO VARY A DEVELOPMENT STANDARD

HEIGHT

**DA162/2020 - 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 Height; 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

Height.

5. Under what clause is the development standard listed in the environmental planning instrument?

Clause 4.3 of the Wyong Local Environmental Plan 2013 and accompanying maps.

6. What are the objectives of the development standard?

The objectives of Height of Buildings as contained within Clause 4.3 of the Wyong Local Environmental Plan 2013 are recited with relevant commentary included below:-

(a) to establish the maximum height limit for buildings to enable the achievement of appropriate development density,

Comment

Reference to the Height of Buildings Map (Sheet No. HOB_016) will confirm that the height for this precinct is 16 metres – a height which clearly contemplates buildings in the order of 5 metres above natural ground.

(b) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

Comment

Buildings in the precinct include the Long Jetty Hotel located on the corner of Pacific Street and The Entrance Road, the three storey residential flat building adjoining the subject site to the north

and the mixture of ageing housing stock generally west of the alignment of the ridge along which The Entrance Road serves the ribbon development of commercial enterprises at Long Jetty.

Buildings along the ridge following the alignment of The Entrance Road, when constructed to 16 metres, will appear proportionally higher in the landscape given the natural elevation. The building the subject of this application, which marginally exceeds the height provision, does so in satisfaction of the minimum finished floor level requirements but will still appear lower in the landscape given the natural topography of the precinct.

The planning strategy for the locality embeds controls which are aimed at accommodating five storey redevelopment which is intended to typify the desired future built environment. The desired future character of the locality is one which will reflect the broad range of uses as provided for in the B2 Local Centres zone, as does the proposal.

(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.*

Comment

The height of the building being in part marginally above the statutory provision, does not compromise the amenity of neighbouring properties as a consequence of bulk, access to sunlight, privacy or views.

(ca) *in relation to land at Kamwal that is within Zone B6 Enterprise Corridor and is identified as "Area 4" on the Height of Buildings Map—*

- (i) *to provide incentives for the development of health-related facilities in this locality, and*
- (ii) *to encourage lot consolidation of smaller lots to reduce the possibility of fragmented development, encourage shared facilities and manage traffic movements.*

Comment

Not applicable.

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

Comment

The purpose of this submission is to address the variation to the height control, as is provided for in the standard template Wyong Local Environmental Plan, 2013.

(2A) *Despite subclause (2), if the site area of a building on land identified as "Area 1" or "Area 2" on the Height of Buildings Map is at least 1,800 square metres, the maximum height of that building is—*

- (a) *in relation to land identified as "Area 1" on the Height of Buildings Map—20 metres, and*
- (b) *in relation to land identified as "Area 2" on the Height of Buildings Map—26 metres.*

(2B) *Despite subclause (2), the maximum height of a building on land identified as "Area 3" on the Height of Buildings Map is 10 metres if the building is to be located within 5 metres of any lot boundary with a frontage to Alison Road or the Pacific Highway.*

(2C) *Despite subclause (2), the maximum height of a building on land identified as "Area 4" on the Height of Buildings Map is 20 metres if—*

- (a) *the site area is 2,000 square metres or more, and*
- (b) *the building is used for the purposes of health services facilities or for a purpose that, in the opinion of the consent authority, complements and contributes to the special centre role of the hospital precinct adjacent to the land.*

Comment

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The additional opportunities in terms of both floor space and height on consolidated sites which meet the prescriptive requirements is acknowledged and recognised as an appropriate mechanism to encourage site amalgamation. The site the subject of this application embeds those principles in the consolidation of two existing lots.

7. What is the numeric value of the development standard in the environmental planning instrument?

16 metres.

8. What is proposed numeric value of the development standard in your development application?

The topmost part of the building, being the northernmost lift overrun, is at RL 19 above natural levels of about 1.61 AHD producing a maximum height of 17.39 metres resulting in departure of 1.39 metres above the 16 metre height control.

9. What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation at its maximum is calculated at 8.6%.

The maximum variation to height control occurs only on the lift overrun and is reduced to the parapet and finished roof levels.

The highest roof level, as notated on plans and sections, is 17.7 metres.

Measured above an average of natural ground levels of 1.7 metres AHD, confirms that the roof level is compliant at 16 metres above natural ground level.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

Strict compliance with the standard in this case is unreasonable because of the necessity for a building in this location to adopt a minimum finished floor level 500mm above the nominated 1% AEP level in order to satisfy Council's requirement for development in flood fringe localities.

It is also unreasonable to force mathematic compliance of the standard given that the overall building roof complies with the numerical requirements, with only parapet and lift overruns exceeding the standard.

The standard that is exceeded is exceeded to a minor degree (8.6% maximum) and is contained to small areas of the building.

It is unnecessary for the proposal to comply strictly with the standard as the departure does not compromise amenity either on or off-site, containing shadows primarily within the street alignments.

Additionally, strict compliance is unnecessary because impacts on amenity do not arise as a consequence of the skilful design adopted providing, inter alia, basement parking, compliant podium and finished floor levels, through site connectivity and protection of privacy particularly in relation to the three storey (two storey residential above parking) residential building adjacent to the north.

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.

The height control contemplates five storeys. The proposal is five storeys. The departure, minor in any event, does not compromise the desired future character of the locality, nor detract from residential amenity.

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,

Comment

As with floor space, the variation contemplated in respect of height 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 with respect to height (arising as a consequence of complying with minimum floor levels) is justified as the proposal remains consistent with the objects of the Act to promote the social and economic welfare of the community by the provision and inclusions of design elements that fulfil the zone objectives.

(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

Comment

Variation to the development standard as is sought arises as a consequence of complying with minimum floor levels. The variation does not detract from the pursuit of ecologically sustainable development.

(c) to promote the orderly and economic use and development of land,

Comment

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) to promote the delivery and maintenance of affordable housing,

Comment

The proposal incorporates compliant, accessible and secure space for its intended market comprising both permanent householders/residents and serviced apartment accommodation. The provision of 21 (reduced from 23) additional housing opportunities at Long Jetty must contribute to the availability of housing stock and thus assist in the delivery and maintenance of housing. The proposal does not detract from, nor deplete, affordable housing in the locality.

(e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

Comment

No impact to the natural environment arises as a consequence of Council permitting variation to the FSR control.

(f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

Comment

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) *to promote good design and amenity of the built environment,*

Comment

The variation in height accommodates the buildings design which includes satisfaction of the minimum floor levels together with the incorporation of synergistic business premises aiding local job creation in a manner consistent with the desired likely future environment.

(h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

Comment

Promoting health and safety is achieved by compliance with relevant and specific standards including compliance with the finished floor level and the provision of accessible egress in the 1% AEP.

(i) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

Comment

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) *to provide increased opportunity for community participation in environmental planning and assessment.*

Comment

It is noted that no objections were received when the proposal was advertised/notified indicating general acceptance of the inconsequential affects of the minor departure in relation to height.

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.

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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, in spite of the minor variation, 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, one consequence of the inclusion of height is to accommodate the "head room" in the function space which, while contributing to bulk, does not detract from amenity.

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, and the desired future built environment, the inconsequential variation to the height control does not give rise to character or amenity impacts that would warrant refusal of the project.

It is clear that from time to time exceptions to or variation from development standards including FSR and height 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 height) 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 unreasonable. It is unreasonable because, at least in part, the variation in height arises as a consequence of compliance with minimum floor levels.

Strict compliance is unreasonable also because the height controls contemplate five storey development in the precinct, being the scale of building that would facilitate investment and redevelopment.

Strict compliance is also unnecessary as no benefit is derived by strict compliance, no impacts are manifested off-site by acceptance of the variation and no precedence in terms of development scale or bulk is likely to arise as a consequence.

The proposal and the variation satisfy the objectives of the zone and the statutory controls as is evidenced by the demonstrable satisfaction of relevant aims and objectives found in the Act and those relevant to the applicable zone.

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 as a consequence of the variation in relation to height.

No weight can be placed (as within the report and the reasons for refusal) on the alleged visual amenity impacts of the building because that argument is not able to be sustained. It cannot be sustained because it is impossible to observe the building from the lake or the foreshore.

In streetscape terms, the physical aspects of the building are consistent with the five-storey development promoted for the area.

At the streetscape level, the elements of the building (lift overruns) which cause the maximum exceedance from height (8.6%) is concealed from view by "parallax" i.e. the topmost part of the building (lift overruns) will not be visible from an observer in the footway of streets adjacent to the site.

26th November, 2020.

APPLICATION TO VARY A DEVELOPMENT STANDARD

FLOOR SPACE RATIO

DA162/2020 - 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 and commented on below:-

(a) *to ensure that the density, bulk and scale of development is appropriate for a site,*

Comment

The density, bulk and scale of development is encouraged at an overall height of five storeys given the height controls which must be considered contemporaneously with relevant aims, objectives and urban design criteria.

What has been advanced in the application is consistent with that planned for the site in the B2 Local Centres zone implemented by the Council by conscious decision to encourage development to five storeys incorporating a variety of uses as advanced.

(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,

Comment

The desired streetscape and character is derived from the zone applicable, the range of uses permitted and the relevant development standards and requirements. Considering the site in the context of the suite of controls applicable and the design outcomes for the locality i.e. to create an east-west node at Long Jetty punctuating The Entrance/Long Jetty lineal city conurbation, results in confirmation that the proposed density, bulk and scale of development integrates with the desired and designed streetscape of the area; an area which must accommodate future development at finished floor levels respecting the 1% AEP flood constraints.

The building in the form submitted integrating vehicular access to sub-basement parking with permeable and active street interface of commercial content with managed residential above, will contribute in a positive manner to the character of the area as is planned.

(c) to facilitate development in certain areas that contributes to economic growth.

Comment

In broad terms, it is generally acknowledged that every new housing opportunity brings with it a single, full or part-time employment opportunity. Serviced apartment housing has a generally higher job creating potential, while commercial floor space of the specialised nature proposed can generate full and part-time positions at the rate of up to 1 per 10m².

It is accepted that job creation in the construction phase will conclude within say, 12 months of commencement, on-going employment opportunities are generated within the café and alfresco dining space, the function centre space and those other spaces at ground floor and roof level.

This project contributes to local employment generation both within the commercial component as well as the hospitality and maintenance services industries associated with the serviced apartments/tourist accommodation all of which contribute 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,

Comment

Not Applicable.

(d) to promote the provision of affordable housing.

Comment

The proposal is to provide additional housing (both permanent and serviced apartments) and does not detract from the availability of affordably housing.

7. **What is the numeric value of the development standard in the environmental planning instrument?**

1.5:1

8. **What is proposed numeric value of the development standard in your development application?**

1.75:1

9. **What is the percentage variation (between your proposal and the environmental planning instrument)?**

16.66%.

10. **How is strict compliance with the development standard unreasonable or unnecessary in this particular case?**

Mathematical compliance might be better achieved by reduction of the number of dwellings.

It might also be better achieved via removal of the majority of the space devoted to "function centre" activities.

The consequence of any further reduction in the number of accommodation suites (down from 23 to 21) and/or any reduction in commercial content would reduce the commercial viability of the project and potentially deny local employment opportunities in an area of acknowledged high unemployment.

Such action i.e. to reduce the viability of the proposal, would be antipathetic to the zone objectives and the intended use of the land as prescribed in the Wyong Local Environmental Plan, 2013.

Given that there are no objections to the proposal and no negative environmental or amenity impacts, 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" shop top housing development with individual "lock-up" shops.

Such an approach to the sites development would produce unlettable and un-nominated retail shops at Long Jetty. The proponent and the Applicant/Architect have given particular consideration to the commercial opportunities and, rather than compromise the sites potential with un-nominated and untenable "lock-up" shops, identified and made provision for unique opportunities to accommodate synergistic viable retail space and consequent employment generating opportunities together with high quality housing above.

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 but does facilitate employment generation by inclusion of specially designed ground floor retail and business premises.

Strict compliance is unnecessary because impacts on amenity do not arise as a consequence of the skilful design adopted providing basement parking, compliant finished floor levels for all commercial and habitable space, permeable retail frontage and superior compliant access throughout.

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.

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,

Comment

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) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,

Comment

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) to promote the orderly and economic use and development of land,

Comment

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.

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(d) *to promote the delivery and maintenance of affordable housing,*

Comment

The proposal incorporates compliant, accessible and secure space for its intended market comprising both permanent householders/residents and serviced apartment accommodation. The provision of 21 (reduced from 23) additional housing opportunities at Long Jetty must contribute to the availability of housing stock and thus assist in the delivery and maintenance of housing. The proposal does not detract from, nor deplete, affordable housing in the locality.

(e) *to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*

Comment

No impact to the natural environment arises as a consequence of Council permitting variation to the FSR control.

(f) *to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*

Comment

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) *to promote good design and amenity of the built environment,*

Comment

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. This is evident by the absence of any objections from nearby or adjacent property owners.

(h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*

Comment

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) *to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*

Comment

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) to provide increased opportunity for community participation in environmental planning and assessment.

Comment

Community participation and environmental planning assessment is to be managed by Council consistent with the Development Control provisions. The amendments maintain the project as substantially the same as previously proposed, thus removing the need for further public exhibition. It is noted that no objections were received when the proposal was advertised/notified.

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.

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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.

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.

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

Central Coast
Local Planning Panel

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.

Applicant	Thrum Architects Pty Ltd
Owner	Mr GG Smith and Mrs K Smith
Application No	DA/162/2020
Description of Land	Lot 2 DP 571978, Pt Lot 37 Sec 1 DP 13225, Paradise Tourist Park, 136-136 Tuggerah Parade, LONG JETTY NSW 2261
Proposed Development	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
Site Area	1510 m ² (1480 m ² by survey)
Zoning	B2 Local Centre
Existing Use	Caravan Park (Paradise Tourist Park)
Employment Generation	Unknown
Estimated Value	\$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)

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:

Proposed Development	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.
Permissibility and Zoning	The site is zoned B2 Local Centre under <i>Wyong Local Environmental Plan 2013</i> (WLEP). The following uses are permissible uses within the zone: <ul style="list-style-type: none"> • business premises • commercial premises • function centre • retail premises • shop top housing • tourist and visitor accommodation 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.
Relevant Legislation	<ul style="list-style-type: none"> • <i>Environmental Planning & Assessment Act 1979</i> (EP&A Act) • <i>Environmental Planning & Assessment Regulation 2000</i> (EP&A Regulation) • <i>State Environmental Planning Policy No. 65</i> (SEPP 65) • <i>Apartment Design Guide</i> (ADG) • <i>State Environmental Planning Policy (Coastal Management) 2018</i> (SEPP CM)

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"> • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX) • State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55) • Wyong Local Environmental Plan (WLEP) • Draft Central Coast Local Environmental Plan 2018 • Wyong Development Control Plan 2013 (WDCP)
Current Use	Caravan Park (Paradise Tourist Park)
Integrated Development	No
Submissions	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 1,480m². 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

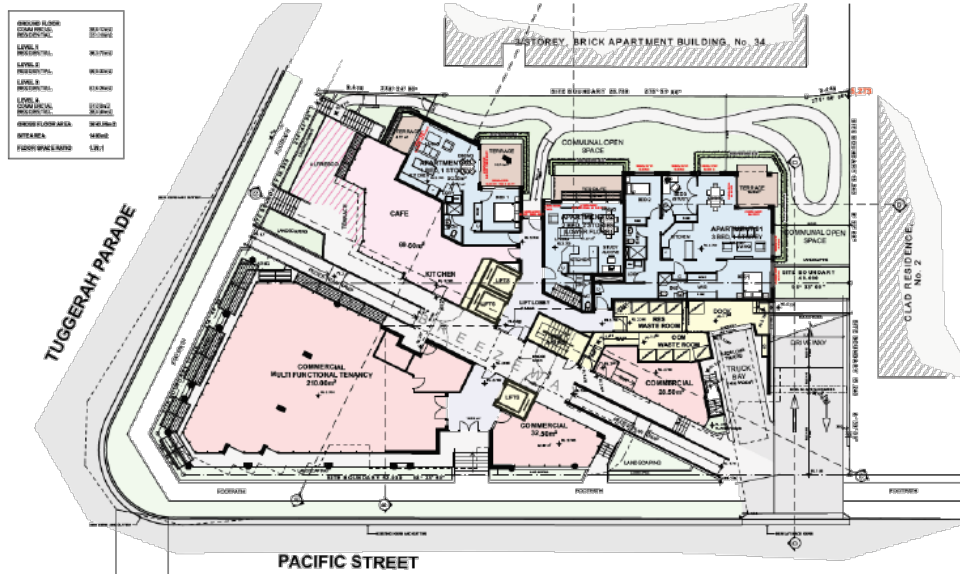
The proposed development is for a mixed use building comprising 23 dwellings, tourist and visitor accommodation, business premises, food and drink premises (café) and function centre, basement parking and associated works.

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 69.6m²
 - Multi-function tenancy 210m²,
 - Commercial tenancies 32.5m² and 28.5m²
 - 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)

The applicant’s Statement of Environmental Effects indicates that the development will contain tourist and visitor accommodation and a “function centre”. The site layout is shown below.



Above: Site plan showing development layout



Above: Rendered Perspective Elevations

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)

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)

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)

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)

- 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)

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)

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 420m² 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:

- 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.*
- 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)

- *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)

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)

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.*

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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

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)

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.

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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

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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)

Principles	Proposal
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"> - <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> - <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> - <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>
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"> - <i>Mass and scale of the proposed building, together with unsatisfactory articulation; and</i> - <i>Façade-architecture comprises elements with a distinctly-commercial character and poorly-articulated side or rear elevations;</i> - <i>Street setbacks which are insufficient, and which cannot accommodate canopy landscaping that might have moderated visual impacts.</i>
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>

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>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"> - <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> <p><i>ii Privacy of neighbouring apartments within the development would be compromised:</i></p> <ul style="list-style-type: none"> - <i>39% of the proposed apartments would be exposed to cross-viewing between windows of habitable rooms and / or balconies;</i> - <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> <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"> - <i>Privacy of neighbouring apartments would be compromised by 35% of the proposed apartments;</i> - <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> - <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> <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"> - <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> - <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> - <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>
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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"> - <i>The diagonal alleyway would accommodate both public and private access</i> <p><i>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></p> <ul style="list-style-type: none"> - <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> - <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>
Housing diversity and social interaction	<p><i>Location and design of common residential areas are unsatisfactory:</i></p> <ul style="list-style-type: none"> <i>i Unsatisfactory safety and security for residential lobbies.</i> <i>ii Amenity of the proposed ground level communal open space is compromised by:</i> <ul style="list-style-type: none"> - <i>Configuration is a long and narrow area which is partly-hidden behind the eastern elevation;</i> - <i>Extensive midwinter overshadowing due to the form and proximity of the northern neighbour;</i> - <i>Security concerns of the rear-most portion due to partial concealment 'behind' the proposed building;</i> <i>iii Amenity of the roof-top open space above the southern pavilion is compromised by:</i> <ul style="list-style-type: none"> - <i>no indication of 'outdoor rooms' or smaller social spaces that would encourage concurrent use by unrelated individuals and small groups;</i>
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"> - <i>Sections and three-dimensional views confirm that scale of street elevations would be highlighted by sheer vertical walls of four and five</i>

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	<p>storeys, and that impacts of the corner pavilion would be accentuated by overhanging upper storeys;</p> <p>- 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;</p> <p>In both pavilions, side elevations which would be visible from streets are bland planes without articulation, and would not improve existing streetscape quality.</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,

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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,*

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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

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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 (10m² per dwelling with a minimum dimension of 5 metres);

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- private open space (a minimum area of 10m² 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 (3m² 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:

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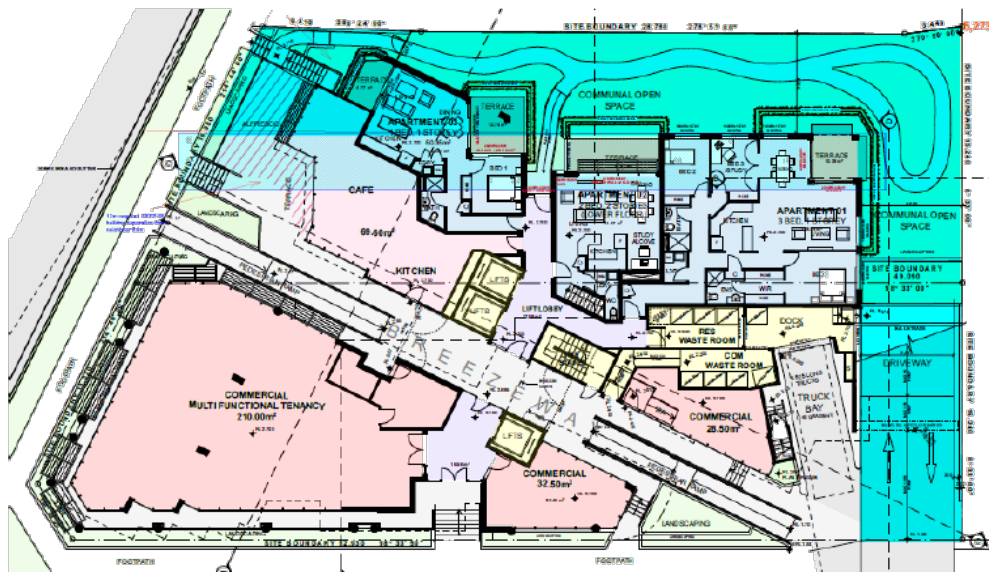
- To provide a high quality and varied residential environment with accessible open space, retail and community facilities
- To provide attractive streetscapes which reinforce the function of a street and enhance the amenity of dwellings

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

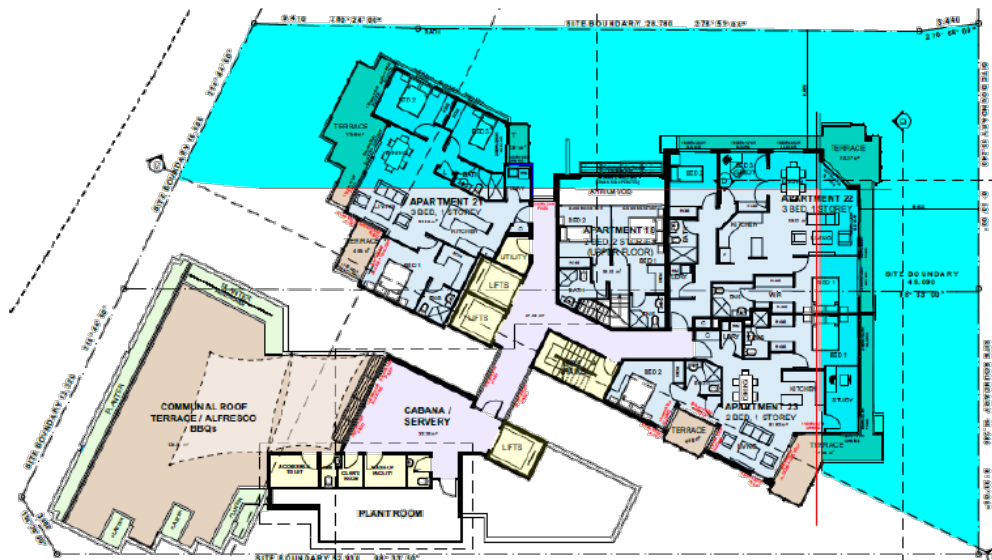
The DCP requires that tower elements are setback from any boundary that faces another mixed development, or an existing rear lane, by half of the “distance separation” that is specified by the SEPP No 65 Residential Flat Design Code.

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.

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 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.

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 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.

- 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)



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

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)

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.

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)

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

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)

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 30m² 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

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)

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

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)

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 *Wyang 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.

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)

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.

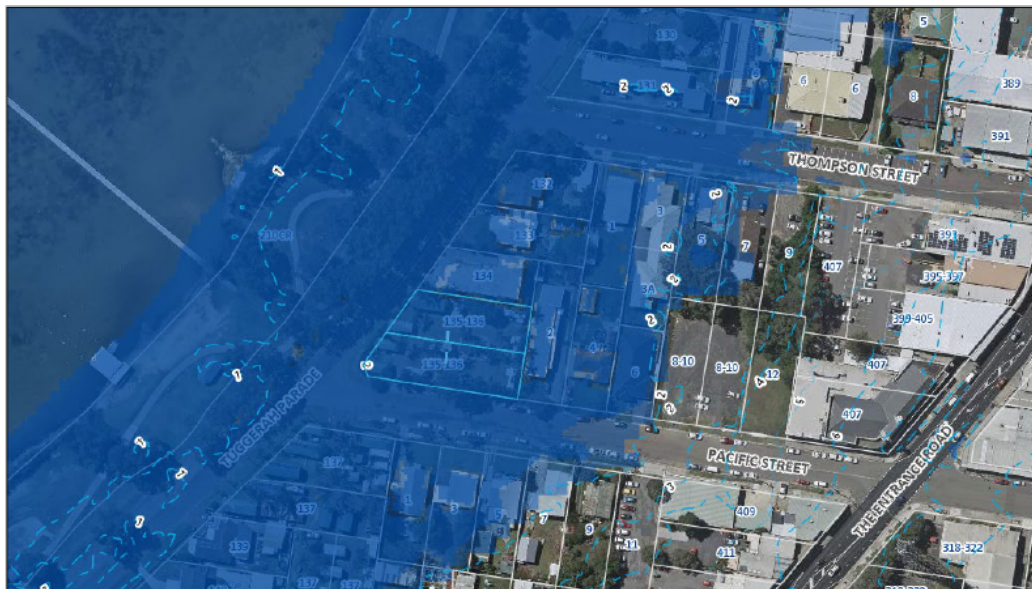
Flooding

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.



Above: 1% AEP extent from GeoView

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)

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.

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 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)

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)

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)

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)

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

1	Attachment 1 Reasons for Refusal		D14177502
2	Attachment 2 Apartment Design Guide Compliance Table		D14178352
3	Attachment 3 - DCP & ADG compliance tables		D14179043
4	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
5	Attachment 5 Architectural Plans prepared by Thrum Architects	Provided Under Separate Cover	D13848986
6	Attachment 6 Clause 4.6 written request prepared by SJH Planning and Design		D13848954

Attachment 1Attachment 1 Reasons for Refusal

Applicant	Thrum Architects Pty Ltd
Owner	Mr GG Smith and Mrs K Smith
Application No	DA/162/2020
Description of Land	Lot 2 DP 571978, Pt Lot 37 Sec 1 DP 13225, Paradise Tourist Park, 136-136 Tuggerah Parade, LONG JETTY NSW 2261
Proposed Development	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

Attachment 1**Attachment 1 Reasons for Refusal**

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

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Attachment 1 Reasons for Refusal

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*.

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- 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.

Attachment 1**Attachment 1 Reasons for Refusal**

- 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.

Attachment 1**Attachment 1 Reasons for Refusal**

- 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

Attachment 2 Apartment Design Guide Compliance Table

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
3A Site analysis		
<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>
3B Orientation		
<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>

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Attachment 2 Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
3C Public domain interface		
<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.
3D Communal and public open space		
<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>Design criteria</p> <ol style="list-style-type: none"> Communal open space has a minimum area equal to 25% of the site (see figure 3D.3) 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) 	NO	<p>370m² is required. The proposal provides 300m² at ground level. The proposal does not achieve >2hrs solar access to 50% of the ground floor space (150 m²).</p> <p>The proposal includes a hard paved rooftop terrace (140m²) 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>

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Attachment 2 Apartment Design Guide Compliance Table

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	-
3E Deep soil zones		
<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.

Attachment 2 Attachment 2 Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE				
Guideline			Y/N	Comment
Design criteria				
Deep soil zones are to meet the following minimum requirements:				
Site area	Minimum dimensions	Deep soil zone (% of site area)		
less than 650m ²	Nil	7%		
650m ² - 1,500m ²	3m	Minimum 7% with recommended 10%		
greater than 1,500m ²	6m	-		
greater than 1,500m ² with significant existing tree cover	6m	-		
3F Visual privacy				
Objective 3F-1				
Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy				
			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.
Design criteria				
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:				
Building height	Habitable rooms and balconies	Non-habitable rooms	Proposal	
up to 12m (4 storeys)	6m	3m	6m	
up to 25m (5-8 storeys)	9m	4.5m	9m	
over 25m (9+ storeys)	12m	6m	-	
Note: 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				
			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)

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Attachment 2 Apartment Design Guide Compliance Table

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 < 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>
3G Pedestrian access and entries		
<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>
3H Vehicle access		
<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>

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Attachment 2 Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
<p>Design guidance</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"> the materials and colour palette to minimise visibility from the street security doors or gates at entries that minimise voids in the facade where doors are not provided, the visible interior reflects the facade design and the building services, pipes and ducts are concealed 	YES	The car parking is provided largely within a basement.
3J Bicycle and car parking		
<p>Objective 3J-1</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>Design criteria</p> <p>1 For development in the following locations:</p> <ul style="list-style-type: none"> on sites that are within 800 metres of a railway station or light rail stop in the Sydney Metropolitan Area; or on land zoned, and sites within 400 metres of land zoned, B3 Commercial Core, B4 Mixed Use or equivalent in a nominated regional centre <p>the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever 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>Objective 3J-2</p> <p>Parking and facilities are provided for other modes of transport</p>	YES	Bicycle parking is provided, along with service vehicles.
<p>Objective 3J-3</p> <p>Car park design and access is safe and secure</p>	YES	Car parking is contained within a basement.
<p>Objective 3J-4</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>Objective 3J-5</p> <p>Visual and environmental impacts of on-grade car parking are minimised</p>	YES	No on grade car parking is proposed.

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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	-
4A Solar and daylight access		
<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>Design criteria</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.
4B Natural ventilation		
<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.

Attachment 2 Attachment 2 Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE																
Guideline	Y/N	Comment														
<p>Design criteria</p> <p>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</p> <p>2 Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p>	YES	73% (17 units) comply.														
4C Ceiling heights																
<p><i>Objective 4C-1</i></p> <p>Ceiling height achieves sufficient natural ventilation and daylight access</p>	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.														
<p>Design criteria</p> <p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <table border="1"> <thead> <tr> <th>Minimum ceiling height for apartment and mixed use buildings</th> <th>Proposal</th> </tr> </thead> <tbody> <tr> <td>Habitable rooms</td> <td>2.7m</td> </tr> <tr> <td>Non-habitable</td> <td>2.4m</td> </tr> <tr> <td>For 2 storey apartments</td> <td>2.7m for main living area floor</td> </tr> <tr> <td></td> <td>2.4m for second floor, where its area does not exceed 50% of the apartment area</td> </tr> <tr> <td>Attic spaces</td> <td>1.8m at edge of room with a 30 degree minimum ceiling slope</td> </tr> <tr> <td>If located in mixed used areas</td> <td>3.3m for ground and first floor to promote future flexibility of use</td> </tr> </tbody> </table>	Minimum ceiling height for apartment and mixed use buildings	Proposal	Habitable rooms	2.7m	Non-habitable	2.4m	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	NO	<p>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.</p> <p>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.</p>
Minimum ceiling height for apartment and mixed use buildings	Proposal															
Habitable rooms	2.7m															
Non-habitable	2.4m															
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															
<p><i>Objective 4C-2</i></p> <p>Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms</p>	YES	Ceiling height is adequate for levels above ground level.														
<p><i>Objective 4C-3</i></p> <p>Ceiling heights contribute to the flexibility of building use over the life of the building</p>	NO	Ground floor ceiling heights are 3.0m and do not allow for flexibility of use.														
4D Apartment size and layout																

Attachment 2 Attachment 2 Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE																		
Guideline		Y/N	Comment															
<p><i>Objective 4D-1</i></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>Design criteria</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>35m²</td> <td>-</td> </tr> <tr> <td>1 bedroom</td> <td>50m²</td> <td>51m²</td> </tr> <tr> <td>2 bedroom</td> <td>70m² + 5m²</td> <td>72.31m²</td> </tr> <tr> <td>3 bedroom</td> <td>90m² + 5m²</td> <td>91.65m²</td> </tr> </tbody> </table> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² 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 ²	-	1 bedroom	50m ²	51m ²	2 bedroom	70m ² + 5m ²	72.31m ²	3 bedroom	90m ² + 5m ²	91.65m ²		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 ²	-																
1 bedroom	50m ²	51m ²																
2 bedroom	70m ² + 5m ²	72.31m ²																
3 bedroom	90m ² + 5m ²	91.65m ²																
<p><i>Objective 4D-2</i></p> <p>Environmental performance of the apartment is maximised</p>		YES	Environmental performance is adequate.															
<p>Design criteria</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><i>Objective 4D-3</i></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.															

Attachment 2

Attachment 2 Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE																		
Guideline	Y/N	Comment																
<p>Design criteria</p> <p>1 Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)</p> <p>2 Bedrooms have a minimum dimension of 3m (excluding wardrobe space)</p> <p>3 Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments <p>4 The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	YES	Rooms are adequately sized throughout the development.																
4E Private open space and balconies																		
<p>Objective 4E-1</p> <p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity</p>	NO	Some apartments have POS with a minimum dimension of less than 2m.																
<p>Design criteria</p> <p>All apartments are required to have primary balconies as follows:</p> <table border="1"> <thead> <tr> <th>Dwelling type</th> <th>Minimum area</th> <th>Minimum depth</th> </tr> </thead> <tbody> <tr> <td>Studio apartments</td> <td>4m²</td> <td>-</td> </tr> <tr> <td>1 bedroom apartments</td> <td>8m²</td> <td>2m</td> </tr> <tr> <td>2 bedroom apartments</td> <td>10m²</td> <td>2m</td> </tr> <tr> <td>3+ bedroom apartments</td> <td>12m²</td> <td>2.4m</td> </tr> </tbody> </table> <p><i>The minimum Balcony depth to be counted as contributing to the balcony area is 1m</i></p> <p>For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m</p>	Dwelling type	Minimum area	Minimum depth	Studio apartments	4m ²	-	1 bedroom apartments	8m ²	2m	2 bedroom apartments	10m ²	2m	3+ bedroom apartments	12m ²	2.4m	NO	<p>A number of units have non-compliant balcony sizes where they rely upon areas of balcony that are less than 1m in depth.</p> <p>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).</p>	
Dwelling type	Minimum area	Minimum depth																
Studio apartments	4m ²	-																
1 bedroom apartments	8m ²	2m																
2 bedroom apartments	10m ²	2m																
3+ bedroom apartments	12m ²	2.4m																

Attachment 2 Attachment 2 Apartment Design Guide Compliance Table

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.
4F Common circulation and spaces		
<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>Design criteria</p> <ol style="list-style-type: none"> The maximum number of apartments off a circulation core on a single level is eight For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40 	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.
4G Storage		
<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.

Attachment 2

Attachment 2 Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE			
Guideline		Y/N	Comment
Design criteria			YES The proposal includes dedicated storage cupboard within the apartments.
In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:			
Dwelling type	Storage size volume m³	Proposal m³	
Studio apartments	4 m ³	-	
1 bedroom apartments	6 m ³	6 m ³	
2 bedroom apartments	8 m ³	8 m ³	
3+ bedroom apartments	10 m ³	10 m ³	
At least 50% of the required storage is to be located within the apartment			
Objective 4G-2			YES Additional storage areas are located in the basement.
Additional storage is conveniently located, accessible and nominated for individual apartments			
4H Acoustic privacy			
Objective 4H-1			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			
Objective 4H-2			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			
4J Noise and pollution			
Objective 4J-1			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			
Objective 4J-2			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			
4K Apartment mix			

Attachment 2 Attachment 2 Apartment Design Guide Compliance Table

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.
4L Ground floor apartments		
<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.
4M Facades		
<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.
4 N Roof design		
<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.
4O Landscape design		

Attachment 2 Apartment Design Guide Compliance Table

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.
4P Planting on structures		
<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	-
4Q Universal design		
<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.
4R Adaptive reuse		

Attachment 2

Attachment 2 Apartment Design Guide Compliance Table

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	-
4S Mixed use		
<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..
4T Awnings and signage		
<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.
4U Energy efficiency		
<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.

Attachment 2

Attachment 2 Apartment Design Guide Compliance Table

ADG COMPLIANCE TABLE		
Guideline	Y/N	Comment
4V Water management and conservation		
Objective 4V-1 Potable water use is minimised	NO	A valid BASIX certificate has not been provided.
Objective 4V-2 Urban stormwater is treated on site before being discharged to receiving waters	NO	Water quality has not been addressed within the application.
Objective 4V-3 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).
4W Waste management		
Objective 4W-1 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.
Objective 4W-2 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
4X Building maintenance		
Objective 4X-1 Building design detail provides protection from weathering	NO	The proposal does not include roof overhangs or window hoods.
Objective 4X-2 Systems and access enable ease of maintenance	NO	The proposal includes large unarticulated sheer facades that are difficult to maintain.
Objective 4X-3 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

Attachment 3 - DCP & ADG compliance tables

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
Site Area	1480m ²	-	-
Site frontage (Tuggerah/Pacific)	30.3m/52.93m width		
Site Depth	Corner site		
Height (WLEP 2013)	17.39m	16m	No
FSR (WLEP 2013)	1:5:1	1:78:1	No
Setbacks (DCP Ch 5.3)			
- West (Tuggerah Pde)			
1 st -4 th storey	Up to 7m/building, 4.8m/balc	Not specified	N/A
5 th and above	Up to 8m/building, 4.8m balc	Not specified	N/A
- South (Pacific St)			
1 st -4 th storey	Nil	Not specified	N/A
5 th and above	-	-	-
- North and East (side)			
All storeys	1.7m	6 to 9m	No
Parking (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	TOTAL =34	Yes*
Business 1 space per 40m ²		2 spaces (61m ²)	No
Restaurant and Function			
Centre 15 spaces per 100m ²		30 spaces (280m ²)	No
- Accessible	2 spaces	1/accessible unit (2 units)	Yes*
- Bicycle	10 bike lockers	1 per 3 dwellings (8)	Yes
- Motorcycle spaces	1 spaces	1/50 spaces	Yes
- Washbay (can be visitor space)	1	1 space	Yes
Communal Open Space (DCP Ch 2.4)			
- Min per dwelling	340m ² (14.7m ² /dwelling)	460m ² (20m ² /dwelling)	No
- Min dimension	Min 5m	Min 5m	Yes
- Min 3hrs solar access 9am-3pm @ midwinter	61.7% of area (210m ²)	75% of area (255m ²)	No
(ADG)	-	-	-
- 25% site area	22% (340m ²)	25% of site (370m ²)	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
Private open space			
Balconies (ADG/DCP):			
- Min area	10.9 ²	8 m ² /1 bed	Yes

Attachment 3

Attachment 3 - DCP & ADG compliance tables

<ul style="list-style-type: none"> - Min dimension - Directly accessible from living area - Grade 1:14 	9.66m ² 10.2m ² <2m Adjoining living area - <1:14 -	10m ² /2 bed 12m ² /3 bed 2m Adjoining living area - <1:14 -	No No No Yes - Yes - Yes
Solar access POS (DCP Ch 2.4) (ADG) – rec 3hrs	61% (14 units) receive 3 hours 9am-3pm midwinter	70% receive 3 hrs 9am-3pm mid-winter 70%	Yes
Cross ventilation (ADG)	75% (9 units) comply	60% of units to be naturally cross ventilated	Yes
Solar access (subject site) (ADG) (DCP Ch 2.4)	61% (14 units) 61% (14 units)	70% (16 units) 75% (17 units)	No No
Solar access (surrounding site) (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
Accessible dwellings (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
Landscaping (DCP Ch.2.4) Landscaping (25%)	15% of site (222m ²)	25% of site (370m ²)	No
Deep soil (DCP Ch 2.4) - 50% of required 25% (ADG) - 7% - Min dimension Nil - Not required in town centre locations	173m ² - 173m ² Nil N/A	12.5% (185m ²) - 7% (151m ²) Nil N/A	No - Yes - -
Apartment size (ADG)	51m ² 72.31m ² 91.65m ²	50m ² for 1 bedroom 70m ² for 2 bedroom 90m ² for 3 bedroom	Yes Yes Yes
Building Separation (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

Attachment 3

Attachment 3 - DCP & ADG compliance tables

	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)		
Building depth (ADG)	16.6m @ deepest	12-18m depth from glass to glass	Yes
Units accessed from a single core (ADG)	6 units	Max 8 units at each level	Yes
Storage (DCP Ch 2.4) 1-2 bedrooms 3 or more bedrooms (ADG)	6m ² 8m ² 6m ³ 8m ³ 10m ³	3m ² 6m ² 6m ³ (1 bed) 8m ³ (2 bed) 10m ³ (3 bed)	Yes
Basix Certificate	Certificate NOT provided	BASIX Certificate required	No
Dwelling mix (ADG and DCP Ch 2.4) 1 Bed 2 Bed 3 Bed	2 12 9	Mix required	Yes
Waste storage (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
Desired character mixed use (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

11th 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

Attachment 6

Attachment 6 Clause 4.6 written request prepared by SJH Planning and Design

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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Attachment 6**Attachment 6 Clause 4.6 written request prepared by SJH Planning and Design**

- (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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Attachment 6**Attachment 6 Clause 4.6 written request prepared by SJH Planning and Design**

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.

Item No: 4.2
Title: Alterations and additions to Central Coast Conservatorium of Music
Department: Environment and Planning

Central Coast
Local Planning Panel

22 April 2021 Local Planning Panel Meeting

Reference: 011.2020.00060219.001 - D14531020
Author: Robert Eyre, Principal Development Planner South
Manager: Ailsa Prendergast, Section Manager, Development Assessment South
Approver: Andrew Roach, Unit Manager, Development Assessment

Summary

An application has been received for alterations and additions to the Conservatorium of Music, Gosford. 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 required to be reported to the Local Planning Panel for determination due to alterations and additions/part demolition to a heritage item.

The application is recommended for approval.

Applicant	Central Coast Conservatorium of Music Inc.
Owner	Crown Land
Application No	DA60219/2020
Description of Land	Lot 453 DP7277721 No 45 Mann Street, Gosford.
Proposed Development	Alterations and additions.
Site Area	1152m ²
Zoning	B3 Commercial Core
Existing Use	Conservatorium of Music
Employment Generation	No
Estimated Value	\$728,035.00

Recommendation

- 1** *That the Local Planning Panel grant consent to DA60219/2020 for alterations and additions to the Conservatorium of Music on 45 Mann Street, Gosford 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.*
- 2** *That Council advise relevant external authorities of the Panel's decision.*

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

Key Issues

- Heritage
- Car Parking

Precis:

Proposed Development	Alterations and additions to Conservatorium of Music including; 3 x Teaching Spaces, Awning, Alterations to Foyer & Reception, New Amenities, Driveway & Car Parking Spaces
Permissibility and Zoning	The subject land is zoned B3 Commercial Core under the provisions of <i>State Environmental Planning Policy (Gosford City Centre) 2018</i> The proposed development is permissible with consent.
Relevant Legislation	<ul style="list-style-type: none"> • <i>Environmental Planning & Assessment Act 1979 – Section 4.15</i> • <i>Local Government Act 1993 – Section 89</i> • <i>State Environmental Planning Policy (Coastal Management) 2018</i> • <i>Gosford Local Environmental Plan 2014</i> • <i>Gosford Development Control Plan 2013</i> • <i>Protection of the Environment Operations Act 1997</i> • <i>Roads Act 1997</i> • <i>Water Management Act 2000</i> • <i>State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017</i> • <i>State Environmental Planning Policy (Gosford City Centre) 2018</i> • <i>Gosford City Centre Development Control Plan 2018</i> • <i>Central Coast Climate Change Policy</i>
Current Use	Conservatorium of Music.
Integrated Development	No
Submissions	Nil

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

Variations to Policies

Clause	Chapter 7.1 (Gosford City Centre DCP 2018)
Standard	Car parking
Departure basis	86%

The Site and Surrounding Development

The site is located on the north-eastern corner of Mann Street and Georgiana Terrace, Gosford. Georgiana Terrace has a steep topography in this location.

Adjoining development comprises commercial and retail developments, including the Council offices/administration building to the north side and Council car parking to the east.

On the south-east corner of Mann Street and Georgiana Terrace is a local heritage Item No 37 known as 'Creighton's Funeral Parlour'. This site has consent for a commercial/residential development (that retains the heritage item). This development has physically commenced.

On the south-west corner of Mann Street and Georgiana Terrace is a local heritage Item No 36 known as the 'Former School of Arts building'. This building has been converted to a café.

The site contains the Conservatorium of Music buildings which are listed as local heritage item No38 under SEPP Gosford City Centre 2018, being the former Gosford Courthouse and Police Station.

The site is not identified as being "bushfire prone land" on Council's bushfire maps.



Figure 1- Locality Plan



Figure 2- Existing Building viewed from Mann Street.

The Proposed Development

The proposal comprises alterations and additions, including:

- 3 new purpose-built acoustic teaching rooms and recording facilities.
- A new awning to the existing courtyard linking teaching spaces.
- A number of small alterations to the existing foyer and reception, creating a new feature teaching space.
- A new entry and public foyer to the Robert Knox Hall. This will give disabled access from the rear car parking area and a new disabled parking space.
- Removal of the existing demountable structures and toilets and construction of new toilet facilities to the north-east corner of the site.
- A new back of house performance area or staff meeting area.
- A new driveway off Georgiana Terrace and provision of disabled parking and turning area.
- Maintenance of sandstone retaining wall on Mann Street and landscaping.
- The development is proposed to be carried out in stages being;
 - Stage 1- Awning and new teaching spaces.
 - Stage 2- Back of House space to Mann Street.
 - Stage 3- Alterations to Robert Knox Hall, new foyer and entry spaces.
 - Stage 4- Alterations to existing openings, rear teaching spaces, and new driveway.
- The Conservatorium employs 5 permanent staff, 49 casual staff, and has a student body of 363.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

- The hours of operation are Monday to Friday 9.00am to 9.00pm, and Saturday 8.00am to 7.00pm.
- There are 11 car parking spaces on the adjoining Council owned land which is leased by the Conservatorium.
- The proposal results in an increase of 49.36m².

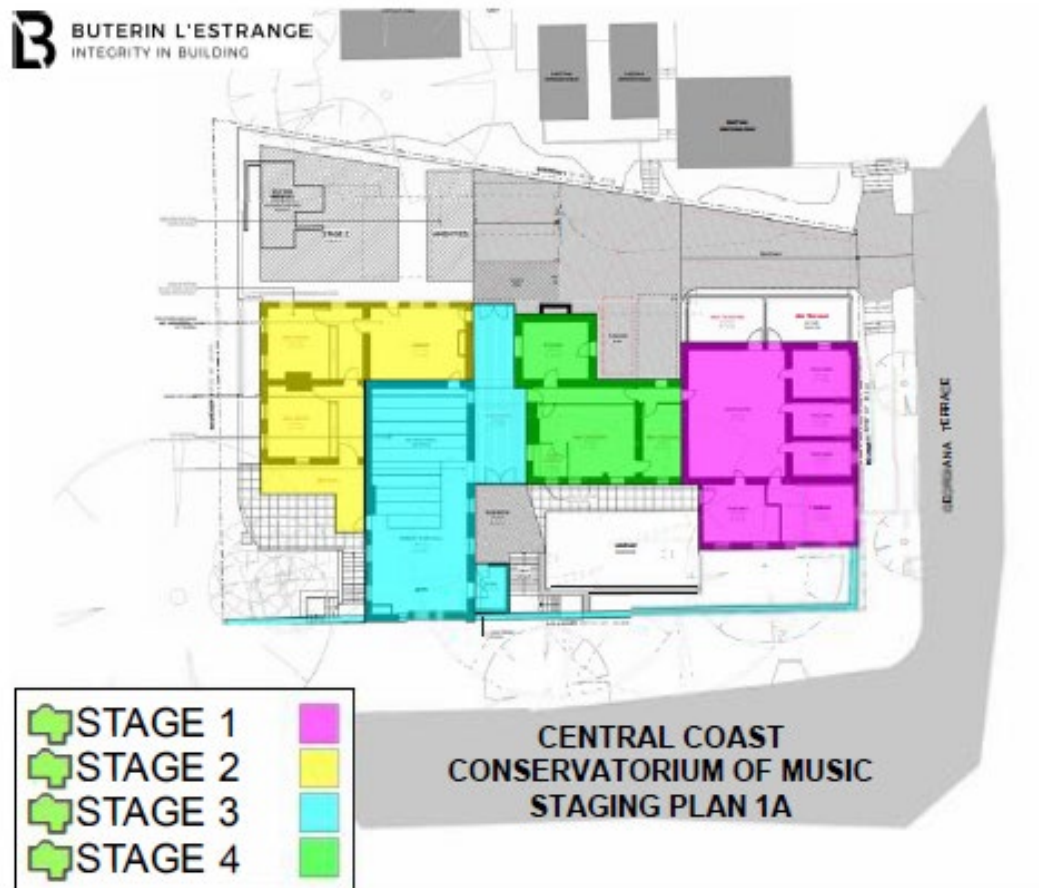


Figure 3-Staging Plan

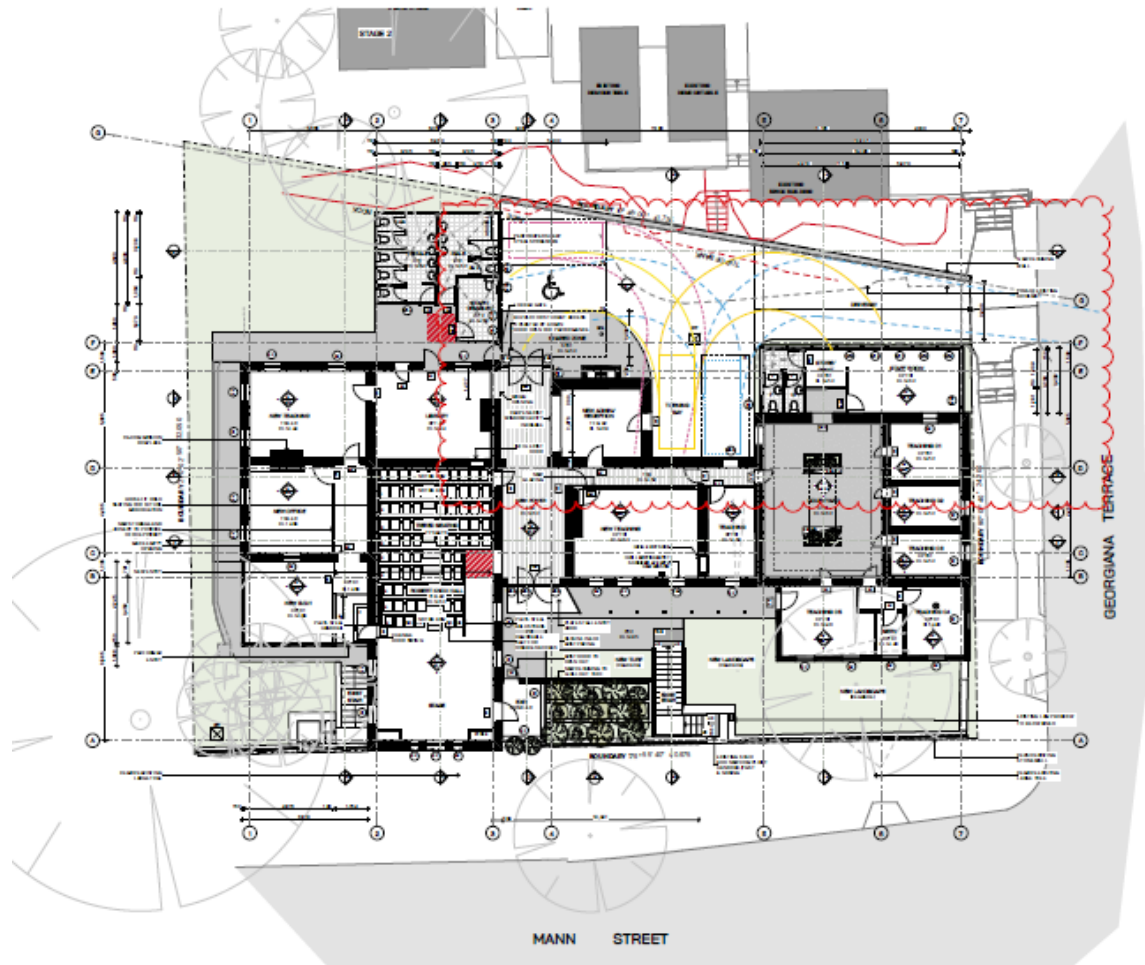


Figure 4-Proposed Plan



Figure 5- Proposed Mann Street Streetscape



Figure 6- Proposed rear driveway off Georgiana Terrace

History

The site has been used as an educational establishment by the Conservatorium of Music for over 30 years.

DA6915/2000 granted consent on 21 February 2000 for alterations to the buildings.

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 information of the Local Planning Panel. Any tables relating to plans or policies are provided as an attachment.

State Environmental Planning Policy (Coastal Management) 2018

The provisions of *State Environmental Planning Policy (Coastal Management) 2018* require Council consider the aims and objectives of the SEPP when determining an application within the Coastal Management Area. The Coastal Management Area is an area defined on maps issued by the NSW Department of Planning & Environment and the subject property falls within this zone.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

The relevant matters have been considered in the assessment of this application. The application is considered consistent with the stated aims and objectives.

State Environmental Planning Policy (Educational Establishments and Child Care Facilities) 2017

The following Design quality principles are set out in the SEPP, with comments where appropriate:

Principle 1—context, built form and landscape

Schools should be designed to respond to and enhance the positive qualities of their setting, landscape and heritage, including Aboriginal cultural heritage. The design and spatial organisation of buildings and the spaces between them should be informed by site conditions such as topography, orientation and climate.

Landscape should be integrated into the design of school developments to enhance on-site amenity, contribute to the streetscape and mitigate negative impacts on neighbouring sites.

School buildings and their grounds on land that is identified in or under a local environmental plan as a scenic protection area should be designed to recognise and protect the special visual qualities and natural environment of the area, and located and designed to minimise the development's visual impact on those qualities and that natural environment.

Comment - The proposal has been designed to respond to the heritage value and setting of the site. Landscaping of the Mann Street frontage retaining walls has been integrated into the design.

Principle 2—sustainable, efficient and durable

Good design combines positive environmental, social and economic outcomes. Schools and school buildings should be designed to minimise the consumption of energy, water and natural resources and reduce waste and encourage recycling.

Schools should be designed to be durable, resilient and adaptable, enabling them to evolve over time to meet future requirements.

Comment - The use for music education is an adaptable and durable use.

Principle 3—accessible and inclusive

School buildings and their grounds should provide good wayfinding and be welcoming, accessible and inclusive to people with differing needs and capabilities.

Note—Wayfinding refers to information systems that guide people through a physical environment and enhance their understanding and experience of the space.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

Schools should actively seek opportunities for their facilities to be shared with the community and cater for activities outside of school hours.

Comment - The building is used for music education outside school hours and for community purposes. Disabled access is improved with the proposed alterations by addition of a disabled parking space with level access into the rear of the building and disabled amenities.

Principle 4—health and safety

Good school development optimises health, safety and security within its boundaries and the surrounding public domain, and balances this with the need to create a welcoming and accessible environment.

Comment- Building alterations comply with BCA and improves access to the building.

Principle 5—amenity

Schools should provide pleasant and engaging spaces that are accessible for a wide range of educational, informal and community activities, while also considering the amenity of adjacent development and the local neighbourhood.

Schools located near busy roads or near rail corridors should incorporate appropriate noise mitigation measures to ensure a high level of amenity for occupants.

Schools should include appropriate, efficient, stage and age appropriate indoor and outdoor learning and play spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage and service areas.

Comment- The alterations improve the functioning of the building, provide for additional indoor play and outdoor areas for the students.

Principle 6—whole of life, flexible and adaptive

School design should consider future needs and take a whole-of-life-cycle approach underpinned by site wide strategic and spatial planning. Good design for schools should deliver high environmental performance, ease of adaptation and maximise multi-use facilities.

Comment- The alterations are to improve the flexibility of use of the building while maintaining the heritage value of the building.

Principle 7 - Aesthetics

School buildings and their landscape setting should be aesthetically pleasing by achieving a built form that has good proportions and a balanced composition of elements. Schools

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

should respond to positive elements from the site and surrounding neighbourhood and have a positive impact on the quality and character of a neighbourhood.

The built form should respond to the existing or desired future context, particularly, positive elements from the site and surrounding neighbourhood, and have a positive impact on the quality and sense of identity of the neighbourhood.

Comment- The heritage building and use as a conservatorium of music has a positive impact of the locality and surrounding development. It is a key feature of the streetscape in Mann Street.

State Environmental Planning Policy (Gosford City Centre) 2018

Zone and Zone Objectives

The subject land is zoned B3 Commercial Core under the provisions of the *State Environmental Planning Policy (Gosford City Centre) 2018*

The objectives for the B3 Commercial Core zone are:

- To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.
- To encourage appropriate employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To encourage a diverse and compatible range of activities, including commercial and retail development, cultural and entertainment facilities, tourism, leisure and recreation facilities and social, education and health services.
- To provide for residential uses if compatible with neighbouring uses and employment opportunities.
- To provide for the retention and creation of view corridors.

The proposed development meets the objectives of the zone, providing an expansion of uses that offer services to the community, provision of employment and by providing enhanced cultural and entertainment facilities.

Permissibility

The subject site is zoned B3 Commercial Core under *State Environmental Planning Policy (Gosford City Centre) 2018*. The proposed development is defined as an 'educational establishment' which is permissible in the zone with consent of Council.

'educational establishment' means a building or place used for education (including teaching), being—

(a) a school, or

(b) a tertiary institution, including a university or a TAFE establishment, that provides formal education and is constituted by or under an Act.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

Compliance with Development Standards

Development Standard	Required	Proposed	Compliance with Controls	Variation %	Compliance with Objectives
Clause 4.3 Height of Buildings	24m	<24m	Yes-no change to existing height.	Nil	Yes
Clause 4.4 FSR	4:1	0.44:1	Yes	Nil	Yes
Clause 5.10 heritage Conservation-Heritage Conservation	Heritage Impact Statement	Provided	Yes	Nil	Yes

Clause 7.1 Acid sulfate soils

This land has been identified as being affected by the Acid Sulfate Soils Map and the matters contained in clause 7.1 of *Gosford Local Environmental Plan 2014* have been considered. The site contains Class 5 Acid Sulfate Soils. In this instance, the proposal works are not considered to impact on Acid Sulfate Soils.

Gosford City Centre Development Control Plan 2018

Relevant standards

Development Standard	Description	Required	Proposed	Compliance with Control	Compliance with Objective
Clause 4.4	Views & Vistas	Preserve views as per Figure 4	No increase in height.	Yes	Yes
Clause 4.5	Driveway width	2.7m	2.7m	Yes	Yes
Clause 5.2.1	Building Setbacks	Rear setback 6m	Nil	No-see comments below	Yes
Clause 5.2.3	Active Street Frontage	Active street frontage to Mann Street	Primary frontage and access	Yes	Yes

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

			to Mann Street		
Clause 5.2.13	Landscape Design	Landscape Plan	Landscaping of front setback behind retaining wall	Yes	Yes
Clause 5.2.14	Site Coverage	100%	<100%	Yes	Yes
Clause 5.2.16	Safety & Security	Security provided for existing building		Yes	Yes
Clause 5.2.15	Front Fencing	Restoration of existing retaining wall		Yes	Yes
Clause 5.2.7	Building Exterior	Heritage listed	Heritage report/POM	Yes	Yes
Clause 5.2.19	Advertising & Signage	Existing maintained		Yes	Yes
Clause 7.4	On-site Car Parking	2	15	No	Yes-See comments below.
Clause 10	Heritage Items	Heritage Report	Provided	Yes	Yes

Car Parking

As an educational establishment the development would require the provision of 15 car parking spaces. Two (2) spaces are proposed on the site and 11 spaces are available on the adjoining site leased from Council. This results in a variation of 86% for on-site parking. Council owns the adjoining site which is leased by the Conservatorium of Music and used for parking.

If the adjoining site was sold by Council and not available for use by the Conservatorium of Music, this would result in the loss of 11 car parking spaces and a deficiency of 13 spaces.

Most students who attend the Conservatorium do so after school hours and on a Saturday. The applicant advises most students are dropped off or attend by public transport. The site has been used by as an educational establishment for decades, and the proposed development results in only a minor increase in floor area.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

It is considered the parking provided is adequate and parking is available in the area if the existing adjoining on-site parking is no longer available in the future. The site is also well served by public transport including bus and rail transport.

Public Submissions and Community Consultation

The application was notified in accordance with Gosford City Centre DCP 2018 from 21 January 2021 to 15 February 2021. No submissions were received during this period.

Submissions from Public Authorities

Department of Planning, Industry and Environment (Crown Lands)

Consent to lodgment of the application and no objections to the proposed development.
(Refer attachment 6)

Internal Consultation & Referrals

Internal Referral Body	Comments
Development Engineer	Supported, subject to conditions. Refer comments below. Refer conditions 2.3, 2.4, 2.5, 3.6, 3.7, 5.3-5.8.
Building Surveyor	Not supported-See comments below and Heritage comments. Refer condition 2.2.
Heritage Planner/Architect	Supported subject to conditions. Refer comments below and condition 2.6.
Environmental Health	Supported subject to conditions. Refer conditions 4.4, 4.7-4.13, 6.2.
Water & Sewer	Supported subject to conditions. Refer condition 2.7.
Tree Assessment/Landscape	Supported without conditions. Refer comments below.

Development Engineer

Road works

The site has a frontage to two public roads, these being Mann Street (Western frontage) and Georgiana Terrace (southern frontage). The site is at the intersection of Mann Street and Georgiana Terrace, with traffic regulated at this intersection by way of a roundabout.

There is kerb and gutter across the frontage of Georgiana Terrace. There is part kerb and gutter, part dish drain & parking bay with footways across the frontage of the site in Mann street. The footway in Mann Street is paved. The footway in Georgiana Terrace is part turf and part bitumen footpath, with some concrete stairs.

No road works are required for this development.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

Access & Parking

Vehicular access to the site is presently obtained from Georgiana Terrace via an existing vehicular access crossing. The development proposes to upgrade this access which will require formal application and approval under Section 138 of the Roads Act 1993.

There is an existing concrete driveway within the eastern boundary of the site that is accessed off Georgiana Terrace via the existing vehicle crossing (mentioned above). This driveway is proposed to be reconstructed to suit the proposed development. There is no existing formal car parking within the site and at present cars parked within the site would be via a stacked-parking arrangements with reverse movements either into the site or back onto Georgiana Terrace for vehicles entering or exiting the site.

The proposal originally included 3 new car spaces, one of which is a disabled space. Concerns were raised in relation to the ability of vehicles to be able to enter and exit the site in a forward direction for each car space proposed. Additional information was requested to essentially delete one space and verify through vehicular swept turn path manoeuvres that vehicles associated with the remaining two spaces could enter and exit the site in a forward direction. These requested details prepared by TTP Transport Planning (Ref Project No 21088 Rev A dated 01.03.21) were submitted and appear to satisfy Council's request.

A pedestrian path within the site adjacent to the driveway and connecting to Georgiana Terrace has since been deleted with amended plans submitted.

Traffic

The revised development would have a negligible effect on traffic movements in the area.

Flooding

Council's records do not indicate the site being affected by flooding or flood planning controls for events up to the 1%AEP flood event.

Drainage

The site generally grades towards Mann Street. The architectural plans submitted with the application indicated that stormwater is to drain from roofed areas to new water tanks located within the north-western part of the site, but no indication was provided to indicate how stormwater from these water tanks and other parts of the site including the new driveway and car parking areas will be piped to Council's drainage system. Additional information submitted with the application has indicated that there is an existing stormwater pipeline near the north-west corner of the site that traverses the footway to connect to Council's piped stormwater system in Mann Street, and that the proposed development will connect to this system.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

Retaining walls

The plans for the development indicate restoration works to existing retaining walls near the boundary frontages of Mann Street and Georgiana Street, and the construction of new retaining walls within the site. The applicant has advised that the retaining walls within the Mann Street and Georgiana Street frontages of the site have already been reconstructed as part of emergency works and as such the reconstruction of these retaining walls and associated footings do not form part of this DA. Other retaining walls within the site will need to be designed and certified by a suitably qualified Civil/Structural engineer.

Building Surveyor

In general terms the existing stone stairs do not comply with accessibility requirements and cannot be regarded as complying access, nor can they readily be converted. The reliance upon a single car space to enable access via vehicle only is questionable given as soon as one vehicle parks no other persons can access any part of the site if needing these facilities. The fact that there is currently no access is not a valid reason for non-provision from the public space and is more reason to address the matter in a positive fashion. The BCA clearly shows a requirement to provide access for people approaching the building for the road boundary under the *Performance Requirements* of DP1. This access is not provided with the current arrangement. Works that are occurring trigger access and facilities provisions and is appropriate to include public road boundary access now.

Planning Comment: The proposed changes to the building are to improve the usability of the building while maintain the heritage value of the building and site.

The current building does not comply with disabled access. The proposed changes will improve disabled access which is of a community benefit. On this basis the proposal is supported.

Council's Architect/Heritage Planner also advises:

In this instance I support the location of disabled access from the carpark for the following reasons.

- 1. The site is located on the corner of Mann Street (west) and Georgianna Terrace (south). The application proposes pedestrian access from both streets and vehicle access and disabled parking from Georgianna Terrace. This is considered the most suitable and likely access point to the conservatorium for disabled users.*

The disabled parking access is located adjacent to the single foyer space that runs through the building from east to west and provides access to the auditorium and other spaces within the building. This is a single foyer space and therefore is not considered a secondary entry.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

2. *The approximately 3 metre level difference between Mann Street and the entry foyer would require a series of ramps approximately 46 metres long to provide access. Though complying with accessibility controls, this is not considered to provide easy access to the foyer and additional access is considered unnecessary as disable parking and access is available from the Georgianna Terrace entry.*
3. *It may be possible to provide an alternative means of access from Mann Street such as a lift or stair lift however as there is easy and equitable access from the carpark this is considered unnecessary.*
4. *This is a significant heritage listed building. Any alteration to the building that reduces the significance should consider how to minimise that impact. In this instance, later unsympathetic additions on the eastern side of the building are proposed to be removed creating the new foyer and thereby supported.*

Heritage Planner/Architect Assessment

The application proposes alterations to the Central Coast Conservatorium of Music. The conservatorium is a heritage listed building in Schedule 5 of the Gosford Local Environmental Plan. The site is located at 45 Mann Street Gosford on the corner of Mann Street and Georgianna Terrace. Mann Street being on the west and Georgianna Terrace on the south with adjoining sites on the north and east.

Statement of significance:

"The Gosford Court House is a visually prominent building, which comprises an earlier building designed by Colonial Architect M Lewis in 1849 with additions designed by J Barnet in the after Victorian period. It is of considerable historic, social and townscape significance to Gosford and is a fine and intact example of early nineteenth century stone architecture. It is the oldest public building on the Central Coast and provides a rare example of a public courthouse. It has historic significance for its association with the growth of the Gosford township through the development of primary Institutions, its prominent position on Mann Street forming part of the urban streetscape. It has social significance for its continued use by the Police and forming part of the Government precinct".

Designer/Maker: 1848 Mortimer Lewis, 1884 James Barnet

Construction years: 1848. With later additions 1857, 1984, 1919, 1930, 1948 and 1960-2020.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

Physical description:

The Gosford Court House is a prominent building sited on the high side of the street on a raised sandstone base course. The present Victorian Free Classical building's appearance was completed in the 1880s and is a very utilitarian in design and is largely the work of Barnett. The front elevation is largely unadorned apart from the bargeboards on the gable roof line. The Court House is sited next door to the Police Station.

Construction: The Gosford Court House is constructed in sandstone with some brickwork with a fine sandstone retaining wall.

Exterior materials: Sandstone, brick.

In close association with municipal offices and the Old School of Arts. Front of Old Courthouse has a steel fence and garden bed with mature trees that screen the facade. New courthouse addition has alignment on footpath as does the south facade of the Old Courthouse.

The Old Courthouse has a rectangular plan with hip roof and awning roof over verandah along front facade. Verandah has timber posts and cast iron brackets. Walls are rough cut regular sandstone blocks. Concrete steps to front. Timber framed, multi-paned double hung windows. Timber soffits to eaves. Cast iron decorative vents to south facade. Sub floor stone walls deteriorated. Brick extension to rear.

New Courthouse is L-shaped with gable roof to front and hipped at rear. Decorative barge boards and detailed stonework around circular vent to top of gable end. Three timber framed elongated double hung windows to front facade. Ashlar sandstone with picked finish structure on rough faced sandstone base. Timber framed, hipped wing to south facade adjoining Old Courthouse, possibly enclosed verandah. Rendered chimney with terracotta pots to rear.

Proposed Works

The application proposes works as shown in drawings prepared by Fabric Architecture dated 16/10/20 issue H.

Heritage Assessment

The application is accompanied by a Heritage Impact Assessment (HIA) dated November 2020 and a Conservation Management Strategy (CMS), dated September 2020 both prepared by Romey Knaggs Heritage Consultants

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

Heritage Office "Guidelines for Statement of Heritage Impacts" lists the following matters for investigation where alterations and additions are proposed to a heritage item.

How is the impact of the new development on heritage significance of the item or area to be minimised?

As the HIS and CMS show, the building was designed by Mortimer Lewis and the first section constructed in 1849 and further sections added in stages.

It is considered the most significant parts of the building are the original 1849 section and the 1887 James Barnet additions, though all additions illustrate how buildings can be added to and each addition can be representative of a time and may contribute to heritage significance.

The CMS lists the significance levels of the parts of the site as exceptional, high, moderate, little and intrusive.

The impact on the significance of the item is minimised by the following:

The application proposes conserving those parts of the site determined as exceptional, high and moderate significance, particularly the early Lewis and Barnet designed parts.

The application proposes removing intrusive elements and those of little significance. These include the 1990s fibre cement and metal toilets and storeroom on the east of the site and skillion roofed fibre cement infill at the rear of the building. Removal of these is supported.

Can the additional area be located within an existing structure? If no, why not?

The additional area is required to facilitate the operations of the conservatorium. It is generally located on the north of the site on the area currently occupied by the intrusive elements. The new building will not have any detrimental impact on the item.

Will the additions visually dominate the heritage item?

The new work on the north of the site is located on the area currently occupied by the intrusive elements. The additions are low scale with a neutral appearance to distinguish them from the original building.

On the Mann Street frontage, the application proposes the removal of the 1980s verandah roof and posts and replace it with a steel plate roof and new entry canopy. It is accepted that this is a contemporary addition but has a simple neutral appearance similar in scale to the previous verandah roof and will not visually dominate the item.

Is the development sited on any known or potentially significant archaeological deposits? If so have alternative sites been considered?

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

The buildings to be removed on the east are recent 1980s additions and unlikely to reveal any archaeological deposits.

Is the new development sympathetic to the heritage item? In what way (eg: form, siting, proportions, design)?

The new development is generally considered sympathetic to the heritage item. On the eastern side of the site, the new work is constructed of metal or FC cladding, neutral materials that clearly distinguish it from the masonry of the original item. The new office connects to the item by a low flat roof below the original eaves line before changing pitch to match that of the item. This preserves the significance of the original eaves line and roof form.

The new toilet block is physically separated from the original item to retain the form and minimise any impact on it.

On the Mann Street frontage, the application proposes removing the existing verandah roof which is a later addition of little significance.

A new large entry foyer extending through the entire width of the building is proposed. This will require a large opening in the existing western wall. Despite the exceptional significance of this Mortimer Lewis designed section of the building, this is considered an appropriate intervention to create a large suitably scaled entry necessary to adapt the building to its new use and be able to accommodate a concert audience of seventy.

The new opening will be surrounded by a large steel plate canopy entry that will match a steel plate roof over the original verandah paving. This is a simple neutral structure that does not compete with the stonework of the original and matches the entry canopy, though there is concern that it blocks access along the original verandah.

The original significant stone staircase is retained and provides access to a new section of paving adjoining the verandah.

The new addition on the north west corner replaces an earlier unsympathetic addition and fits below the original eaves line preserving the significance of the original eaves line and roof form.

Facing Mann Street, it removes later additions and trees allowing views of the item from the street. The new entry opening and canopy is a distinctly contemporary intervention but is appropriate for its adaption the building to a new role as a teaching and concert venue.

Facing Georgianna Terrace, it removes later intrusive additions and adds a new addition that defines the entry to the site.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

On the east It removes the later intrusive additions and sheds, reinstates the original form of the item and creates a new foyer connecting both sides of the building.

Conclusion

The application is supported in principle subject to appropriate conditions (**condition 2.6**)

Environmental Health

Air Quality

Dust is expected during the construction phase of the development. Conditions are applied.

Acid Sulfate Soil (ASS)

The land is mapped as Class 5 ASS; however, is located within 500m of Class 2 ASS land. The development is unlikely to lower the watertable and further information was requested for the volume of cut and fill. The amended cut and fill plan indicate 105m³ (approx. 37 tonnes) of mostly sandstone is to be removed. An ASS management plan is not required as the cut mostly consists of sandstone which is unlikely to consist of ASS.

Asbestos Containing Material (ACM)

The site consists of heritage listed buildings which may contain ACM. The demolition plan indicates two (2) amenities buildings, one teaching space and various internal alterations are proposed. This may disturb ACM. Condition applied.

Contamination/ SEPP 55

Councils database indicates the property has been used as a Police Station and Courthouse, therefore the contamination risk is very low.

Noise

The site is zoned B3 – Commercial with primary frontage to Mann Street. The site is surrounded by retail, commercial businesses and medium density residential properties. The business (Central Coast Conservatorium of Music (CCCM)) has been operating in this location from 1987. This current use consists of administration spaces, teaching space and the Robert Knox Hall which is open to the public and students for performances.

No change to the current use or operating hours is proposed under this DA. The site currently operates Monday to Friday 9am to 9pm and Saturday 8am to 7pm.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

The closest sensitive residential receiver is approximately 20m to the South on land zoned B4 Mixed Use. Council has not received any noise complaints from the running of the business. The Environment and Public Health Team has no concerns from a noise perspective.

Construction noise is expected. Standard condition is applied.

Soils and Construction/Cut and Fill

The area of potential soil disturbance is approximately 200m². The site is located approximately 290m from Brisbane Water and due to the environmentally sensitive and very steep area an Erosion and Sediment Control Plan is best practice for the DA.

An Erosion and Sediment Control Plan (ESCP) has been reviewed. The ESCP required amendments. An amended ESCP has been provided which shows the location of Sand Bag Sediment Traps, stabilised site access and material stockpiles, maintenance requirements for all erosion and sediment control measures and construction drawings in accordance with the Blue Book (Landcom, 2004).

Earthworks for the development include cut of up to 2.2m and fill of up to 0.3m. Further information was requested on the quantity of cut and fill required on site. The Cut and Fill plans have confirmed 105m³ of cut (mostly sandstone) and 11.5m³ of fill is required on site. Conditions will be applied.

Water

The site slopes from the northern corner to the south-western corner with surface waters discharged to Council roadside stormwater and into Brisbane Water approximately 300m downslope of the development. An Erosion and Sediment Control Plan is required to ensure that the water course is not negatively impacted from sediment laden water leaving the site.

The Environment and Public Health Team support this proposed, subject to the attached conditions.

Tree Assessment/Landscape

Council's Tree Assessment officer advises:

The subject application has been considered noting that trees are not nominated for removal, nor is expected to require further tree removal to those that have already been removed.

Existing trees within the property near works expected to be retained consist of young planted Palms located in the front north-western corner of the property, indicated by green symbols on plan.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

Grey tree symbols shown closer to works, larger at the front of the building and on rear boundary represent trees that have already been removed.

The large tree on the rear adjoining property is a mature Cheese Tree approximately 8m high. This tree is located on an upper embankment and not expected to be adversely impacted by the works. This tree may require pruning of lower over hanging branches for future maintenance of the property.

Likely Impacts of the Development

Section 4.15 (1)(b) of the EP&A Act requires consideration of the likely impacts of the development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality. The likely impacts of the development are addressed below:

a) Built Environment

The subject site is zoned B3 Mixed Use under SEPP(GCC)2018 and is surrounded by other business and office uses, including the Council administration building.

The proposed development is not considered to have adverse amenity impacts to adjoining development from overshadowing, privacy, noise generating activities and views.

A thorough assessment of the impacts of the proposed development on the built environment has been undertaken in terms of the SEPP(GCC)2018 and GCC DCP 2018 compliance. The potential impacts are considered negligible and reasonable.

b) Natural Environment

The proposed development is not considered to have any adverse impacts on scenic quality or the streetscape of Mann Street. The upgrading of the heritage building and landscaping retains and improves the character of the area.

The redevelopment of the site will result in a development consistent with that for a heritage item in this location within the Gosford city centre. There is no significant tree removal and the proposed development does not impact the natural environment.

The submitted SWMP, Water Cycle Management Plan and Heritage Conservation Plan provides an overall concept which will stabilise and manage the entire site and retain heritage values.

There will be no significant impact upon the natural environment as a result of the proposal.

c) Economic Impacts

The proposed development will have beneficial economic impacts. The proposal is considered to meet the aims of the *Central Coast Structure Plan 2036* and facilitates educational, social and cultural development that has community benefits.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

d) Social Impacts

The proposed development will have beneficial social and educational impacts as it will provide continued educational and cultural music development and learning in the regional capital.

Suitability of the Site for the Development

The site is considered to be suitable for the proposed development as follows:

- The site is zoned B3 Commercial Core under SEPP(GCC)2018. Educational Establishments and Community Facilities are permissible under the B3 zone and the scale of the proposed development is consistent with the objectives of the zone.
- There are no environmental hazards which would prevent development of the site.
- Utility services are available to the site.
- The site is located on and near public transport facilities as well as public recreation/community facilities.

The Public Interest

The approval of the application is considered to be in the public interest as follows:

- The proposal will generate social, cultural, and economic benefits for the community by providing continued music education and restoration of a heritage building in the Gosford City Centre.
- The proposal is consistent with the relevant objectives of the applicable environmental planning framework, including the SEPP(GCC)2018 and GCCDCP2018.
- The proposal does not result in any unreasonable environmental impacts and will not unreasonably impact the amenity of neighbouring properties.

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 the retention of vegetation where possible 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.

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

The retention, upgrading and use of the heritage building is in accordance with ESD principles.

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of the 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. The proposed development is considered satisfactory in relation to climate change

Other Matters for Consideration:

Section 7.12 Contributions

Contributions may be applicable to development which is subject to section 7.12 Contributions Plan - Gosford City Centre. Development contributions are only levied where the proposed cost of works exceeds \$250,000 and the gross floor area of the development is increased. In this instance, the proposed development increases the gross floor area and the value of the works is \$728,035.00. A condition of consent has been imposed requiring the development contribution to be paid prior to the issue of any Construction Certificate. **(Refer to Condition 2.8).**

Shadow Impacts

The existing building is well below the height limit permitted and does not increase the height. It is considered the shadow impact of the existing and proposed development does not significantly impact adjoining sites and is not unreasonable given the slope of the land in this location and existing height.

Isolation/Redevelopment of Adjacent Sites.

The proposed development does not result in isolation of adjoining sites for future development. The land to the east is owned by Council and currently used by the Conservatorium of Music and Council for car parking.

Future development on the adjoining land will not be constrained by approval of this application.

Development at Zone Interface.

In *Seaside Property Developments Pty Ltd v Wyong Shire Council* [2004] NSWLEC 117 the planning principle was established that any development in one zone needs to take into

4.2 Alterations and additions to Central Coast Conservatorium of Music (contd)

account the form of existing development and/or development likely to occur in the adjoining different zone.

The adjoining land on the southern side of Georgiana Terrace is zoned B4 Mixed Use.

Development consents have been granted on adjoining sites, and some sites developed, which have a greater height and FSR than the proposal on this site.

CONCLUSION:

This application has been assessed against the heads of consideration of Section 4.15 of the *Environmental Planning & Assessment Act 1979* and all relevant instruments and policies. The potential constraints of the site have been assessed and it is considered that the site is suitable for the proposed development. Subject to the imposition of appropriate conditions, the proposed development is not expected to have an adverse social or economic impact. It is considered that the proposed development will complement the locality and meet the desired future character of the area.

Accordingly, the application is recommended for **approval** pursuant to Section 4.16 of the Environmental Planning and Assessment Act.

Reasons for the Decision

The reasons for the decision as recommended under the assessment of this application are 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 provisions of *State Environmental Planning Policy (Gosford City Centre) 2018* and Gosford City Centre Development Control Plan 2018 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 *Environmental Planning and Assessment Act 1979*.
- 4 The proposal provides for the upgrading and continued use of a heritage item for educational, social and cultural use while retaining the heritage value of the building.

Attachments

1	Conditions of Consent		D14563405
2	Architectural Plans D14585797	Provided Under Separate Cover	D14585797
3	Statement of Environment Effects	Provided Under Separate Cover	D14313150
4	Heritage Impact Assessment	Provided Under Separate Cover	D14313162
5	Conservation Management Strategy	Provided Under Separate Cover	D14313165
6	Owners Consent		D14585241

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 to which is affixed a Council stamp "Development Consent" unless modified by any following condition.

Architectural Plans by: Fabric Architecture

Drawing	Description	Sheets	Issue	Date
A001	Cover Sheet	1	H	16/10/2020
A002	Notes	1	K	11/03/2021
A003	Survey	1	H	16/10/2020
A004	Site Analysis	1	H	16/10/2020
A005	Site plan	1	H	16/10/2020
A006	Erosion & Sedimentation Control Plan	1	H	16/10/2020
A006	Stormwater management Plan	1	K	11/03/2021
A007	Cut & Fill Plan	1	K	11/03/2021
A008	Zone Diagram	1	H	16/10/2020
A009	Demolition Plan	1	H	16/10/2020
A010	Mood Board	1	H	16/10/2020
A201	Ground Floor GA	1	H1	19/01/2021
A202	Roof Plan GA	1	H	16/10/2020
A130	RCP	1	H	16/10/2020
A201	Elevations	1	H	16/10/2020
A202	Elevations	1	H	16/10/2020
A301	Sections	1	H	16/10/2020
A302	Sections	1	H	16/10/2020
A501	9am Shadow	1	H	16/10/2020
A502	12pm Shadow	1	H	16/10/2020
A503	3pm Shadow	1	H	16/10/2020
A701	Internal Elevations STG1	1	H	16/10/2020
A702	Internal Elevations STG1	1	H	16/10/2020
A703	Internal Elevations STG2	1	H	16/10/2020
A704	Internal Elevations STG3	1	H	16/10/2020
A705	Internal Elevations STG3	1	H	16/10/2020
A706	Internal Elevations STG4	1	H	16/10/2020

Supporting Documentation

Document	Title	Date
Fabric Architecture Studio	Statement of Environmental Effects Rev A	11/08/2020

Romey Knaggs Heritage	Conservation Management Strategy Ref 19.009	02/09/2020
Lindsay Perry Access	Disability access Report Ref LP_20191 Rev 1	28/08/2020
Romey Knaggs Heritage	Heritage Impact Assessment Rev 1	05/11/2020

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

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. Submit details/ plans showing that the levels of fire safety within the premises will achieve adequate conformity with the National Construction Code Series, Building Code of Australia, Volume 1 Part D & Part E1 & E4 of the BCA 2019 Amendment 1 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 as appropriate to:

- protect persons using the building, and to facilitate their egress from the building in the event of fire.

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

- 2.3. Obtain a Roads Act Works Approval by submitting an application to Council for a Section 138 Roads Act Works Approval for all works required within the road reserve. The application is to be lodged using an *Application for Subdivision Works Certificate or Construction Certificate, Roads Act Works Approval and other Development related Civil Works* form.

The application is to be accompanied by detailed design drawings, reports and other documentation prepared by a suitably experienced qualified professional in accordance with Council's *Civil Works Specifications*.

Fees, in accordance with Council's Fees and Charges, will be invoiced to the applicant following lodgement of the application. Fees must be paid prior to Council commencing assessment of the application.

Design drawings, reports and documentation will be required to address the following works within the road reserve:

- a) Construction of an industrial/commercial vehicle access crossing in Georgiana Terrace that has a minimum width of 3.5 metres at the road gutter crossing and 3.0 metres at the property boundary including construction of a heavy-duty gutter crossing and road pavement adjacent to the gutter crossing.
- b) Removal of the existing vehicle gutter crossing / laybacking Georgiana Terrace.
- c) Construction of any works including footpath required to transition new works into existing infrastructure (e.g. footpath & stairs) and the surrounding land formation.

The section 138 Roads Act Works Approval must be issued by Council and all conditions of that approval must be addressed prior to occupying and commencing any works in the road reserve.

- 2.4. 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.
- 2.5. Submit to the Registered 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) Provision of on-site stormwater retention measures (e.g water tanks) as indicated on the approved plans.
 - c) Construction of stormwater drainage collection and piping of all stormwater runoff from areas within the site to the approved connection to Council's storm water drainage system located in Mann Street.
 - d) Construction of retaining walls where indicated on development approval documentation. Retaining wall design must not conflict with existing or proposed services or utilities. Retaining walls designs for wall greater than 600mm in height must be certified by a registered practising Civil or Structural engineer as being in accordance with Australian Standards.

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

- 2.6. Submit amendments to the approved plans to Council for approval prior to the issue of any Construction Certificate pursuant to clause 139 of the *Environmental Planning and Assessment Regulation 2000* that must detail:
- a) The submission of amended architectural plans for a revised detail for the side of the entry canopy.
- 2.7. 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. Early application is recommended.

A Section 307 Certificate must be obtained prior to the issue of any Construction Certificate.

- 2.8. Pay to Council a contribution amount of \$7,280.00 that may require adjustment at time of payment, in accordance with the Section 94A Development Contribution Plan - Gosford City Centre.

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 that the contributions have been paid. A copy of this receipt must accompany the documents submitted by the certifying authority to Council under Clause 104/Clause 160(2) of the *Environmental Planning and Assessment Regulation 2000*.

A copy of the Contributions Plan may be inspected at the office of Central Coast Council, 49 Mann Street Gosford 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. 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

- 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. 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.

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

- 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 to Council a completed *Notice of Intention to Commence Subdivision, Roads and Stormwater Drainage Works* form with supporting documentation prior to the commencement of any Roads Act Works Approval works. These works are not to commence until a pre-commencement site meeting has been held with Council.

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 & 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. 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*.

4.7. Implement all erosion and sediment control measures and undertake works in accordance with the approved Erosion and Sediment Control Plan prepared by Fabric Architecture Studio dated 11/2/21, Rev – K. 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).

4.8. 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.

4.9. No soils to be imported to the subject site except for Virgin Excavated Natural Material (VENM) as defined in Schedule 1 of the Protection of the Environment Operations Act 1997.

4.10. Implement dust suppression measures on-site during bulk earthworks 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.

4.11. Classify all excavated material removed from the site in accordance with NSW EPA (2014) *Waste Classification Guidelines Part 1 - 4* 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.

4.12. Removal of greater than 10m² 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 2019*.

4.13. Carry out cut and fill works in accordance with the Amended Cut and Fill Plan, prepared by Fabric Architecture Studio, dated 11/3/21, Rev – K.

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. Submit a Certificate of Compliance for all plumbing and drainage work and a Sewer Service Diagram showing sanitary drainage work (to be provided by licensed plumber) in accordance with the *Plumbing and Drainage Act 2011*.

- 5.3. Construct any additional civil works, where required by Council, to ensure satisfactory transitions to existing site formations and pavements where designs contained in the Roads Act Works Approval do not adequately address transition works.
- 5.4. 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.
- 5.5. Complete construction of all works within the road reserve in accordance with the Roads Act Works Approval. Completion of works includes the submission and acceptance by Council of all work as executed drawings plus other construction compliance documentation and payment of a maintenance/defects bond to Council in accordance with Council's Fees and Charges.
- 5.6. 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.
- 5.7. Complete the civil engineering works within the development site in accordance with the detailed design drawings and design reports plans within the construction certificate.
- 5.8. 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.

6. ONGOING OPERATION

- 6.1. maintain landscaping.
- 6.2. Restrict hours of operation as follows:
 - Monday to Friday 9am to 9pm
 - Saturday 8am to 7pm
 - Closed Sunday and Public Holidays

7. 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

- 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 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.
- Install and maintain backflow prevention device(s) in accordance with Council's *WS4.0 Backflow Prevention Containment* Policy. This policy can be found on Council's website at: www.centralcoast.nsw.gov.au

Fabric.

Statement of Environmental Effects

Central Coast Conservatorium of Music | Mann Street, Gosford, NSW.

Date:

11th August 20 - Rev-A

For:

Alterations and Additions CCCM at
45 Mann Street,
Gosford NSW, 2250

Prepared For:

CCCM Board
45 Mann Street,
Gosford NSW, 2250

Prepared By:

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1.0 SITE & CONTEXT SUITABILITY

The subject site comprises of Lot 43 DP 727721 known as No. 45 Mann Street, Gosford. The site is zoned B3- Commercial core with primary frontage onto Mann Street. The site has an approximate area of 1152.86m². The site is located on a corner block shown in Figure 1, with road frontage to Mann Street and Georgiana Terrace. The site is situated in the Gosford CBD and surrounded by retail infrastructure, commercial business and medium density residential properties. The site is located approximately 500m from notable public landmarks such as the Central Coast Stadium, Gosford Station and the Brisbane water waterfront.



Figure 1: Location Plan (base image provided by NSW Spatial Information Exchange)

The site currently contains one (1) elevated single storey stone and lightweight clad building with an existing access/service driveway to the rear boundary of the lot. Access to the driveway is off Georgiana Terrace, to the Southern boundary of the Conservatorium. Starting life as a courthouse and police station the building is considered one of the cCentral Coast's most important and oldest structures. The building has retained its' educational functionality over the last decade, and is noted as an item of Local Heritage under the Central Coast Council LEP. The current use of the he current use of the Central Coast Conservatorium of Music (CCCM) consists of Administration spaces, teaching space and the Robert Knox hall which is open to the public and students alike.

The site lies on the threshold of the central retail and commercial precinct and as such has high variation in property types surrounding the site. Refer to site photographs below.

No testing of the soil has been carried out due to the current use's low risk of contamination and there is no known Aboriginal significance related to this site, however Aboriginal sites are recorded near the location, refer the the AHIMS search (Appendix A). The site is not mapped as lying in a flood or bushfire zone..

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2.0 SITE PHOTOGRAPHS



Figure 2: Subject Site. Corner Mann St & Georgiana Terrace.



Figure 3: Subject Site – Mann Street addition to be upgraded.

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Figure 4: Subject Site. State of existing roof which has been replaced. Also visible add ons to be upgraded.



Figure 5: Subject Site: Exterior of Robert Knox Hall viewed from Mann St.

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Figure 6: Subject Site: Current Mann Street entry. View of awning to be replaced and new entry and awning incorporated.



Figure 7: Subject Site: Current Courtyard off teaching spaces.

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3.0 PRESENT & PREVIOUS USES

The current use remains in keeping with the use of the site as a Teaching space and public performance space. Refer to photos in Section 3.1 of this S.E.E. Originally the CCCM was run by Newcastle University (NU) and it was not a priority for NU which is evident the current state of the building. Currently the Central Coast Conservatorium has taken over operations of the building and are keen, alongside the CCCM board to bring the building back to life by providing much needed upgrades and maintenance. This will win turn prolong the life of one of the Central Coast's most important historical buildings.

The site is characterised by its location on a main vehicular artery in close proximity to the city centre of Gosford and, as such, is surrounded by a mix of commercial and residential properties, as shown in Section 2.0.

No change to the current use is proposed. Refer to the Statement of Heritage Impact by Romey Knaggs included with this application for further information.

3.1 EXISTING PHOTOGRAPHS (INTERNAL)

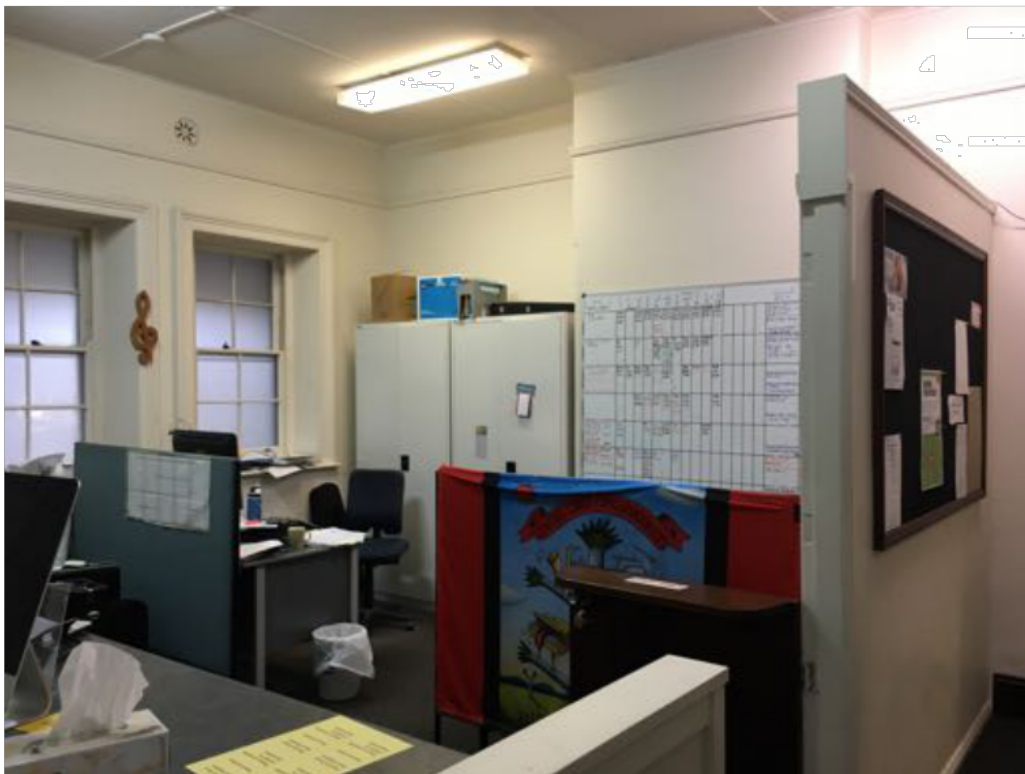


Figure 8: Subject Site: Views of the Main Bar, with original pressed metal ceiling detail. No change proposed in this application

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Figure 9: Subject Site: Internal teaching space along the northern boundary. Mould and moisture damage evident.



Figure 10: Subject Site: Internal rear access to be opened to provide new foyer connecting Mann street and Georgina terrace.

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Figure 11: Subject Site: Existing entry in the North West corner along Mann Street.

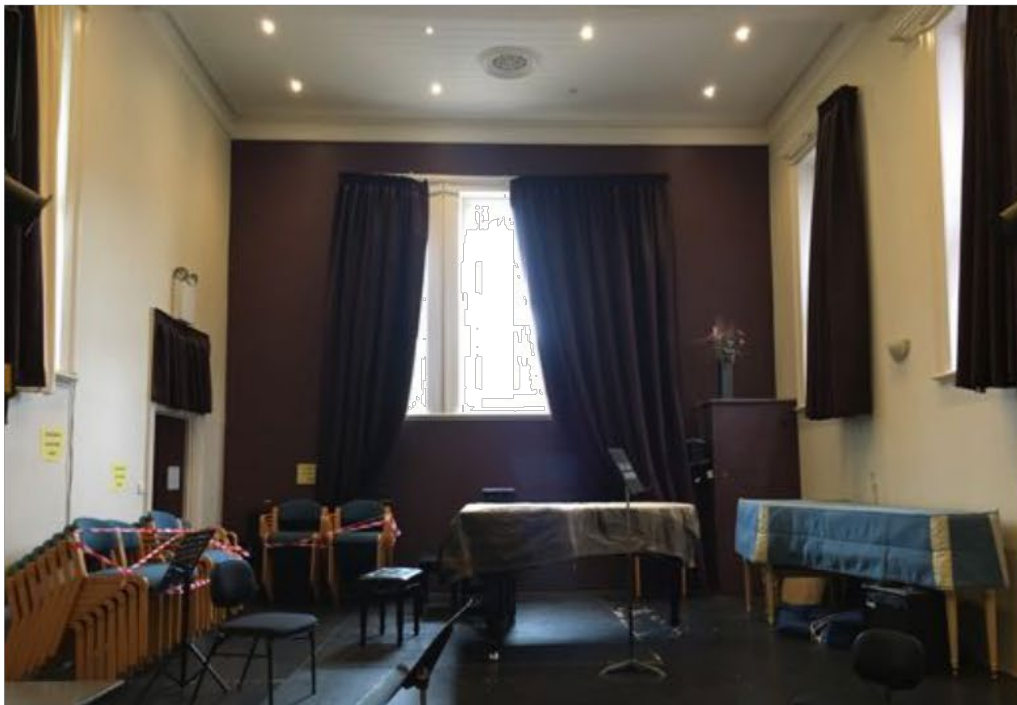


Figure 12: Subject Site: Existing Robert Knox Hall, Western facade.

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Figure 13: Subject Site: Existing Robert Knox Hall, Eastern internal face.



Figure 14: Subject Site: Existing student library and study space.

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4.0 DESIGN PROPOSAL

The Central Coast Conservatorium Inc is seeking to undertake alterations and additions to the existing building at 45 Mann Street, Gosford. The building has been let to dilapidate by previous owners and permission is being sought from Central Coast Council to bring the building to life and improve the current teaching spaces for the students, create a world class small performance space for the public/faculty and look at improving the lack of disabled access to the current building.

The existing building is located on Crown Land and NOT listed on the NSW Heritage register but is listed on Central Coast Council's Local Environment Plan as heritage significant. Please refer the attached HIS and Conservation management plan from Romey Knaggs for all Heritage information and assessment.

The proposal includes:

- 3 new purpose-built acoustic teaching space to enhance learning and rehearse ensembles and public recording facilities,
- A new awning to the existing courtyard linking teaching spaces.
- A number of small alterations to the existing foyer and reception, creating a new feature teaching space.
- A new entry and public foyer to the Robert Knox Hall. The public foyer is to be a dual entry space which will give disabled access via the new driveway and parking spaces off Georgiana Terrace. Currently there is no disabled access.
- A new performer "back of house" space which can serve as Musician entrance before a performance or a meeting space for staff during weekdays.
- Removing the existing demountable structures and installing new male and female amenities to the north east corner including disabled.
- A new rear driveway off Georgiana Terrace including disabled and staff parking spaces.

The materials chosen for the external alterations are considered and relate to the fabric of the existing building. Stone will remain as the exterior of the building, while raw Fibre cement sheeting, perforated metal, steel and transparent glazing will provide a contemporary complement to the stone facade while activating the Mann street connection to the public. See Sections 10.0 and 10.1 of this S.E.E and Sheet A305 in Architectural's.

Timing

Due to the CCCM being predominately a teaching facility, works will need to be timed to reduce student and staff disruption. The following points below highlight the timeline the contractor will follow. All work is done under one program and is requested to be assessed and issued as one complete DA. A number of works have begun on site and are being carried out as maintenance such as the re-roofing of the building, new painting internally and replacing mould damaged internal linings.

Staging 1 plan:

- Awning and new teaching spaces.

Stage 2 Plan:

- BOH space to Mann Street .

Stage 3 Plan:

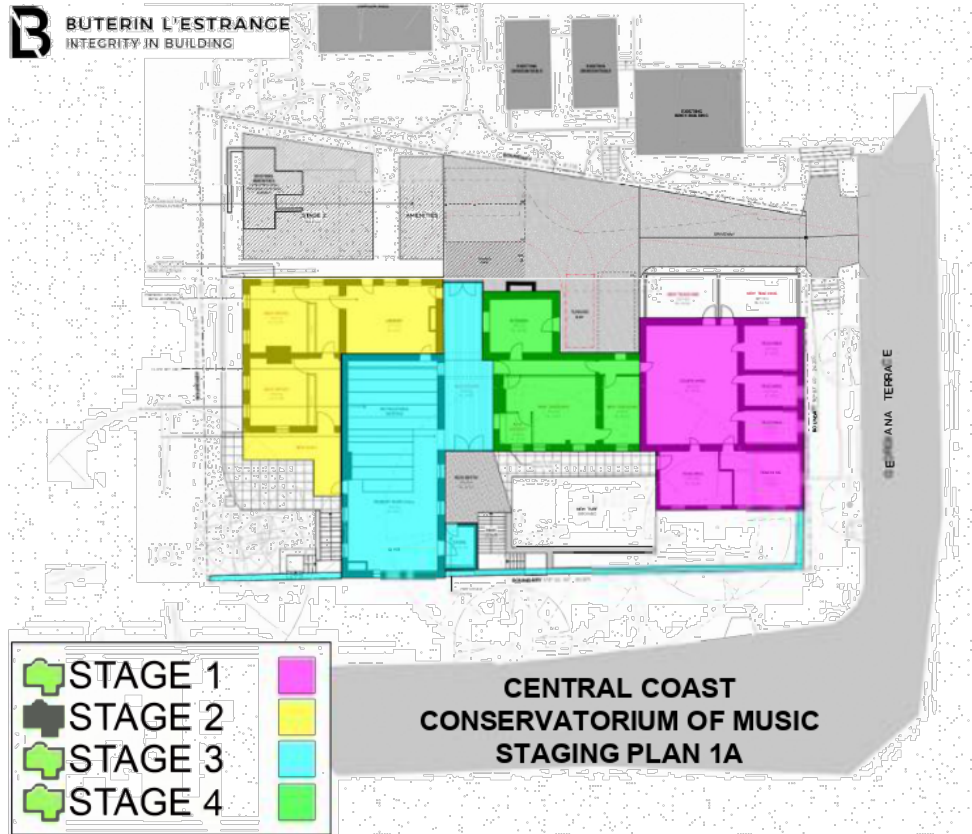
- Alterarions to RNH
- New foyer spac.e
- New entry space.

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Stage 4 Plan:

- Alterations to existing openings.
- Rear teaching spaces.
- New driveway.



Internally, this application proposes minor alterations to the existing spaces in the form of upgrading damaged linings, painting and new services such as aircon and data. This will include minor demolition and infilling of walls as marked on the plans submitted with this proposal. Careful coordination has taken place with the heritage consultants. Please refer the HIS and conservation management plan for further detail of work done under maintenance. A number of openings are proposed to be kept and infilled with glazing or brought back to their original form with new doors. This is considered an important part of respecting the buildings heritage and prolonging its life.

This application maintains that the internal alterations proposed are not radical in nature. Careful consideration has been taken to maintain as much of the existing structure as possible, including the keeping of stone nib walls and highlight existing parts of the building that have been covered up.

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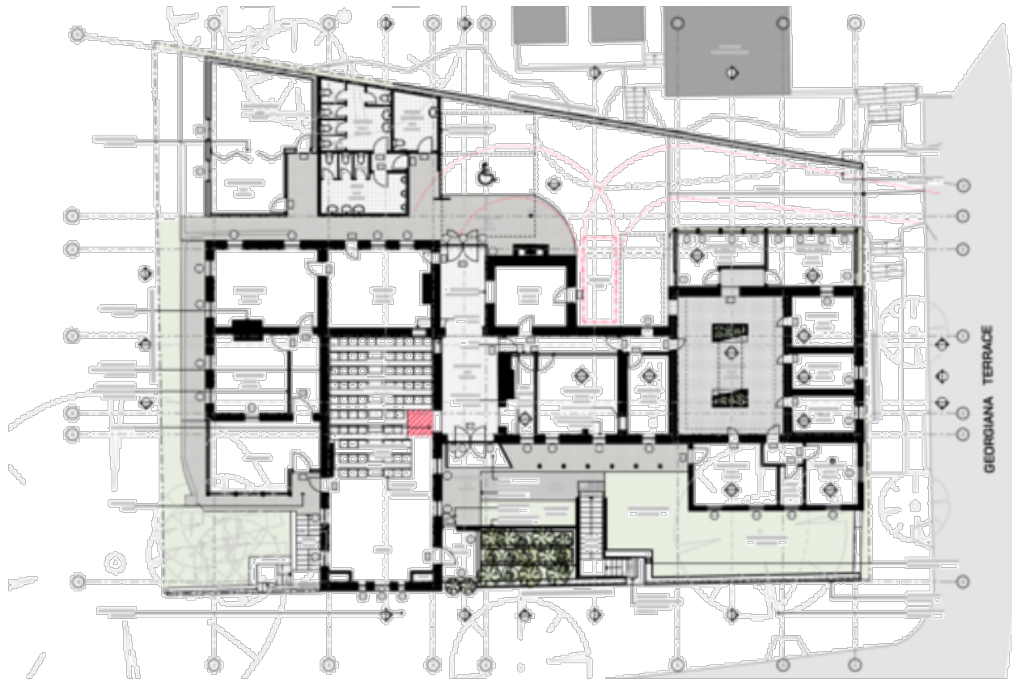


Figure 16: Proposed Plan



Figure 17: Demolition Plan

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5.0 DEVELOPMENT STANDARDS

All controls by Council affecting the site and its immediate vicinity have been carefully considered and incorporated where practical into the design proposal.

LEP	Clause No.	Compliance	Comment
Central Coast Council (Gosford) LEP 2014	Part 2 Land Use Table	Y	Proposed development is in an B3 - Commercial Core zone. This proposal does not seek to amend the current, approved usage of the lot.
	Part 4.3 Height of Buildings	Y	The proposal achieves the LEP objective to provide appropriate height for high quality development. No addition to the building exceeds the existing ridge line. Refer to Architecturals.
	Part 4.4 Floor Space Ratio	Y	The proposal achieves the LEP objective to provide sufficient floor space for high quality development. Refer to Architecturals.
	Part 5.10 Heritage Conservation	Y	Please refer the attached Heritage impact Statement and Conservation Management plan prepared by Romey Knaggs.

DCP	Clause No.	Compliance	Comment
Central Coast Council. Gosford City Centre DCP 2018	Part 4.4 Views & Vistas	Y	Due to the minimal increase in GFA and no change in the existing height, the current proposal will not block or interfere with any views or vistas for neighbouring buildings.
	Part 4.5/7.3 Footpath Crossings	Y	Existing singular driveway access to be upgraded. Refer Architectural's for location.
	Part 5.2.1 Street & Rear setbacks	Y/N	Refer to Section 6.0 of this S.E.E
	Part 5.2.3 Active Street Frontages	Y	The current proposal seeks to activate Mann street by providing new way finding devises and encouraging community interaction by providing visual interest and high level finishes.
	Part 5.2.13 Landscape design	Y	Tree removal and new landscaping is proposed to the Mann street streetscape.
	Part 5.2.16 Site cover and deep soil	Y	No change to existing.

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	Part 5.2.16 Safety and Security	Y	No change to existing. Refer to Section 6.0 of S.E.E
	Part 5.2.15 Front Fences	Y	Refer to attached methodology from Sydney Stone Masons for details regarding the Mann street stone wall restoration process.
	Part 5.2.7 Building exteriors	Y	Existing heritage exterior carefully considered and restored to an acceptable finish enhancing the streetscape.
	Part 5.2.19 Advertising and signage	Y	No change to existing.
	Part 7.4 Onsite parking	N	Refer to Section *0 of this S.E.E
	Part 10 Heritage Items	Y	Please refer the attached Heritage impact Statement and Conservation Management plan prepared by Romey Knaggs.

6.0 CHARACTER STATEMENT

The subject site is situated in an B3 - Commercial core zone, and this application does not seek to change the existing, approved use of the Central Coast Conservatorium as an educational and public premises.

In accordance with the Central Coast Council DCP 2018, *Heritage Conservation: Sympathetic Design*, the proposal aims to -

- *Ensure that new alterations and additions respect the architectural character and style of the building and area concerned,*
- *Maintain and enhance the existing character of the street and surrounding locality,*
- *Enhance the public appreciation of the area*

When viewed from the main access through the Gosford CBD, Mann Street, the proposed alterations and additions will consist of a new awning and entry in place of the existing entry and awning, a new addition in the North West corner of the site that matches the awning/entry and a restored stone wall at street level. The new awning and addition is to be constructed from steel, FC sheeting and glass, blending in to the streetscape and not overpowering the heritage significant stonework. By slightly increasing the new entry, the public will be drawn to the way finding point compared to the closed off nature of the existing entry that is not welcoming. The glazing to the entry will be lit from night and be a more welcoming addition to the public streetscape, especially with performances within the Robert Knox Hall.

Regarding *Heritage Conservation and Design Guidelines: Doors and Windows*;

Original external features such as timber windows and doors shall be retained in their original configuration and dimensions.

This application proposes minor alterations to the Western and Eastern facades in terms of external wall openings. The current entry door is to be retained and infilled with fixed glazing and an existing boarded up opening to the new driveway is to be reinstated and glazed. Both these scenarios will enable us to retain the existing openings and heritage skirting profiles in keeping with the whole building

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and provide more light and connection into the building. All other existing windows and skirting are to be restored and painted as per the heritage consultants advice.

Beyond the development mentioned, there is no change to the existing fabric of the Conservatorium. The Heritage impact Statement and Conservation Management Plan provided with this application will address the need for the removal of the aforementioned windows in greater depth.

7.0 OPERATIONAL DETAILS

The table below encompasses all the relevant operational details for the Central Coast Conservatorium of Music. The current proposal does not alter the existing operational details in any way and the CCCM seeks to continue operating as usual.

Regarding the construction of the project, due to the staggered nature of the teaching program, the build is able to be carried out in stages and the CCCM have a plan and timetable in place to utilise the existing teaching spaces while others are out of use with minimal disruption to the student faculty. The teaching spaces included all rooms on the Mann street site and the additional demountable teaching spaces on the rented sites on Georgiana Terrace. Regarding the Robert Knox Hall, no performances are to be scheduled and the Hall will be closed to the public throughout construction.

Type of business	Music education and events
Number of staff	54. Made up as: 5 permanent and 49 casual
Expected number of customers	363 per week (students) plus accompanying parent in some cases
Hours and days of operation	Monday to Friday: 9 am to 9 pm Saturday: 8 am to 7 pm
Any plant, machinery or production processes	22 Pianos, various musical instruments, computer workstations
Parking facilities on-site or in vicinity	Car park at 126 Georgiana Terrace adjacent to the Council Staff car park with capacity for 11 cars
Type and quantity of goods handled	Not applicable
EPP for industrial developments in accordance with PEOA 1997	Not applicable

8.0 CRIME & SAFETY

As this application does not propose any change of use or change of operational details to the Conservatorium, the existing measures that the Central Coast Conservatorium of Music has in place are to remain. Throughout the construction process the electrical and data communications will be upgraded to which at this point the CCCM will be able to consult the specialist if the series is required to be enhanced.

9.0 HEIGHTS & SETBACKS

The proposal has been designed with consideration of these controls and careful proportioning of new work in relation to existing buildings has been of utmost importance throughout the design

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process. The proposed additions do not exceed the ridge height of the existing building which is within the allowable height limit.

Regarding the setbacks, the two main street additions are within the existing setbacks allowable however the new teaching space and amenities to the rear corner of the site are within the rear setback and request leniency due to the geographical nature of the North West corner of the site bordering the Central Coast Council chambers.

10.0 PARKING, DRIVEWAYS & TRAFFIC

Due to the heritage nature of the building and the minor alterations and additions, the existing building & site contains no formal parking. The current proposal provides 3 new parking spaces which include a disabled space.

Permanent Staff of 5	: 3 Spaces required.
Students, body of 363	: 12 spaces required
	: 3 provided

Currently all staff park at the neighbouring parking stations and on the addition sites along Georgiana terrace the the Conservatorium lease off Central Coast Council. It is requested that the proposal be looked favourable upon with the increase of current parking numbers within the strict parameters.

It is also not likely that the site will have any adverse impact on local traffic movements of the Gosford CBD as no change to use or numbers is proposed.

The new driveway is being upgraded to provide disabled access to the site and the ability via the new turning bay for vehicles to enter and exit the site in a forward direction. This is not currently possible and the proposal is considered a much needed improvement. Both driveway and crossover are to comply with all relevant Australian Standards and BCA provisions.

11.0 BUSHFIRE & FLOOD

The proposed development does not lie in a RFS Bushfire Prone area or flood zone.

12.0 EXTERNAL FINISHES

Heritage Conservation: Colour Schemes of the Central Coast Council DCP states that,

- *Colour schemes which are in keeping with the period of the building will enhance its character and the surrounding area.*
- *It is not usually necessary to repeat the use of original colours, but research is often helpful to understand how different areas were treated.*
- *The dominant use of bright corporate colours on building facades is generally inconsistent with maintaining the heritage character and significance of an item and/or area.*

The proposed materials of the new Mann street awning and new teaching spaces are intended to site comfortably side by side with the heritage stone of the existing building by not overpowering the material and providing hidden details and a tactile experience that will be appealing to the public and staff /students alike. Steel and raw Fibre Cement sheeting is intended to be hard wearing and reflect the longevity of the existing building.

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Figure 18: Mann Street Streetscape



Figure 19: Georgiana Terrace Entry

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13.0 INTERNAL FINISHES

With the materials for the external addition being modest and recessive, the colour scheme proposed for the internal alterations is to be even more subtle and reference the detailing and general interior mood of the existing Conservatorium. Exposing and highlighting the interior existing stone and complementing with whites and greys will work together to pay homage to the playful perforated metal and stone of the exterior. In the teaching spaces, pops of colour are to be incorporated through new sound proofing which is intended to foster creativity.



Figure 20: Internal Courtyard

The internal colour scheme is thoughtful and sophisticated, and speaks to the atmosphere of historicity that permeates the heritage building.

14.0 HERITAGE

The existing building is located on Crown Land and NOT listed on the NSW Heritage register but is listed on Central Coast Council's Local Environment Plan as heritage significant. Please refer the attached HIS and Conservation management plan from Romey Knaggs for all Heritage information and assessment.

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15.0 WASTE MANAGEMENT

Details of the management of waste expected to be generated during the each phase of the project is as follows and all waste management on site will be carried out in accordance with the details contained within the waste management plan submitted as part of the Development Application.

Demolition and Construction Phase:

ELEMENT	MANAGEMENT RESPONSE
Type of Waste	Waste during construction would include: General builder's waste – rubble, non-recyclable off cuts and waste materials. Recyclable waste – Cardboard Packaging, steel, glass and aluminium waste.
Volume of Waste	Maximum of one 5m ³ skip per week during construction of general builder's waste. Maximum 0.5m ³ per week of recyclable material.
Storage	All non-recyclable waste materials would be stored within skips located wholly within the site. Recyclable materials would be separated and placed in a separate bin to general waste.
Frequency of Collection	Collection is readily available and will be on an 'as required basis'.
Recycling	Recycling of suitable material is to be provided for on site.
Location and Method of Disposal	All non-recyclable materials would be covered and transported to landfill in a skip bin. All recyclable materials will be collected by a licensed contractor and transported to a recycling facility. All loading would occur on site to minimise interference to traffic. Waste facilities and management to be inspected by the Site Manager on a daily basis

Operational Phase:

Due to the minor increase in floor area, no additional operational waste will be generated as a result of the proposed development. The sites existing on-going waste management system will remain in place and will be unaffected by the proposal.

Summary:

The waste type, storage and collection generated during the construction and operational phases of the development are able to be satisfactorily managed using existing on site storage and collection arrangements.

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16.0 CONCLUSION

The proposal seeks approval for alterations and additions to an existing heritage listed building on land zoned for that purpose and on a site that has been used as a commercial premise.

The proposal is considered to be well justified and complies with the objectives of the Central Coast Council Local Environmental Plan 2014 and is considered to be consistent with the Council's applying Development Control Plans, including the updated Gosford city centre DCP 2018. Further, it implements a design scheme sensitive to the environmental and contextual constraints of the site and seeks to conserve, protect and enhance the qualities of the existing building in order to extend functionality and relevance in a contemporary context.

We recommend that Council give consent to this development subject to appropriate conditions of development consent, as:

- it will improve the amenity of the site and therefore its effect on the surrounding area;
- it will create the opportunity for employment during both construction and operation;
- it will improve the streetscape appearance of the site from the existing development;
- it has utility services available to support the development;
- the site can be adequately drained to service the proposed development;
- the proposed dwelling will have minimal impacts on adjoining properties;
- the expected traffic impacts are minimal and adequate access to the road network exists.
- The existing parking and manoeuvring arrangements are considered adequate for the proposed use

We trust that the information provided in this report is sufficient for the department to establish the scope of environmental assessment required for the development application.

Damien Furey,
Fabric Architecture Studio

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17.0 APPENDIX



**AHIMS Web Services (AWS)
Search Result**

Purchase Order/Reference : 20010
Client Service ID : 530872

Fabric Architecture Studio
87 Toowoon Bay Rd
Toowoon Bay New South Wales 2261
Attention: Brent Fitzpatrick
Email: brent@fabricarch.com.au

Date: 27 August 2020

Dear Sir or Madam:

AHIMS Web Service search for the following area at Lat, Long From : -33.43, 151.3396 - Lat, Long To : -33.4274, 151.3438 with a Buffer of 50 meters, conducted by Brent Fitzpatrick on 27 August 2020.

The context area of your search is shown in the map below. Please note that the map does not accurately display the exact boundaries of the search as defined in the paragraph above. The map is to be used for general reference purposes only.



A search of the Office of the Environment and Heritage AHIMS Web Services (Aboriginal Heritage Information Management System) has shown that:

2	Aboriginal sites are recorded in or near the above location.
0	Aboriginal places have been declared in or near the above location.*

Appendix A - AHIMS Serch

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Appendix B - Land Zone



Appendix C: Floor Space Ratio

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Appendix D: Height of Buildings



Planning,
Industry &
Environment

File Ref: MD91R26#01
Account No: 624536

Letter to Authority
(consent granted)

Phone: 1300 886 235
melanie.osborne@crowland.nsw.gov.au

Central Coast Council
ask@centralcoast.nsw.gov.au

18 December 2020

Dear Sir/Madam

Application Landowner's consent for development comprising alterations and additions to the Central Coast Conservatorium of Music building located on Lot 453 DP 727721 at Gosford being Crown Reserve 170139 for community purposes

The Minister administering the *Crown Land Management Act 2016*, as owner of the subject land, has granted landowner's consent to Central Coast Conservatorium of Music Inc for the lodging of a development application required under the *Environmental Planning and Assessment Act 1979*, and any other associated applications to other authorities for the above development proposal.

The applicant has been instructed to provide you with the landowner's consent provided by the NSW Department of Planning, Industry & Environment – Crown Lands (the department) with the application.

Landowner's consent is given without prejudice so that consideration of the proposed development may proceed under the *Environmental Planning and Assessment Act 1979* and any other relevant legislation.

In this regard, only matters relevant under the *Crown Land Management Act 2016* were considered when assessing this consent. Other considerations may arise as a result of applications made under the *Environmental Planning and Assessment Act 1979* and/or other legislation that the department may wish to comment on. As such, it is requested that a copy of the application, when lodged with the Central Coast Council, be referred to the department for comment so that any such matters can be raised.

The applicant has also been advised that the Minister administering the *Crown Land Management Act 2016* reserves the right to issue landowner's consent for the lodgement of applications for any other development on the subject land concurrent with this landowner's consent.

For further information, please contact Melanie Osborne via the details given in the letter head.

Yours faithfully



Melanie Osborne
Group Leader, Property Management



CM9 Ref: DOC21/030726

General Manager
Central Coast Council
PO Box 21
Gosford NSW 2250

Email: ask@centralcoast.nsw.gov.au

Dear Sir/Madam

Proposed Development: DA/60219/2020 – Business purposes, alterations and additions.

Applicant: Mr Rob Kitchen
Location: Lot 453 DP 727721 - 45 Mann Street, Gosford

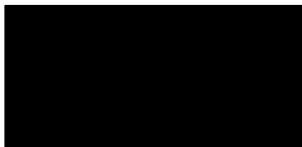
I refer to Council's letter dated 12 January 2021 requesting comments for the above development proposal.

The Department of Planning, Industry and Environment – Crown Lands (the department), as adjoining landowner has reviewed the development application in accordance with the principles of Crown land management (s.1.4 *Crown Land Management Act 2016*), and offers no objections to the proposed development as no impact to Crown land has been identified.

Should the development be modified in any manner that impacts the adjoining Crown land, e.g. by amendment to the development proposal or draft conditions of consent, the department requests an opportunity to further review the application prior to determination.

Should you require any further information, please do not hesitate to contact Charlie Low at the Maitland Crown Lands Office by phone on 4931 6490 or email charlie.low@crownlands.nsw.gov.au

Yours sincerely



Property Services Officer – Maitland Office
Department of Planning, Industry and Environment – Crown Lands

Date: 18 February 2021