

# Central Coast

## Local Planning Panel

Central Coast  
LOCAL PLANNING PANEL MEETING  
Business Paper  
**24 June 2021**



# Meeting Notice

**The LOCAL PLANNING PANEL MEETING  
of Central Coast  
will be held remotely - online,  
THURSDAY 24 JUNE 2021 at 2.00 pm,  
for the transaction of the business listed below:**

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4.1	DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises .....	94

Donna Rygate  
**Chairperson**

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

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24 June 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

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24 June 2021 Local Planning Panel Meeting

Reference: F2020/02502 - D14685436  
Author: Rachel Callachor, Administration Officer

### **Summary**

*The Minutes of the following Meeting 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 10 June 2021***

### **Recommendation**

***That the minutes of the previous Local Planning Panel Meeting held on 10 June 2021 are submitted for noting.***

### **Attachments**

- 1 MINUTES - Local Planning Panel - 10 June 2021 D14680571



## Local Planning Panel

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

Held remotely - online  
on 10 June 2021

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#### **Panel Members**

Chairperson	Kara Krason
Panel Experts	Stephen Leathley Linda McClure
Community Representative/s	Tony Tuxworth

#### **Central Coast Council Staff Attendance**

Scott Cox	Director Environment and Planning
Andrew Roach	Unit Manager Development Assessment
Ailsa Prendergast	Section Manager Development Assessment South
Brian McCourt	Development Planner Development Assessment South
Anna McKeough	Team Leader Business Support North
Rachel Callachor	Administration Officer Business Support South
Kathryn Williams	Administration Officer Business Support South

The Chairperson, Kara Krason, declared the meeting open at 2.07pm and advised in accordance with the Code of Meeting Practice that the meeting is being recorded.

The Chair, read an acknowledgement of country statement.

#### **Apologies**

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

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#### **1.1 Disclosures of Interest**

***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.***

***Unanimous***

## **2.1 Confirmation of Minutes of Previous Meeting**

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***That the minutes of the following meetings of the Local Planning Panel, which have been endorsed by the Chair of those meetings, were submitted for noting:***

- ***Meeting held on 13 May 2021 and***
- ***Supplementary Meeting Minutes regarding DA57958/2020 – dated 2 June 2021.***

***Moved and Confirmed – Kara Krason***

### **Public Forum**

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The following people addressed the Panel:

#### ***Agenda item 3.1***

1. Tracy Rogers - for recommendation
2. Gail Santi, President of Springfield Residents Association - for recommendation
3. Luke Gemmill - for recommendation
4. Cheryl Walsh – for recommendation
5. Glenys Ray - for recommendation
6. Ross Wellington - Ecologist - Australian Environmental Surveys (on behalf of applicant) - against recommendation
7. Shane McKinnon - Owner - against recommendation

The Local Planning Panel public meeting closed at 2:49pm. The Panel moved into deliberation from 2:50pm, which concluded at 5:15pm.

### **3.1 DA 55715/2018 - 35-45 Clarence Road, Springfield - Four (4) lot subdivision**

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<b>Site Inspected</b>	Yes
<b>Relevant Considerations</b>	As per Council assessment report
<b>Material Considered</b>	<ul style="list-style-type: none"><li>• Documentation with application</li><li>• Council assessment report</li><li>• Submissions</li></ul>
<b>Council Recommendation</b>	Refusal

**Panel Decision**

- 1 That the Local Planning Panel refuse the application Development Application No. 55715/2018 for Four (4) lot subdivision on Lot 6 -7 DP 9777248, 35 - 45 Clarence Road Springfield for the following reasons:**
  - i. The application relies on flexible zone boundary provisions provided by Clause 39A in IDO122. State Environmental Planning Policy (Coastal Management 2018) cl.20 states that flexible zone provisions do not apply where this SEPP applies to this site. Consequently there is no legal basis on which the application can be approved by relying on Clause 39A of the IDO.**
  - ii. The subdivision is contrary to the provisions of Clause 18(3) of Interim Development Order 122 (IDO 122) relating to compliance with the minimum lot size.**
  - iii. The subdivision is contrary to the provisions of the zone objectives of Interim Development Order 122 (IDO 122).**
  - iv. The subdivision is contrary to the provisions of Clause 18 (4) of Interim Development Order 122 (IDO 122) relating to the character of the site and surrounding area.**
  - v. Inadequate information has been provided in relation to GDCP 2013 Clause 3.6 .4.2(c)(i) Subdivision of Rural and Non – Urban Land Arrangement of Lots – Tree Preservation.**
  - vi. The proposal would adversely impact on the biodiversity of the site as it would facilitate significant vegetation removal associated with future residential development, construction and bushfire asset protection.**
  - vii. The land has strategic value as part of the Coastal Open Space System (COSS) which identifies the land for voluntary land acquisition.**
- 2 That Council advise those who made written submissions of the Panel’s decision.**
- 3 That Council advise relevant external authorities of the Panel’s decision.**

**Reasons**

- 1 The proposal is unable to rely on the flexible zone provisions under cl. 39A of IDO 122 as the site is subject to the State Environmental Planning Policy (Coastal Management 2018). Therefore the proposal does not comply with minimum lot size under IDO 122;
- 2 The proposal would adversely impact on the biodiversity of the site as it would facilitate significant vegetation removal associated with future residential development, construction and bushfire asset protection; and
- 3 The application is not in the public interest.

**Votes**

The decision was unanimous

**4.1 Request to prepare Local Environmental Plan Amendment (Planning Proposal) – 43-49 The Esplanade, Ettalong Beach**

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Stephen Leathley did not participate in this matter due to a declaration of a significant non pecuniary interest.

The Panel considered the report on the matter and the material presented by Council Officers at the briefing meeting.

- 1 The Panel supports the report recommendation included below and offers the following advice:

That Council, pursuant to Section 3.33 of the Environmental Planning and Assessment Act, 1979, prepare a Planning Proposal to amend the Gosford Local Environmental Plan 2014 or Central Coast Local Environmental Plan (if in effect), to:

a) increase the maximum building height from 11.5m to 17m and floor space ratio from 1:1 to 1.75:1 on the following lots:

- Lot 117 in DP 10650 (No 46 The Esplanade);
- Lot 118 in DP 10650 (No 46 The Esplanade);
- Lot 119 in DP 10650 (No 46 The Esplanade);
- Lot 120 in DP 10650 (No 45 The Esplanade);
- Lot 121 in DP 10650 (No 44 The Esplanade); and
- Lot 122 in DP 10650 (No 43 The Esplanade), and

b) to increase the maximum building height and floor space ratio on Lot 2 in DP1249007 and 0/SP 99403 (No 49 The Esplanade) to be consistent with the planning controls approved as part of the State Significant Project Approval (MP 09\_0121) for this site.

- 2 The Panel supports the strategic intent of the proposal for redevelopment of this key site and considers that it has site specific merit, subject to the following qualifications:



- Proposed height and FSR for No. 43-46 The Esplanade, Ettalong Beach is supportable provided the site is developed as one consolidated lot. Standards relating to minimum allotment size, minimum frontage and site consolidation must be included within the LEP.
  
- The proposed LEP controls rely on detailed urban design controls being developed in a future Development Control Plan, which should preferably be exhibited alongside the Planning Proposal. If this is not possible, then the DCP should be finalised prior to the gazettal of the amending LEP. This should include, but not be limited to:
  - limiting the overshadowing of the beach, public open space and bushland in the area
  - allowing for view sharing to the water from other B2 zoned land in the centre
  - providing for acceptable building separation and setbacks
  - incorporating active street frontage provisions
  - transition in height to the adjacent low density areas
  - design excellence
  
- The Panel supports the proposed intent to prepare a Planning Agreement alongside a Planning Proposal.
  
- The Panel requests consideration as part of the Planning Proposal of public benefits such as affordable housing, through site links and public realm improvements along The Esplanade and Picnic Parade.

**Item No:** 3.1  
**Title:** DA/52083/2017/4 - 5-7 Church Street, Terrigal -  
Modification of approved commercial premises  
and shop top housing

**Department:** Environment and Planning

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24 June 2021 Local Planning Panel Meeting

Reference: 011.2017.00052083.004 - D14549904  
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 modification of an approved commercial/shop top housing development by the addition of one (1) additional apartment and one (1) additional level. 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 this report.

The application is referred to the Local Planning Panel due to the number of submissions received being in excess of 15 submissions. 62 submissions have been received.

The application to modify the consent is recommended for refusal

<b>Applicant</b>	G Daaboul C/-Slater Architects
<b>Owner</b>	GDMA Pty Ltd
<b>Application No</b>	52083/2017/4
<b>Description of Land</b>	Lots 19 and 20 DP7861 No5 and 7 Church Street, Terrigal
<b>Proposed Development</b>	Modification of commercial development and shop top housing.
<b>Site Area</b>	942m <sup>2</sup>
<b>Zoning</b>	B2 Local Centre
<b>Existing Use</b>	Vacant (under construction)
<b>Employment Generation</b>	No
<b>Estimated Value</b>	\$10,770,653.00

### Recommendation

- 1 That the Local Planning Panel refuse consent to DA52083/2017 Part 4 for modification to the approved commercial/shop top housing development on Lots 19 and 20 DP7861 No 5 and 7 Church Street, Terrigal, for the reasons below and having regard to the matters for consideration detailed in Sections 4.15 and 4.55(2) of the Environmental Planning and Assessment Act 1979.***

**3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

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- i. The proposed modification significantly increases the height and floor space of the approved development and development standards of Clause 4.3 and 4.4 of the Gosford Local Environmental Plan 2014.**
- ii. The proposed modification does not comply with the objectives and development standards of the B2 zone State Environmental Planning Policy 65, Gosford Local Environmental Plan 2014, or Gosford Development Control Plan 2013.**
- iii. The proposed modification has additional impacts on adjoining sites resulting in additional view loss and amenity impacts.**
- iv. Approval is not in the public interest.**

**2 That Council advise those who made written submissions of the Panel's decision.**

**Key Issues**

- Height and Floor Space Ratio
- View impacts
- Whether the proposal is substantially the same development
- Public Submissions and matters raised therein.

**Precis:**

<b>Proposed Development</b>	Modification of approved commercial premises and shop top housing.
<b>Permissibility and Zoning</b>	B2 Local Centre. Commercial premises and shop top housing permissible with consent.
<b>Relevant Legislation</b>	Environmental Planning and Assessment Act 1979 - Section 4.15 and 4.55(2) Local Government Act 1993 - Section 89 State Environmental Planning Policy (Coastal Management) 2018 State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 State Environmental planning Policy (Gosford City Centre) 2018 Draft Central Coast Local Environmental Plan 2018 Gosford City Centre Development Control Plan 2018 State Environmental Planning Policy (Infrastructure) 2007 State Environmental Planning Policy No 65 (Design Quality of Residential Flat Buildings) Draft State Environmental Planning Policy (Environment) 2017

**3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

	Draft State Environmental Planning Policy (Short Term Rental Accommodation) 2019 State Environmental Planning Policy (Exempt and Complying Development) 2008 Apartment Design Guidelines (ADG) Central Coast Climate Change Policy
<b>Current Use</b>	Construction physically commenced for development (Construction Certificate issued 8 January 2021).
<b>Integrated Development</b>	No
<b>Submissions</b>	62

**Variations to Policies**

Clause	4.3 and 4.4 of Gosford LEP 2014 DCP Chapter 4.3 - Terrigal Village Centre
Standard	Height and FSR Building Envelope
LEP/DCP	Gosford LEP 2014 Gosford DCP 2013
Departure basis	Approved in initial proposal - 10.4% -13.8%. Proposed in current amendment application - 26.1%- 28.2%

**The Site**

The site is known as No.'s 5-7 Church Street, Terrigal (situated between Church Street and Hudson Lane) and is legally described as Lots 19 and 20 in Deposited Plan 7861.

The site is generally rectangular having a site area of 942m<sup>2</sup> with a frontage to Church Street of 24.385m, and at the rear, a frontage to Hudson lane of 24.385m.

The northern side boundary has a length of 38.605m and the southern side boundary a length of 38.66m.

There is a very slight falling grade from Church Street (RL 4.09m AHD) towards Hudson Lane (RL 2.72m AHD).

The subject site previously contained a public car parking area for about 32 cars. The site was sold by Council and construction work has physically commenced under this consent.

3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)



Figure 1- Locality Plan

### 3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)

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#### Surrounding Development

Surrounding development mainly consists of commercial premises, shops, restaurants of varying heights. The Crown Plaza is located on the southern side of Kurrawyba Avenue.

A medical centre is located on the northern side, and a bank on the southern side. Terrigal Police Station is located further to the north.

A 6 storey development (DA49519/2016) has been approved on the corner of Kurrawyba Avenue and Church Street diagonally opposite the site. This development has commenced construction. The approved development has a height of RL26.75m and FSR of 2.56:1. **(Refer figure 2)**



**Figure 2- Approved development DA49519/2016**

#### The Proposed Development

It is proposed to amend the approved plans by the addition of a fifth-floor (Level 6) penthouse which increases the number of residential units from 12 to 13, revises the roof plan, and enlarges the size of the terraces on level 5 from 1m to 1.6m.

The proposed level 5 will be setback greater than the floors below and will be setback;

- Church Street. 3.8m to balcony and 7.6m to wall.
- Hudson Lane. 4.4m to edge of balcony and 8.2m wall.
- North side. 3m edge of balcony and 6m wall.
- South side. 3m edge of balcony and 6m wall.



Figure 3 – Approved Church Street Elevation

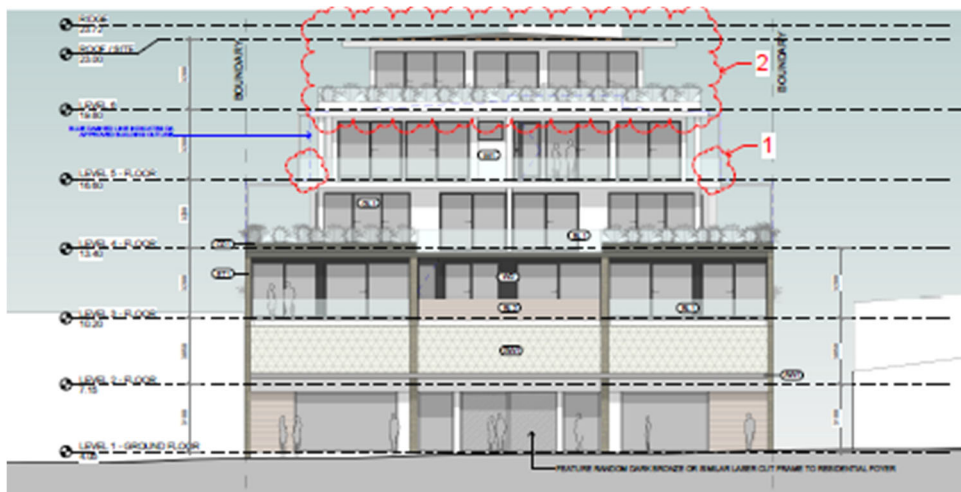


Figure 4 -Proposed Church Street Elevation

## History

Consent was granted on 28 October 2019 subject to conditions for shop top housing containing 12 residential units above commercial premises.

An application to modify the consent (Part 2) was withdrawn.

The consent (Part 3) was modified on 4 September 2020.

The amendments to the approved plans included:

- Changing the use of the ground floor premises from 'shop' to 'business premises'.
- Revised internal layout on levels 1, 2, 3 and 4 to accommodate structural and service requirements.
- Amend car parking layout on levels 1 and 2 to increase car parking spaces from 23 to 36 spaces.

### **3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

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- Reduction of GFA of ground floor business premises from 315m<sup>2</sup> to 258m<sup>2</sup> and provision of 92m<sup>2</sup> storage for business premises.
- Minor revision of ground floor entry foyer.
- Minor changes to floor levels to achieve 3.2m floor to floor for residential levels.
- Revised internal layout of units 2 and 6 on level 3.
- Revised internal layout to unit 7 on level 4 to reduce from 3 to 2 bedrooms and amended planter box depth and privacy screens to suit.
- Revised layout of unit 11 on level 5 and location of privacy screens.
- Revised building elevations to reflect internal changes.
- Minor increase in height of the lift overrun from RL 20.35m AHD to RL20.43m AHD, an increase of 80mm.

#### **ASSESSMENT:**

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

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

The application was previously 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 (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.

The relevant matters have been considered in the assessment of this application. The application is considered consistent with the stated aims and objectives.



### 3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)

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#### Gosford Local Environmental Plan 2014 - Permissibility

The subject site is zoned B2 Local Centre under Gosford Local Environmental Plan 2014. The proposed development is defined as commercial premises and shop top housing which are permissible in the zone with consent of Council.

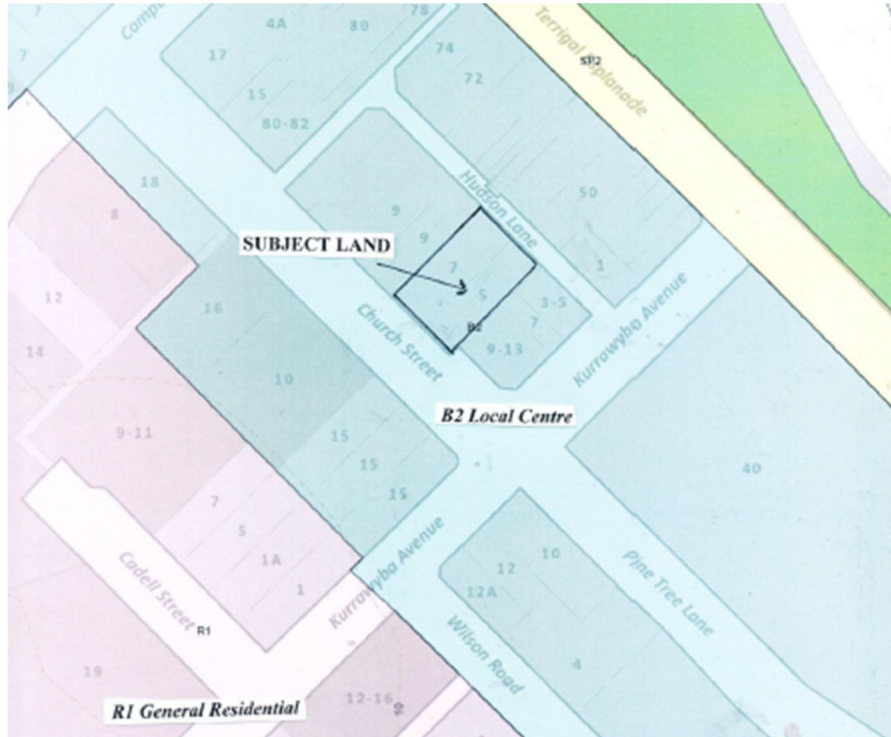


Figure 5-Zoning Plan

#### Gosford Local Environmental Plan 2014 – Zone Objectives

The land has a B2 Local Centre zone under the provision of the Gosford Local Environmental Plan 2014.

The objectives for the B2 Local Centre are:

- 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 provide for residential uses, but only as part of a mixed use development.
- To ensure that development is compatible with the desired future character of the zone.
- To promote ecologically, socially and economically sustainable development.
- To ensure that the town centres of Erina and Woy Woy are recognised as providing a higher level, and greater diversity, of services and facilities to serve a

**3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

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wide population catchment from numerous localities and as key public transport nodes, secondary to Gosford City Centre.

- To ensure that village centres such as Avoca, East Gosford, Ettalong Beach, Kincumber, Lisarow, Niagara Park, Terrigal, Umina Beach, West Gosford and Wyoming are recognised as providing a broad range of services and facilities to serve the population of the locality.
- To ensure that villages are recognised as providing local level services and facilities and are developed at a scale that reflects their population catchment and as a focus for public transport routes.
- To ensure that the different roles of villages are recognised with some villages being key tourist destinations with boutique activities in addition to serving the needs of local residents, while other villages are purpose-built centres to serve the needs of the local population.
- To encourage the residential population of villages and town centres to contribute to the vitality of those locations.

The proposed development meets the objectives of the zone **except for** the desired future character of the zone in this location due to excessive height, FSR and view loss.

**Gosford Local Environmental Plan 2014 - Clauses 4.3 and 4.4. (Height and FSR)**

The following table illustrates the difference between the development standards and the approved and proposed modification.

Clause	Development Standard	Approved Part 1	Approved Part 3	Proposed Part4	Variation Part 3-Part 4
4.3 Maximum Height	RL 18.5m	Roof RL19.8m Lift Overrun RL 20.35m	Roof RL 19.8m Lift Overrun RL 20.35m	Roof RL 23m Lift Overrun RL 23.72m	Roof+3.2m Lift Overrun +3.37m
4.4 Maximum FSR	1.8:1	1.9:1	2.05:1 (incl ex car parking)	2.27:1 (incl ex car parking)	+0.22:1

The approved development has varied the height 10.4%. The proposed modification will vary the approved height by a further 3.37m to a total of 5.22m or 28.2%.

The approved development has varied the FSR 13.8%. The proposed modification will vary the approved FSR by a further 0.22:1 to a total of 0.47:1 or 26.1%.

In considering the additional building height and FSR, there is established case law that a variation to development standards is not required for a modification under section 4.55 ( NSW Court of Appeal *North Sydney Council v Michael Standley & Associates Pty Ltd* (1998), and the Land & Environment Court *Gann v Sutherland Shire Council* (2008))

However, Council is still required to undertake an assessment of the variation and its impact under s4.15 of the EPA Act, 1979.

### **3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

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The variations are numerically large, and the increase is not mitigated by the additional floor level and apartment being setback a greater distance from the boundaries of the site. This is not in accordance with the aims of the GDCP 2013 and the desired development in this part of the Terrigal business area. The increase by one (1) additional apartment from a total of 12 to 13 apartments may appear minor but the additional storey is a major increase beyond the current approval.

The additional traffic generated is not considered significant.

#### **Gosford Local Environmental Plan 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.

#### **Gosford Local Environmental Plan 2014 - 7.2 Flood planning**

The land has been classified as being under a "flood planning level" and subject to the imposition of a minimum floor level. The development is considered satisfactory in respect to clause 7.2 of Gosford Local Environmental Plan 2014.

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

##### Chapter 2.1 Character

The site is located within "Terrigal 8: Mainstreet Centre".

The desired character as set out in the DCP is as follows:

*This should remain a mixed-use centre that provides a range of services and accommodation for local residents as well as visitors, where the scenic potential of a prominent backdrop to Gosford City's ocean beaches is enhanced by new developments that encourage high levels of street activity and also achieve improved standards of amenity plus urban-and-civic design quality.*

*Protect and enhance existing levels of "main-street" activity with building forms that maintain both the pedestrian-friendly scale of existing one and two storey shop-front developments, and also the current level of midday sunlight along all footpaths and laneway frontages. Promote high levels of on-street activity by maximising the number of retailers or businesses and the continuity of shop-windows along all street and laneway frontages. Avoid indoor arcades that would draw people away from the street. Incorporate awnings, colonnades or balconies in all buildings to provide sheltered pedestrian settings that encourage pavement dining. Contribute to high levels of visible activity along all streets by surrounding upper storeys with balconies that accommodate restaurant dining or residents'*

*outdoor recreation.*

*Ensure that new developments (including alterations to existing buildings) do not dominate the informal scenic qualities of foreshore settings or disrupt the main-street development pattern in this established coastal shopping village. The height and form of buildings should maintain panoramic ocean and coastal views that are enjoyed from surrounding hillside dwellings, as well as providing a transition from residential areas to the middle storeys of the existing resort hotel. Along all public streets, shop-front facades should have a zero setback and a maximum height of two storeys, with taller storeys set back behind terraces to maintain a pedestrian-friendly scale as well as midday sunlight along all footpaths and laneways. Ensure that the height and siting of new buildings also preserve levels of privacy, sunlight and visual amenity that are enjoyed by existing dwellings and their private open spaces.*

*Reflect the form of development that is typical of traditional coastal centres where a wide variety of retailers are accommodated by separate buildings upon narrow-fronted allotments. Along any street or waterfront, avoid the appearance of a continuous wall of development or uniform building heights. Vary the shape and height of all visible facades. Top-most storeys should be setback behind wide roof terraces, and roofs plus parapet heights should step from one building to the next. Street corners should be emphasised by taller forms. Neighbouring buildings should be separated by landscaped courtyards and alleyways that provide view corridors, access to apartment lobbies, and daylight plus an outlook for above-ground dwellings.*

*Disguise the scale and bulk of new buildings. All visible facades should employ extensive windows that are shaded by lightly-framed balconies, verandahs or exterior sunshades, plus painted finishes and some board or sheet cladding rather than expanses of plain masonry. Roofs should be gently-pitched to minimise the height of ridges, flanked by wide eaves that shade terraces and also disguise the scale of exterior walls. Side and rear facades should match the design quality of the street frontage.*

*Conceal off-street parking behind street-front shops or apartments, and provide unobtrusive vehicle entrances from laneways or secondary streets to minimise disruption of shopfronts and their associated pedestrian activity. Contribute to co-ordinated street improvements that include dedicated pedestrian crossings, footpath paving, landscaping and lighting to provide safe and secure settings for informal social interaction. Building colour schemes and commercial signs should be co-ordinated and limited in size and number to promote the identity of this coastal centre, rather than emphasising corporate sponsorship.*

*Around the Skillion, provide master planned landscape improvements that enhance the scenic potential, accessibility and recreation value. Maintain existing boatsheds*

### 3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)

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*that are distinguishing features of this foreshore, but allow alterations or additions to accommodate community or publicly-accessible facilities. New works should complement the modest scale, form and traditional marine architecture displayed by these existing buildings, incorporating in particular a light-weight appearance and gently-pitched roofs flanked by verandahs or balconies.*

The proposed modification is not considered consistent with the desired character as it does not step the top level back from all site boundaries in accordance with that required in the DCP.

#### Chapter 2.2 Scenic Quality

The proposed modification does not generally detract from the commercial and coastal scenic quality, however it is a substantial increase in height, bulk and scale to that approved. It is not substantially the same development.

#### Chapter 4.3-Terrigal Town Centre.

The following controls are applicable to the proposed modification/additional floor level.

Clause	Required	Approved	Proposed
4.3.6 Height	4 storeys	5 storeys	6 storeys
4.3.6.4 Buildings exceeding 4 storeys	Enclosed floor space shall not exceed 50% of primary street frontage.	Level 5-67%	Level 6-51.8%

The DCP requires the 5<sup>th</sup> and 6<sup>th</sup> floor to not exceed 50% of the street frontage width. While the variation is minor for the proposed 6<sup>th</sup> floor, when combined with the large variation to the 5<sup>th</sup> floor, the proposed modification contributes to excessive height, bulk and scale to that envisaged under the planning controls.

#### Clause 4.3.6.3 Building Envelope

This clause requires the buildings facing each street or laneway to maintain a pedestrian-friendly scale by requiring buildings to be setback at 45 degrees above 7m or 2 storey height.

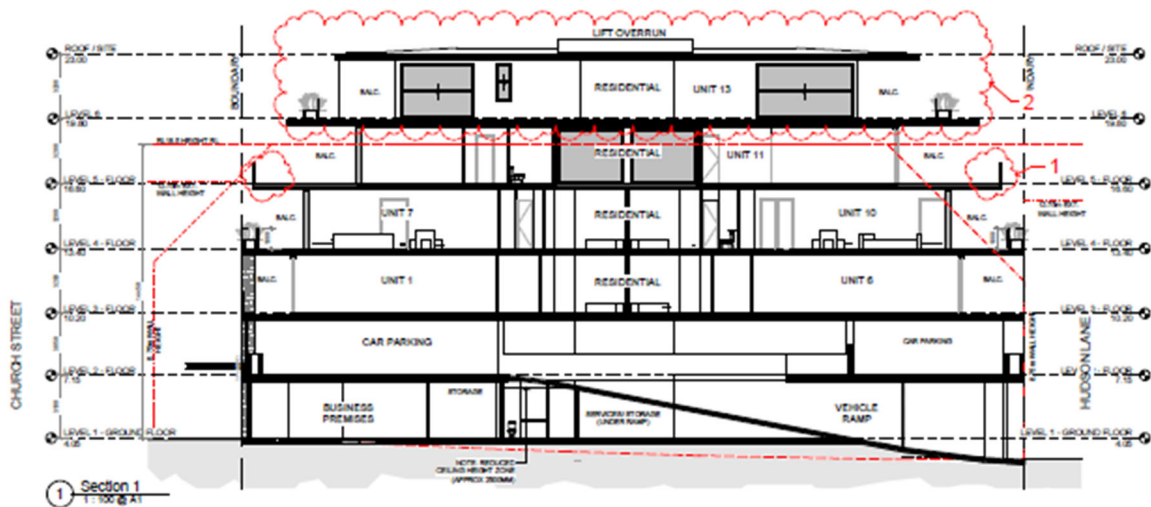


Figure 6-Section

As can be seen in the above figure 6, the section shows the incorrect application of this clause as it should be taken from the street boundary, not the kerb line. The proposed building projects closer to the street and rear lane than identified under the DCP to maintain a pedestrian friendly scale and adds to the bulk and scale of the proposed building.

#### Chapter 6.7 Water Cycle Management

The proposed modification does not increase stormwater run-off.

#### Chapter 7.1 Car Parking

The proposed modification does not alter the approved car parking.

The approved development requires the provision of a total of 24 car parking spaces based on;

- commercial 8 spaces.
- shop top housing 13 spaces.
- visitor 3 spaces.

The approved development provides 36 car parking spaces which is 12 spaces greater than the minimum required.

This was previously supported based on the demand for parking in the Terrigal area and the number of submissions which raise the shortage of parking in the area as a main concern with more intensive development.

**3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

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Chapter 7.2 Waste management

No changes are proposed or required to the waste storage and collection previously approved.

**Submissions from Public Authorities**

None required.

**Internal Consultation**

The following internal consultations were undertaken:

Development Engineer	No changes to conditions required.
Water and Sewer	No changes to conditions required.
Architect	Not Supported – see comments below.

Architect - SEPP 65 Assessment

This is a further S4.55 application to amend approved application DA 52083. This assessment is based on drawings issue 8 dated 17-11-2020. It has been assessed under SEPP 65, the nine Design Quality Principles and the Apartment Design Guide (ADG) and Chapter 4.3 of the DCP, Terrigal Village Centre.

This amendment proposes adding an additional floor containing a single three-bedroom penthouse to the approved application.

*Context*

The approved application had a roof height of 19.80 metres or 1.3 metres above the permissible height of 18.50 metres.

The current application proposes a total height of 23.73 metres or 5.23 metres or 28% above the 18.5 metre height control. It is noted that the application proposes floor to floor heights of 3.2 metres. A design that minimised floor to floor height may have significantly reduced the extent of non-compliance however the current application has not done this.

This is considered inconsistent with the existing and likely future context.

While some non-compliance was considered acceptable in the approved application, the proposed additional floor and 28% non-compliance will result in loss of views to adjoining sites, reduced solar access and is inconsistent with the likely future context.

It is acknowledged that Council has approved a non-complying building on the site opposite (corner of Church Street and Kurrawyba Avenue) however this was a larger site with the

### **3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

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building setback from the Kurrawyba Avenue frontage. It is also accepted that the proposed penthouse does not obstruct all views from 15 Kurrawyba Avenue however view loss on adjoining sites and public spaces resulting from non-compliance is inconsistent with the Land and Environment Court Planning Principles. *"Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable"*.

The view impact in this instance arises from non-compliance with height, density and building envelope controls and therefore is considered unreasonable.

#### *Built Form and Scale*

The non-complying height adds to the visual bulk and scale. It is noted that the Church Street building envelope shown in the approved drawing DA300 revision 5 dated 07-02-2018 shows the building envelope 4 metres from the Church Street boundary. This results in the approved application not complying with the building envelope control in the DCP and the current proposal will result in increased non-compliance.

#### *Density*

The proposed density is 2.27: 1 or 26.1% above the allowable maximum of 1.8:1. When combined with the non-complying height and building envelope it indicates an over development of the site.

#### *Sustainability*

BASIX certificate supplied indicating compliance with mandatory energy efficiency standards. The use of solar hot water and photovoltaic cells or other energy saving options should also be considered.

#### *Landscape*

The amendment has no impact on landscaping as the approved application has no deep soil planting and relies entirely on planting on the structure.

#### *Amenity*

Amenity of units within the development is acceptable however detrimental impacts on other sites is considered unacceptable.

#### *Safety*

Balconies and windows overlook the street and lane to provide surveillance.



### 3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)

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#### *Housing Diversity and Social Interaction*

The application provides 2 and 3 bedroom units and adaptable units to cater for a variety of occupants.

#### *Aesthetics*

The amendment increases bulk and scale and is considered to have a detrimental impact on the aesthetics of the building.

#### *Conclusion*

The amended application results in significant non-compliance with height, density and building envelope controls resulting in detrimental impacts on adjoining sites. This is inconsistent with the L&E Court planning principles.

The proposed additional level is not supported.

#### **Public Submissions**

The application was notified from 15 January 2021 to 15 February 2021. Sixty-two (62) public submissions were received in relation to the application. Those issues associated with the 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 public submissions, with appropriate comments, is detailed below:

- 1 *The existing approval is beyond a reasonable height. The increase in height will severely impact the Terrigal Township by denial of natural light to Church Street and Hudson Lane, creation of wind tunnel effect and lose of village appeal.*

Comment-The additional height of one level from 5 storeys to 6 storeys is a significant increase. Such height is unlikely to create a wind tunnel effect.

- 2 *Lack of car parking.*

Comment- The proposal provides excess and adequate on- site car parking.

- 3 *The crane on the site is too big and the crane light shines into bedrooms impacting privacy of nearby residents.*

**3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

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Comment- This is not a relevant matter for consideration in the assessment of the current application. The crane is there for construction purposes only and will be removed when construction is completed or no longer required.

- 4 *Traffic and parking in Terrigal is already a nightmare. The infrastructure including roads and sewer are overloaded with sewage spills.*

Comment- The addition of one apartment is not a significant increase and impact on roads and services.

- 5 *The proposal will impact residents on the opposite side of Church Street. The building is too high and will affect the outlook and property values. The Terrigal skyline is becoming an eyesore with such developments.*

Comment- The increase in building height is significant and will increase the bulk and scale and visual impact of the proposed development.

- 6 *The application is not a s4.55(1A) application.*

Comment- The application has been amended to a s4.55(2) application and assessed under this section of the *Environmental Planning and Assessment Act 1979*.

- 7 *The proposal will impact the amenity of residents in Miller Road by reduction in ocean views, loss of light, wind tunneling, traffic congestion, and inadequate services.*

Comment- Miller Road is located to the south-east of the site and not in close proximity. Residents in Miller Road are not significantly impacted by the proposed development or proposed modification.

- 8 *The additional height will create additional overshadowing and block light.*

Comment- The additional height and level 6 is set back a greater distance than the levels below. The additional shadow impact is considered minor and is not over adjoining residential units.

- 9 *The proposal is out of character with existing buildings and the area. Terrigal is overdeveloped.*

**3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

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Comment- Terrigal CBD and the surrounding area is going through a transition to higher density residential and commercial development. The proposed modification is higher than adjoining sites between Church Street and Terrigal Esplanade. While a higher development has been approved on the southern side of Church Street, there should be a decrease in height transition towards Terrigal Beach to facilitate view sharing.

*10 The proposal will impact water/ocean views from the approved development on the corner of Kurrawyba Avenue and Church Street from levels 4 and 5. No view impact assessment was submitted.*

Comment- The applicant and objectors have submitted detailed view impact assessments. Refer view loss assessment below and attachments 3 and 5.

**Other Matters for Consideration:**

Section 4.55(2) Assessment

The proposal is required to be assessed having regard to the following matters.

Section 4.55(2) of the Environmental Planning and Assessment Act 1979 enables a consent authority to modify a development consent upon application being sought by the applicant or any person entitled to act on the consent, provided that the consent authority:

- is satisfied that the development to which the consent as modified relates is substantially the same development;
- has consulted the relevant Minister, public authority or approval body in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent;
- has notified the application in accordance with the regulations and has considered any submissions made concerning the proposed modification; and
- in determining the application for modification, has taken into consideration such matters referred to under Section 4.15(1) as are relevant.

Therefore, Council's assessment of the application to modify the subject development consent must consider the following issues:

- 1 Is the proposed development as modified substantially the same development approved by Council?

Section 4.55(2) of the Environmental Planning and Assessment Act 1979 provides that a consent authority may, on application being made by the applicant, modify a development consent if it is satisfied that the development to which the

consent as modified relates is substantially the same development as the development for which consent was originally granted.

The following case law is of relevance in the consideration of whether the proposal is substantially the same development as that for which consent was originally granted:

*Stein J in Vacik Pty Ltd v Penrith City Council* (unreported 24 February 1992) said that the phrase "substantially the same development" means essentially or materially or having the same essence.

He also said that in assessing whether the consent as modified will be substantially the same development one needs to compare the before and after situations.

The NSW Court of Appeal has said that the verb "modify" means "to alter without radical transformation": see *Sydney City Council v Ilenace Pty Ltd (1984) 3 NSWLR 414 at 421*, per Mason P.

In *Moto Projects (No 2) Pty Ltd V North Sydney Council [1999] NSWLEC 280* at [55] Bignold J said that the requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is "essentially or materially" the same as the (currently) approved development. This ruling determined quantitative and qualitative elements should be considered in their proper contexts, including the circumstances in which the development was granted.

Preston CJ has said, the power of a consent authority to "modify" a consent is a power to alter without radical transformation the consent: *Scrap Realty Pty Limited v Botany Bay City Council [2008] NSWLEC 333*. His Honour emphasised that the comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts.

The Land and Environment Court (LEC) consistently describes the section 96 (now s4.55) modification provision as "beneficial and facultative". It is designed to assist the modification process rather than to act as an impediment to it; "*It is to be construed and applied in a way that is favourable to those who seek to benefit from the provision*" (*North Sydney Council v Michael Standley & Associates Pty Limited [1998]*). Therefore, the modification power is there for a reason, namely, to avoid the full DA process that is always otherwise available.

Nevertheless, there are legal tests that need to be satisfied before a modification application can be considered on its merits. Firstly, a proposal can only be regarded a modification if it involves "*alteration without radical transformation*" (Sydney City Council v Ilenace Pty Ltd [1984]). So if the proposed changes results in a "radical transformation", they will need to be dealt with as a new development application, rather than a modification application. The term "radical transformation" is a very broad term, leaving much scope to change a development consent via section 4.55.

Secondly, the consent authority must also be "satisfied" that the modified development will be "substantially the same development" as authorised by the original development consent. A threshold exercise requirement that the consent authority be satisfied as to a subjective matter before it proceeds further with its merit assessment is to compare the proposed modified development against the development as it was originally approved.

In addition, the environmental impacts of the proposed modification are relevant to the legal question of whether it is "substantially the same development". This means it is possible for some issues that might be characterised as "merit" issues, to also arise in addressing the "substantially the same" test.

In the case *Moto Projects (No 2) Pty Ltd v North Sydney Council* 1999, the LEC said that any comparison exercise cannot be undertaken in a sterile vacuum. Rather, the comparison involves consideration of quantitative and qualitative elements of the development. These elements must be considered in their proper contexts – which include the circumstances in which the development consent was granted (i.e. all of the changes to the consent should be considered, not just changes to plans.)

A qualitative and quantitative analysis between the development as originally consented to and the proposed modification is required, and the modification must render the altered development "essentially" or "materially" the same.

The table below indicates the following quantitative (key numerical differences) changes between the original development, current approved development, and proposed modification.

The following table illustrates the difference between the approved development and the proposed modification.

**3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

Item	Development Standard	Approved Plans	Modification Part 3	Proposed Modification Part 4	Difference Part 1-Part 4.	Difference Part3-Part 4
Number of units		12	12	13	+1	+1
Number of levels		5	5	6	+1	+1
GFA		1798m <sup>2</sup>	1765m <sup>2</sup>	1988m <sup>2</sup>	+190m <sup>2</sup>	+223m <sup>2</sup>
FSR (excluding excess car parking)	1.8:1	1.9:1	1.87:1	2.11:1	+0.21:1	+0.24:1
Height AHD	RL 18.5m	RL 20.35m	RL20.43m	Ridge RL 23m Lift overrun RL 23.72m	+3.37m	+3.29m
Car Parking		23 spaces	36 spaces	36 spaces	+ 13 spaces	Nil
Commercial		315m <sup>2</sup>	258m <sup>2</sup>	258m <sup>2</sup>	- 57m <sup>2</sup>	Nil

The proposed changes to the approved development result in the addition of one (1) additional unit and floor level. This results in a substantial increase in height and floor space/FSR.

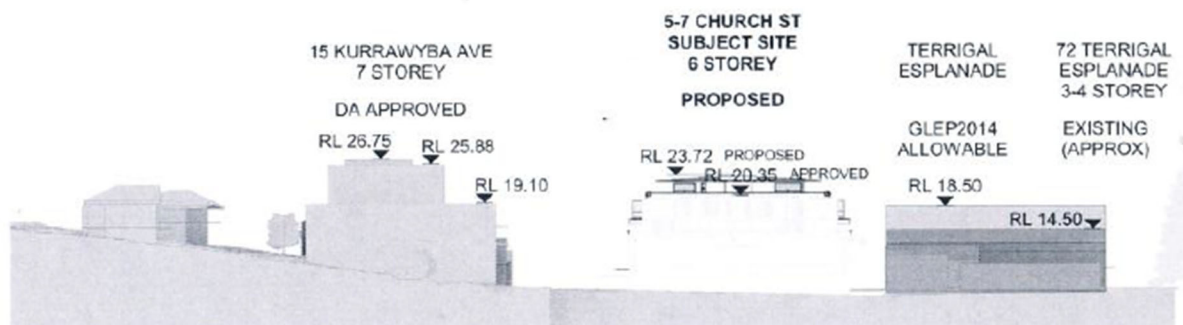
The proposed modification does not change the commercial component or basement car parking. The main modification is the additional level, height and FSR.

The resultant increase in overall height does result in a radical transformation of the building façade, appearance or streetscape.

It should be noted that the B2 zoning of the land permits and encourages shop top housing. The surrounding development is also predominately mixed commercial and residential developments. The proposal is not considered to be consistent with the existing and likely future developments in this location.

The scale and external appearance are significantly greater than that approved or would be expected on adjoining land.

The lift overrun/ridge of the proposal is RL 23.72m, compared to RL26.75m for the development approved on 15 Kurrawyba Avenue. **(Refer Figure 7).**



**Figure 7- Section South to North along Kurrawyba Avenue**

The increase in height is significant particularly as the approved development has already varied the height development standard. The view loss from surrounding developments even if moderate may be unacceptable. As can be seen from figure 6, the proposed modification does step down towards the beach due to a fall in ground levels, but may still impact views from the approved development. A more detailed assessment of view loss impact is required. Development in this section of Terrigal (between Church Street and Terrigal Esplanade) should step down towards Terrigal Beach to preserve views and should be a maximum of 4-5 storeys.

A quantitative and qualitative assessment of the proposed modification concludes that the proposal is substantially the same development.

2 Consultation with other authorities.

No consultation was required with other authorities.

3 Notification of proposed modification.

The proposed modification was notified and sixty-two (62) public submissions were received. The issues raised have been considered (**refer Public Submissions**) in the assessment of the proposal.

4 Consideration of relevant matters under section 4.15(1).

The B2 zoning of the land permits commercial premises and shop top housing and the proposed modification is inconsistent with the objectives of the B2 zone. The proposal provides an increased mix of residential units to support the Terrigal CBD and waterfront.

The increase in height is not minor and has an additional impact on view loss from surrounding sites.

The increase in car parking results in an excess of car parking on-site which is beneficial for this location due to the high demand for street parking due to the proximity to the Terrigal CBD and waterfront/beach.

It is considered the proposed modification is not substantially the same development, and the proposed changes do have a significant additional impact on adjoining developments or the locality.

### 3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)

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#### View Loss Assessment

A number of submissions from residents in Miller Road and on the opposite side of Church Street raised the issue of view loss due to the additional floor and height.

In *Tenacity Consulting Pty Ltd v Warringah Council* [2004] NSWLEC 140, the planning principles of view sharing are;

- 1 Assessment of views to be affected.
- 2 Consider from what part of the property the views are obtained.
- 3 Assess the impact of the impact.
- 4 Assess the reasonableness of the proposal that is causing the impact.

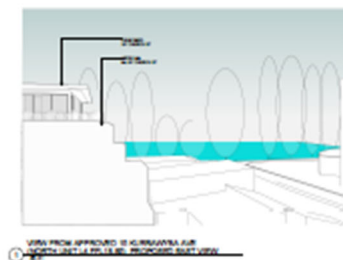
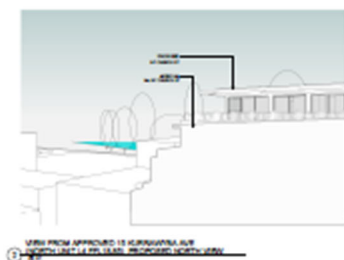
The residents in Miller Street are located a significant distance to the south east from the site and have no views affected by the proposed modification.

Existing developments on the other side of Church Street do not have extensive ocean or beach views or they are blocked by existing and future development even at RL18.5m height between Church Street and Terrigal Esplanade. The view of the additional level is not a view loss issue. *Refer figure 8.*

#### 15 Kurrawyba Avenue

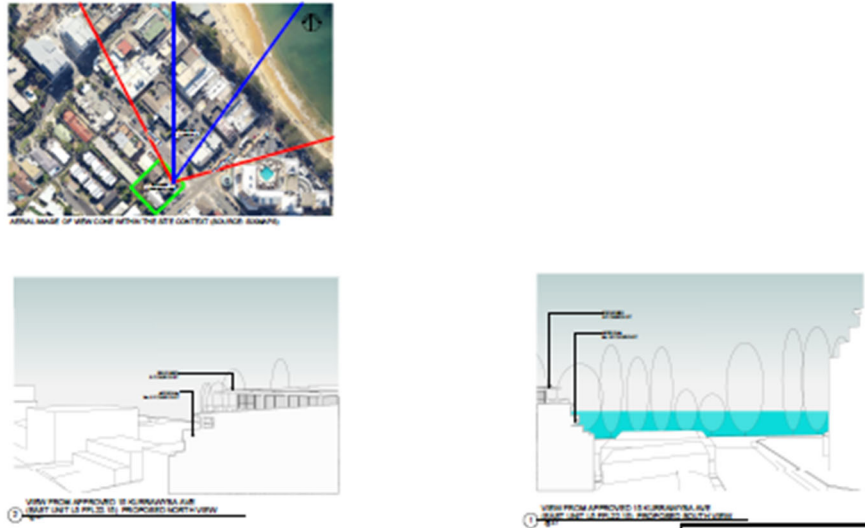
A detailed submission of view loss from 15 Kurrawyba Street was lodged claiming loss of ocean /beach views from levels 4 and above. **(Refer attachment 5 for full assessment)** This site has consent (DA49519/2016) for a commercial/residential development which has commenced construction but has not started above ground level at this time.

The applicant has submitted a view loss assessment from levels 4 and 5. **(Refer attachment 3 and 6).** The applicant contends that the view loss is minor and reasonable.





**3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**



**Figure 8 -Part Applicant's view loss assessment**

The approved development (DA49519/2016) has an RL 18.85m for the 4<sup>th</sup> floor and RL 22.15m for the 5<sup>th</sup> floor. The height limit on this site is RL18.5m AHD the same as the subject site and a variation to height was approved by Council of 8.25m or 44.6%.

This would give an eye height of RL 20.85m for level 4 and 23.65m for level 5.

The proposed ridge height of the proposed modification is RL 23m.

While views from level 4 over the ridge of the proposed building will not be possible, views from level 4 may be available over the side setbacks of the proposed building.



**Figure 9-View Loss from Unit 16**



**Figure 10-View loss from unit 15**

When completed, the approved development on 15 Kurrawyba Avenue will have views of Wamberal Beach and the water/shore interface from level 5 which are valuable water views. People standing on the level 5 of 15 Kurrawyba Street will have reduced views over the top of the proposed building if modified. In particular there will be a significant reduction in beach/water interface views and of Wamberal Beach.

As stated in the planning principles in the *Tenacity* case, a development that affects views may be unreasonable if it comes about as a result of non-compliance with planning standards. This is the situation in this case.

While it may be contented that unit 15 will still retain part views to Terrigal Beach over the top of existing developments (refer figure 10 above), this view would be lost if a complying development was built on these sites.

It is considered the view loss from 15 Kurrawyba Street is moderate and unreasonable due to the proposed modification significantly increasing the height approved and further increase to the height variation. This is not considered to be consistent with the view sharing principles established by the Land and Environment Court.

In particular, the proposed development could have reduced the floor to floor height about 200mm per residential level resulting in reduction to that proposed overall of about 800mm. This combined with a reduction in floor space on levels 5 and 6 and an increase in setbacks as required under the GDCP 2013, would have significantly reduced the impacts of the proposed modification. The applicant was offered the opportunity to achieve this but declined to amend the proposed modification.

**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.

**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

**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 B2 Local Centre under GLEP 2014 and is surrounded by commercial and residential developments.

The proposed development is not considered to have adverse amenity impacts to adjoining development from overshadowing, privacy, and noise generating activities.

A thorough assessment of the impacts of the proposed development on the built environment has been undertaken in terms of the GLEP 2014 and GDCP 2013. The potential impacts on bulk and scale and views are not considered reasonable.

b) Natural Environment

### **3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

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The proposed modification may have adverse impacts on scenic quality or the streetscape of Church Street. The increase in height, bulk and scale is considered not to be reasonable in light of the current approval and planning controls.

The redevelopment of the site will result in a development inconsistent with that for a commercial/residential development in this location within Terrigal.

There is no significant tree removal and the proposed development does not impact the natural environment.

The submitted SWMP, Water Cycle Management Plan and Landscape Design Report provides an overall concept which will stabilise and manage the entire site.

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 economic development that will lead to more local employment and residential opportunities on the Central Coast and reduce the percentage of employed persons who travel outside the region each day for work.

#### d) Social Impacts

The proposed development will have beneficial social impacts as it will provide employment in construction and the provision of medium density residential development in close proximity to public transport, Terrigal CBD and Terrigal Beach.

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

The site is considered to be suitable for the proposed development as follows:

- The site is zoned B2 Local Centre under GLEP 2014 Commercial development and shop top housing are permissible under the B2 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 not considered to be in the public interest as follows:

### **3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

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- The proposal is inconsistent with the relevant objectives of the applicable environmental planning framework, including the GLEP 2014 and GDCP 2013.
- The proposal does result in unreasonable environmental impacts and will unreasonably impact the amenity of neighbouring properties by increased bulk and scale and view loss.

#### **CONCLUSION**

This application has been assessed against the heads of consideration of Section 4.15 and 4.55(2) 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 refusal pursuant to Section 4.16 of the Environmental Planning and Assessment Act.

#### **Recommendation**

The Local Planning Panel refuse consent to DA52083/2017 Part 4 for modification to the approved commercial/shop top housing development on Lots 19 and 20 DP7861 No 5 and 7 Church Street, Terrigal, for the following reasons;

- 1 The proposed modification significantly increases the height and floor space of the approved development and development standards of Clause 4.3 and 4.4 of the Gosford Local Environmental Plan 2014.
- 2 The proposed modification does not comply with the objectives and development standards of the B2 zone State Environmental Planning Policy 65, Gosford Local Environmental Plan 2014, or Gosford Development Control Plan 2013.
- 3 The proposed modification has additional impacts on adjoining sites resulting in additional view loss and amenity impacts.
- 4 Approval is not in the public interest.

#### **REASONS FOR THE DECISION**

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

- 1 The proposal is not satisfactory having regard for the relevant environmental

**3.1 DA/52083/2017/4 - 5-7 Church Street, Terrigal - Modification of approved commercial premises and shop top housing (cont.)**

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- planning instruments, plans and policies.
- 2 The proposal has been considered against the provisions of Gosford Local Environmental Plan 2014 and Gosford Development Control Plan 2013 and has been found not to be satisfactory.
  - 3 There are significant issues or impacts identified with the proposal under s.4.15 of the *Environmental Planning and Assessment Act 1979*.

**Attachments**

<b>1</b>	14181-S455_Additional-Floor_16042021 5-7 Church St TERRIGAL DA/52083/2017/4	Provided Under Separate Cover	D14592437
<b>2</b>	PUBLIC Statement of Environmental Effects 5-7 Church Street, TERRIGAL DA52083 Part 4	Provided Under Separate Cover	D14349796
<b>3</b>	PUBLIC S 4.55 (2) Response to submissions & view sharing assessment - 5 -7 Church St TERRIGAL_PAN-50412		D14515481
<b>4</b>	SEPP 65_DESIGN VERIFICATION STATEMENT & PRINCIPLES_S455 5-7 Church St TERRIGAL DA/52083/2017/4		D14592450
<b>5</b>	Azure View Loss Report REV02 - Attachment to Email D14672778 15 Kurrawyba Avenue, TERRIGAL DA/52083/2017/4	Provided Under Separate Cover	D14672795
<b>6</b>	Applicants additional view loss assessment - DA 52083/2017 -		D14677545
<b>7</b>	Redacted 14181-S455_Additional-Floor_16042021 5-7 Church St TERRIGAL DA/52083/2017/4		D14349794

Robert Eyre  
Principal Development Planner  
Central Coast Council  
49 Mann Street  
GOSFORD NSW 2250

**RE: RESPONSE TO PUBLIC SUBMISSIONS - S. 4.55 (2) APPLICATION TO MODIFY DEVELOPMENT CONSENT NO. 52083/2017-PART 3 FOR 'SHOP TOP HOUSING' ON LOTS 19 & 20 DP 7861, NOS. 5 & 7 CHURCH STREET, TERRIGAL.**

I refer to Council's letter dated 22<sup>nd</sup> December 2020 advising of the public notification arrangements and closing date for submissions for the S. 4.55 (2) application to modify Development Consent 52083/2017 – Part 3 for shop top housing at Nos. 5 - 7 Church Street, Terrigal.

I note that 69 redacted submissions are published on Council's DA tracking link as being received in response to the advertising of the modification application. The majority of these are submissions made by persons who do not live in close proximity to the subject premises; that are not potentially impacted by the proposal to construct an additional penthouse level on the approved development; and who raise various matters in relation to the developed character of Terrigal that are not specific to the proposed modified development. It is considered that these submissions should not be given any determining weight in Council's assessment of the modification application.

Three particular submissions are made on behalf of residents by the following planning consultant and legal firms, which do warrant a response:

- Armstrong Behrens Planning Pty Ltd (4<sup>th</sup> February 2021);
- Michael Leavey Consulting (3<sup>rd</sup> February 2021); and
- Edge Legal Group (10<sup>th</sup> February 2021)

**1. Armstrong Behrens Planning Pty Ltd (4<sup>th</sup> February 2021).**

The submission by Armstrong Behrens Planning Pty Ltd is made on the basis that *"the current application has been made pursuant to S 4.55 (1A)"* and *"It is considered that the application does not constitute a modification .....as it is not substantially the same development as that originally approved by Council"*.

**Response:** The application under consideration by Council is an application made pursuant to S 4.55 (2) – Other Modifications, of the Environmental Planning and Assessment Act 1979.

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Lisarow NSW 2250  
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sneddond@bigpond.net.au  
ABN: 20 100 396 914

The submission made by Armstrong Behrens Planning Pty Ltd relies upon certain numerical variations from the approved development, relating to the increase in the number of units; maximum building height; and floor space ratio, to assert that the proposed modified development is not substantially the same as the originally approved development. This assertion however, is not consistent with the well-established legal tests employed to decide whether a proposed modified development is substantially the same as the originally approved development.

The Statement of Environmental Effects accompanying the S 4.55 (2) application comprehensively addresses the legislative requirements of S 4.55 (2) of the EPA Act and concludes that the Council is able to reasonably form the view that the proposed modified development will be substantially the same development as originally approved and consequently, the council is able to exercise the modification power available to it under S.4.55 (2) of the Act to approve this application to modify Consent 52083/2017 – Part 3.

The Statement of Environmental Effects properly approaches the comparison exercise, involving both a qualitative and quantitative appreciation of the approved development and the proposed modified development (*Moto projects (No.2) Pty Ltd v North Sydney Council (1999) NSWLEC 280*). There are examples of where the Court has found that modifications to the approved development can be significantly different in important respects but still be substantially the same as that which was approved.

Notwithstanding certain numerical variations between the proposed modified development and the approved development, there is no ‘radical’ change to the configuration, bulk and scale of the proposed modified development in comparison to the approved development and there is no *radical transformation* of any quantitative element of the approved development.

## 2. Michael Leavey Consulting (3<sup>rd</sup> February 2021).

The submission made by Michael Leavey Consulting objects to the modification application on the basis that:

- the modification application has been submitted as a S.4.55 (1A) application and that the application should be submitted and considered by Council as a S 4.55(2) application; and
- the application provides inadequate information relating to view impacts on surrounding properties (i.e. No. 15 Kurrawyba Avenue) to enable Council to carry out a proper assessment and consideration of view impacts having regard to the Planning Principal established by the Land and Environment Court in *Tenacity Consulting v Warringah Council (2004) NSW LEC 140*.

**Response:** The application under consideration by Council is an application made pursuant to S 4.55 (2) – Other Modifications, of the Environmental Planning and Assessment Act 1979. Please refer to my response to the submission made by Armstrong Behrens Planning Pty Ltd in Item 1 above.

A View Sharing Assessment having regard to the Planning Principal established by the Land and Environment Court in *Tenacity Consulting v Warringah Council* is provided in Appendix A.



**3. Edge Legal Group (10<sup>th</sup> February 2021).**

The submission from Edge Legal Group is *“based on S 4.55 (1A) as a modification involving minimal environmental impact”* and that *“the modifications required should not be considered as a minor modification to bring the application within the ambit of S 4.55 (1A) of the Act”*.

The application under consideration by Council is an application made pursuant to S 4.55 (2) – Other Modifications, of the Environmental Planning and Assessment Act 1979. Please refer to my response to the submission made by Armstrong Behrens Planning Pty Ltd in Item 1 above.

**Yours Sincerely  
Doug Sneddon  
1<sup>st</sup> March 2021.**

**APPENDIX A: VIEW IMPACT ASSESSMENT**

**(Principles of View Sharing).**

## PRINCIPLES OF VIEW SHARING – THE IMPACT ON NEIGHBOURS.

### 1. BACKGROUND.

Of all submission received in response to the public notification of S 4.55 (2) modification application DA 52083/2017 – Part 4, only one raised specific concerns relating to “*inadequate information provided with the application on view impacts, and to allow proper assessment and consideration of view impacts by Council*”. This was the submission made by Michael Leavey Consulting in relation to the potential view sharing impacts on an approved (but not yet constructed) development at No. 15 Kurrawyba Avenue, under Development Consent No. 49519/2016.

The submission made by Michael Leavey Consulting requested Council to require additional analysis in regard to the view impacts on the DA 49519/2016 approved residential units on Level 4 (Units 11 and 12) and Level 5, No. 15 Kurrawyba Avenue, including views from both a sitting and standing position. This particular development is located on the western side of Church Street, opposite the subject proposed modified development at Nos. 5 and 7 Church Street.

In response to that submission, Slater Architects have prepared the following series of View Impact Analysis Diagrams (copies provided in Annexure A) for the east facing units of Levels 3 – 5 of the development approved at No. 15 Kurrawyba Avenue, Terrigal (Consent 49519/2016), copies of which are provided in Annexure A:

- Drawing VA04 – View Impact Analysis from Level 3;
- Drawing VA05 – View Impact Analysis from Level 4 – East Unit;
- Drawing VA05B - View Impact Analysis from Level 4 – North Unit;
- Drawing VA06 - View Impact Analysis from Level 5 – East Unit;
- Drawing VA06B - View Impact Analysis from Level 5 – North Unit;
- Drawing VA07 - View Impact Analysis from Level 5 – East Unit (Sitting); and
- Drawing VA07B - View Impact Analysis from Level 5 – North Unit (Sitting).

(NOTE: All views are from a standing position other than for Diagrams VA07 and VA07B, which are both from a sitting position. All views are taken from the floor plans/floor levels approved for the development at 15 Kurrawyba Avenue under DA 49519/2016).

As shown in the aerial view cone diagrams presented on each of the view analysis diagrams, the proposed modified development located at Nos. 5 and 7 Church Street, Terrigal, is located in the foreground of potential coastal views available from the approved (but not yet constructed) development at No. 15 Kurrawyba Avenue.

### 2. VIEW IMPACT ANALYSIS.

In the matter of *Tenacity Consulting v Warringah (220) NSWLEC 140* Commissioner Roseth adopted a four step assessment to decide whether or not view sharing in the case of a particular development is reasonable.

### 2.1. Impact of the proposed modified development on the scenic coastal views of neighbours.

The notion of view sharing is invoked when a property enjoys existing views and a proposed development may share that view by taking some of it away for its own enjoyment:

- the subject locality enjoys highly valuable scenic coastal views of the ocean/horizon, Terrigal and Wamberal Beaches and the coastal foreshore.
- As shown in the aerial view cone diagrams presented on each of the view analysis diagrams provided in Annexure A, the proposed modified development located at Nos. 5 and 7 Church Street, Terrigal, occupies the foreground of potential coastal views available from the approved (but not yet constructed) development at No. 15 Kurrawyba Avenue.

These views are already partly blocked/screened by the originally approved development on the subject land; by other multi-level buildings erected in the locality (e.g. Crowne Plaza Hotel); and by the Norfolk Island Pine Trees located along the foreshore esplanade (Terrigal Esplanade). The location and height of these trees have been measured by a registered surveyor and are represented in the accompanying view impact analysis drawings.

The View Analysis Diagrams show that the proposed modified development (i.e. the addition of a penthouse unit level) will not result in the loss of part of any beach; coastal foreshore; or ocean horizon views from the approved (but not yet constructed) residential units at No. 15 Kurrawyba Avenue under Development Consent 49519/2016. The only loss will be part of the view of the sky.

### 2.2 Assessment of the reasonableness of impacts of the proposed modified development on the views of neighbours..

**STEP 1: “The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views are valued more highly than views without icons. Whole views are valued more highly than partial views.”**

The accompanying view analysis drawings provided in Annexure A show that, following construction of the subject approved development at Nos. 5 - 7 Church Street, the residential units located on Levels 3, 4 and 5, No. 15 Kurrawyba Avenue (Consent 49519/2016) would enjoy a partial coastal view along the view corridor provided north-easterly along Kurrawyba Avenue. This would be their primary coastal view. A distant partial coastal view to the north would also be available from Levels 4 and 5, No. 15 Kurrawyba Avenue.

These are the views to be considered in any assessment of the potential impact of the proposed modified development (i.e. an additional penthouse level) on the approved residential units at No. 15 Kurrawyba Avenue.

**STEP 2:** *“The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.”*

The views enjoyed across the subject land from Levels 3 – 5, No. 15 Kurrawyba Avenue are from the front terraces of approved (but not yet constructed) residential units.

All views shown in the accompanying view analysis diagrams are from a standing position on each front terrace at Levels 3 – 5. An additional diagram provides a sitting position view from Level 5, which shows that the difference between a standing and sitting view is negligible.

**STEP 3:** *“The third step is to assess the extent of the impact. This should be done for the whole of the property, not just the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating”.*

The View Analysis Diagrams VA04 – VA07B show that the proposed modification of Development Consent 52083/2017 (i.e. the addition of a penthouse level) does not result in any additional loss of coastal views from the approved apartments at No. 15 Kurrawyba Avenue, in comparison to the originally approved development at Nos. 5 and 7 Church Street.

**STEP 4:** *“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours.”*

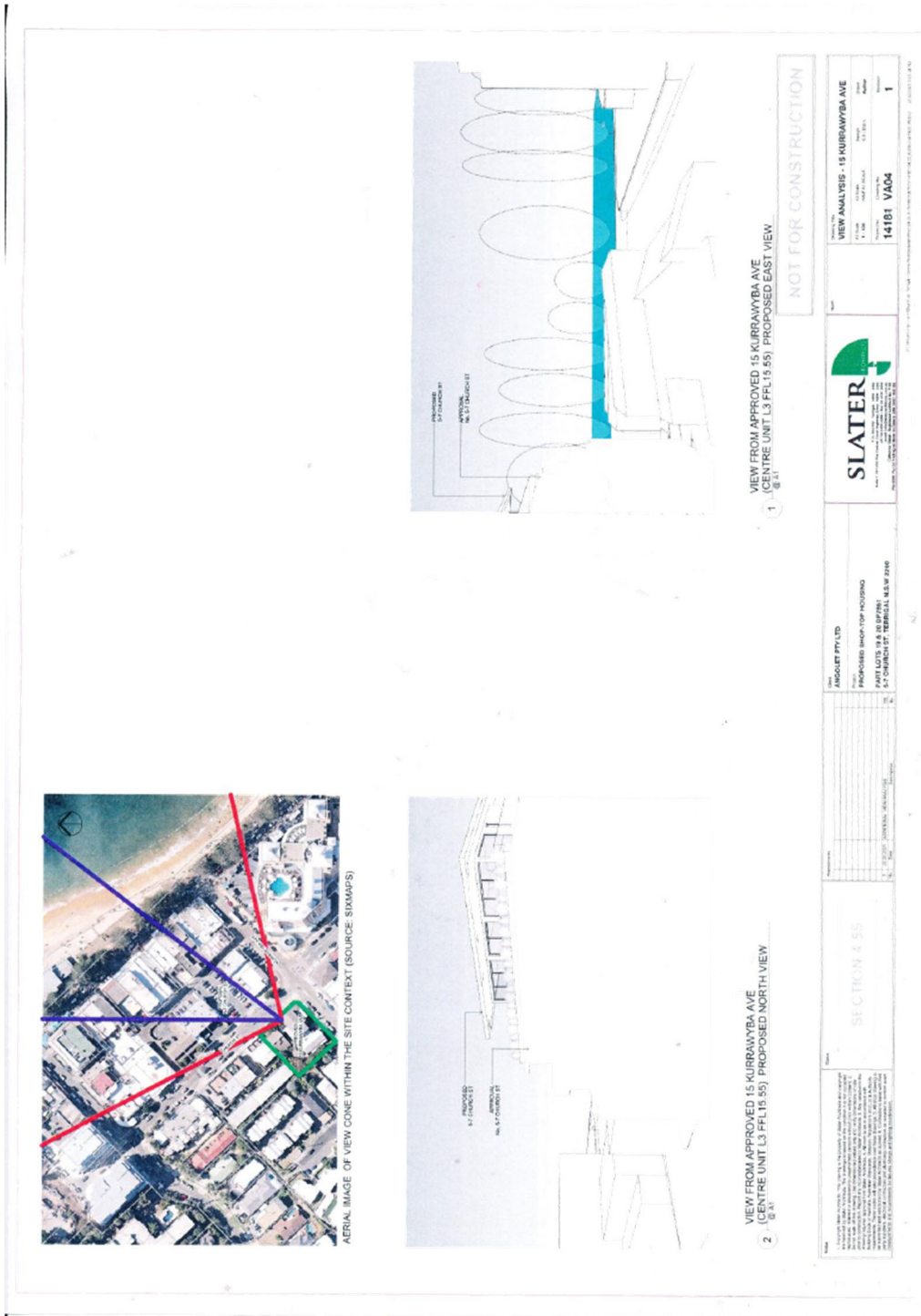
The View Analysis Diagrams VA04 – VA07B show that the proposed modification of Development Consent 52083/2017 (i.e. the addition of a penthouse level) does not result in any additional loss of coastal views from the approved apartments at No. 15 Kurrawyba Avenue, in comparison to the originally approved development at Nos. 5 and 7 Church Street.

**Doug Sneddon**  
1<sup>st</sup> March 2021.

**ANNEXURE A: VIEW IMPACT ASSESSMENT DIAGRAMS**

(Prepared by Slater Architects – 22<sup>nd</sup> February 2021)

- **Drawing VA04 – View Impact Analysis from Level 3;**
- **Drawing VA05 – View Impact Analysis from Level 4 – East Unit;**
- **Drawing VA05B - View Impact Analysis from Level 4 – North Unit;**
- **Drawing VA06 - View Impact Analysis from Level 5 – East Unit;**
- **Drawing VA06B - View Impact Analysis from Level 5 – North Unit;**
- **Drawing VA07 - View Impact Analysis from Level 5 – East Unit (Sitting); and**
- **Drawing VA07B - View Impact Analysis from Level 5 – North Unit (Sitting).**



Drawing VA04 – View Impact Analysis from Level 3.



Drawing VA05 – View Impact Analysis from Level 4 – East Unit.





Drawing VA05B - View Impact Analysis from Level 4 – North Unit.



Drawing VA06 - View Impact Analysis from Level 5 – East Unit.



Drawing VA06B - View Impact Analysis from Level 5 – North Unit.



Drawing VA07 - View Impact Analysis from Level 5 – East Unit (Sitting).



Drawing VA07B - View Impact Analysis from Level 5 – North Unit (Sitting).

## SEPP 65 DESIGN VERIFICATION STATEMENT

TO ACCOMPANY A SECTION 4.55 APPLICATION

*Project description:*

**PROPOSED SHOP TOP HOUSING**

*Located at:*

**PART LOTS 19 & 20 IN DP 7861  
NO. 5-7 CHURCH STREET,  
TERRIGAL NSW 2260**

*Submitted to:*

**CENTRAL COAST COUNCIL**

*Prepared for:*

**Angolet Pty Ltd & Natva Investments Pty Ltd  
co/-Slater Architects**

REVISION 4 / DECEMBER 2020

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## 1.0 INTRODUCTION

### 1.1 Background

The following provides direct response to requirements outlined in the Central Coast Council 'Building & Development on the land subject to GLEP2014 - A guide for Applicants on Supporting Documents required' Revision: 25 October 2016, on page No.23 under heading 'Design Verification Statement' for SEPP 65 Developments.

### 1.2 Apartment Design Guide

Reference to SEPP65 relates to State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65) determined 17th July 2015. The SEPP contains the 'Apartment Design Guide' which offers consistent planning and design standards for apartment development across the State, divided into Design Criteria and Design Guidance. For the purpose of this statement the Design Criteria will be directly responded to and contains quantitative (numeric) criteria with general reference made to the guides where appropriate. The SEPP also contains nine (9) 'Design Quality Principles' which will form the qualitative basis of this statement.

*That they designed or directed the design of the residential flat development;*

The thirteen (13) unit Residential Flat Building (over shops), is located at 5-7 Church Street in Terrigal and has been designed and directed by Slater Architects, a well-respected architectural firm with over 40 years of experience in the residential design industry.

*That the Design Quality Principles set out in part 2 of SEPP 65 for residential flat development are achieved.*

The following items contained in this statement substantiate that the Design Quality Principles have been achieved.

*That the 10 (amended to 9) Design Quality Principles are individually addressed.*

The nine (9) principles have been addressed in Chapter 2.0 of this document.

*Comply with the requirements of SEPP 65 and the Residential Flat Design Code.*

Please refer to Appendix A – SEPP 65 Compliance Table. Where any variation is sought this is outlined in the Statement of Environmental Effects prepared by Doug Sneddon Planning Pty Ltd (under separate cover).

### 1.3 Consent Authority

Central Coast Council (CCC) is the consent authority for this proposed Section 4.55 Application. The Gosford Local Environmental Plan 2014, the Gosford Development Control Plan 2013 have been used in conjunction with the State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development) Apartment Design Guide.

## 2.0 DESIGN QUALITY PRINCIPLES

### 2.1 Principle 1: Context and Neighbourhood Character

*Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.*

*Responding to context involves identifying the desirable elements of an area's existing or future character. Well-designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood. Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.*

**Note: Please refer to Appendix B: CA01 - Context Analysis (Plan), Appendix C: CA02 - Context Analysis (Sections) and Appendix D: SA01 - Site Analysis. Written response as follows:**

#### **Response**

In understanding the influential and desirable elements of the proposed development both in terms of its site and contextual relationship to the Terrigal area, it is important to identify the critical regional characteristics, historical background, existing urban forms and existing development patterns.

The suburb of Terrigal is located midway between Sydney and Newcastle and has become a popular tourist destination. With beginnings in shipbuilding Terrigal had become an established tourist destination by 1910, particularly with the opening of the railway line during the late 19th century and was known for its fishing, prominent stretch of beach, bushwalking, boating and boarding house accommodations.

Terrigal is located at the beginning of a 4km unbroken stretch of beach extending from Broken Head to Wamberal Point. At the southern end of the beach is the Skillion, a scenically prominent headland. Backing onto Wamberal and Terrigal Lagoons is a nature reserve, lined with trees, mangroves and various protected species of fauna and flora.

The backdrop to the area is the accommodation of older-style holiday cottages and contemporary residences, against wooded ridgelines. The beachfront is dominated by an esplanade of Norfolk Pines and an array of specialty stores, cafes and restaurants.

The introduction of a major resort complex in the 1980's, saw the city centre transform into an up-market, cosmopolitan social scene backing onto the beach popular with both residents and tourists alike. Increased demand has fuelled recent growth of mixed use / shop-top housing developments in the Town Centre providing both accommodation and amenities for those wanting to join the increasingly vibrant city centre. Its array of entertainment and eateries, central location within the region and community facilities, such as the Terrigal SLSC and Terrigal Trojans Rugby Club, has imbued the area with a strong community atmosphere.

The natural local features of the Terrigal "bowl" is centred on the beach, lakes and Norfolk Pine trees. Dominated by rocky landmarks and seaside cliffs at either end, they further contribute to giving the suburb and isolated beachside character. There is delineation between the CBD parallel to the beach and the urban residential area.

The suburb is encompassed by the Scenic Highway and Charles Kay Drive, which follow the prominent ridgeline. Smaller suburban roads and narrow access streets direct traffic to the residential surrounds. Recent upgrades to the CBD precinct has transformed the area into a vibrant community space with eateries, shops and access to the beach.

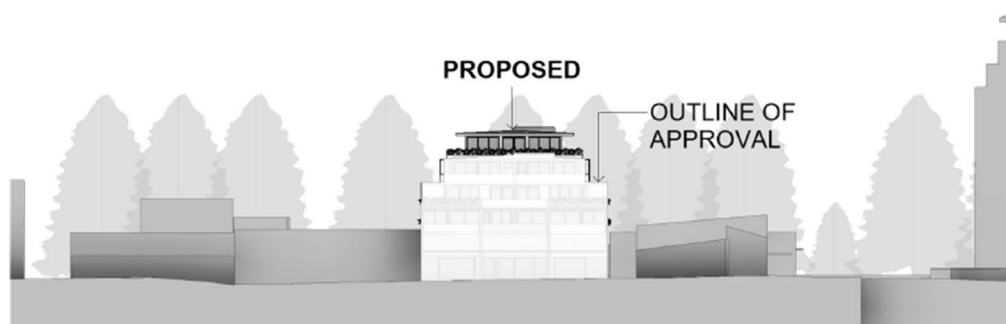
The current formal urban context is a layered environment built over the past century consisting of typically two and three storey single and multi-housing developments of varied vintage, density and height. The most distinct vertical element is the existing resort complex located at the southern end of the beachfront. More recently completed (and some nearing completion) are mixed use developments which are establishing a new streetscape of 5-7 storeys in height.

The surrounding residential "bowl" includes a mix of Residential flat buildings often terracing up/down the hillsides combined with older-style fibro cottages, modest seaside dwellings and contemporary residences. The panoramic beach and lake views has been addressed with residences and apartments cut into the foothills.

Street layouts and subdivisions typically follow the topography of the area, leading to a semi-regular layout of allotments. Proposed future upgrades to the CBD, increased workplace opportunities in the Central Coast region, continued tourist support and the ageing population all indicate a market for medium density housing solutions.

The scarcity of available land in and around established suburbs, scenic prominence and existing zoning suggest that future subdivision and adoption of medium-density housing pave the way for continued supply for the demand or apartment style living. In keeping with the character of the area and existing development controls, developments which respond to the topography and incorporate a varied material palette appear the most successful.

This development is located on an existing carpark within the Terrigal CBD and bounded by Church Street and Hudson Lane to the rear. It is situated one block from Terrigal Beach and in close proximity to the Crown Plaza Hotel. This development proposal seeks to activate the Church Street frontage with ground floor commercial suites and utilise the rear laneway for services and vehicle access.



## 2.2 Principle 2: Built Form and Scale

*Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.*

*Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements. Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.*

**Note: Please refer to Appendix B: CA01 - Context Analysis (Plan), Appendix C: CA02 - Context Analysis (Sections) and Appendix D: SA01 - Site Analysis. Written response as follows:**

### **Response**

In defining an appropriate scale for the building it is important to consider the overall context and future character of the area.

Contextually the building sits at the base of the 'Terrigal Bowl' land formation which forms a backdrop to the development towards the South-West. At its ridge 'The Bowl' sits approximately 74m above the ground level of our site, or RL80, so creates quite a dramatic sense of height and natural scale reference. The hillside is developed with single and multi-unit residences of varying size and scale, typically 2-3 storey, and tend to be terraced, modestly landscaped with narrow winding access roads and turfed verges.

Secondly, the relationship between the proposed building and the beach and CBD. With its strong community and social atmosphere at the beachfront this visual connection compensates for the poor physical one, typical to Terrigal. Adjacent examples of earlier multi-unit housing are heavily constructed and monotonous in appearance. The adjoining properties hem in the proposal, and contribute to the establishment of the streetscape.

The intention of this development is to become a benchmark for new medium density housing and a direction for the future character of the area. The building responds to the site locality, providing a balance between bulk and scale while retaining amenity for surrounding properties and offering equal amenity to the new occupants who would call this home.

The façade treatment of the proposed building is an important factor in influencing the overall visual scale and bulk. The balance of transparent facades, lightweight articulation, vertical blade walls and horizontal design elements combine to anchor the base of the building and suspend the upper three storeys over, breaking down the visual scale & providing visual interest.

This proposal is for a six storey building, comprised of two commercial ground floor tenancies, one level of above ground car parking on the first floor and four levels of residential apartments above. An overall building height of RL 23.72 is proposed for the lift overrun, with a predominant level of RL23.00. As a prime site within the Terrigal City Centre, additional height on this site is deemed appropriate. The upper three levels have increasing setbacks to minimise bulk and overshadowing.

The proposal is reflective of the changing nature of local development and has the potential to influence future approaches. As it stands the development would be an identifiable building positively contributing to the architectural quality of the town centre area of Terrigal.

### 2.3 Principle 3: Density

*Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.*

*Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.*

**Note: Please refer to Appendix A: SEPP 65 Compliance Table. Written response as follows:**

#### **Response**

Terrigal is undergoing a transitional change. With the introduction of the Terrigal Town Centre DCP 55 in 2004 and recent proposed amendments to the local environmental planning framework the density in terms of floor space yields will alter the architectural landscape of Terrigal because larger buildings will be constructed due to increases in permissible building height and building envelope.

The subject site has a maximum FSR for Terrigal of 1.8:1. Given the other height controls and the recommendation in the SEPP65 guidelines that 75-80% of the building envelope is a reasonable density in terms of FSR the 1.8:1 figure for Terrigal is questionable.

The SEPP 65 guidelines were considered in the process of developing the DCP and it was established then that a FSR guideline was not required due to the other controls namely building height, building envelope, minimum floor to ceiling levels.

In this regard the proposed FSR of 2.11:1 is consistent with the current and future desired density provisions because it generally fits within a building envelope and whilst there are some departures from the building height and envelope guidelines there is not enough difference between the compliant and non-compliant areas to justify modification to reduce the FSR.

The proposed density of this proposal is similar to recent Development Applications that have been approved in the area, such as on the corner of Church Street and Kurrawyba Avenue, along Pine Tree Lane and on the corner of Pine Tree Lane and Ash Street.

It has been demonstrated that the proposed building responds to its context. The density is justifiable and consistent with desired future density for the area, which is a town centre precinct undergoing transitional change. The development responds to the regional context, availability of infrastructure, public transport, community facilities and environmental quality and in this regard is reasonable in its presence.

#### 2.4 Principle 4: Sustainability

*Good design combines positive environmental, social and economic outcomes. Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs.*

*Other elements include recycling and reuse of materials and waste, use of sustainable materials, and deep soil zones for groundwater recharge and vegetation.*

**Note: Please refer to Appendix A: SEPP 65 Compliance Table. Written response as follows:**

#### **Response**

The principles of passive solar design are incorporated through a combination of heavier floor and wall construction for thermal mass, and lightweight transparent glass walls for solar penetration and natural daylight, and overhangs as shading devices contribute to the environmental sustainability of the building over its expected life span.

Units sandwiched between one another create their own insulating qualities creating a thermal barrier between the occupants and the external elements.

Most units enjoy a north-eastern or south-western aspect and those that don't have been designed to achieve good cross ventilation and access views. Glazed windows combine with external sun control and privacy screens which contribute to shading on the eastern and western facades. At the street frontages, and upper side elevations, overhanging balconies and screening combine to provide shelter from adverse weather conditions.

Water conservation is integrated into the design in order to facilitate collection of rainwater for re-use in each individual unit to the laundry and bathroom areas, and for landscaping purposes both individually and communally. Louvres and sliding windows and doors can be opened to take advantage of natural ventilation by the prevailing cooling ocean breezes. Generous eave overhangs also provide a high level of amenity and assist in protecting the building from excessive heat gain in summer as well as protection from the elements.

The proposed building is to be a combination of concrete, rendered masonry, glass and lightweight construction selected to be sustainable and low maintenance over the expected lifespan of the development. Proposed energy efficiency commitments include efficient appliances, design, materials and fitting and specified low embodied energy supplies.

The waste management plan which accompanies this application provides the guidelines for recycling of items during demolition and construction.

Other proposed energy efficiency measures include efficient appliances and fittings which are outlined in the Basix and ABSA Certificates that accompany this development application.

## 2.5 Principle 5: Landscape

*Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.*

*Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values, and preserving green networks. Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long term management.*

**Note: Please refer to Appendix E: L01 - Landscape Planting Plan. Written response as follows:**

### **Response**

The Terrigal landscape is dominated by a prominent stand of Norfolk Pine trees to the beachside esplanade, while mangroves and a nature reserve surround the low-lying lagoon, and mature trees to the hillsides. Recent CBD upgrades have seen the introduction of modern strappy varieties and colourful groundcovers.

Street landscaping and furniture flank the beachside public car park and boulevard. A broad pedestrian terrace, sandstone retaining walls and landscape beds frame the beachfront.

The subject site currently has no vegetation and the intention is to build on the natural features of Terrigal which contribute to the identity of the place and respect the significance of the current landscape form. In addition enhancing the developments visual qualities and building performance are equally important contributing factors.

No changes to the landscaping are proposed in the changes to the Section 4.55 Approval. New planting and landscaping is illustrated in the Landscape Plan prepared by Michael Siu Landscape Architects (under separate cover). The landscape design was undertaken to uphold the high level of architectural design and provide a beautified street address and simultaneously provide privacy and screening without adversely affecting visual amenity.





2.6 Principle 6: Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well-being.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility.

**Note: Please refer to Appendix A: SEPP 65 Compliance Table. Written response as follows:**

**Response**

An overriding consideration for the layout and orientation of the mixed use development was the prominent site location and elevated vistas towards the ocean, back toward the Terrigal 'bowl' and along the Church Street streetscape. The vast majority of units benefit and where not achievable the units living spaces outlook onto large balconies with perimeter planting and screening for privacy.

The majority of units include main bedroom and living areas, with elevated views, natural ventilation, and solar access opportunities. Combined social spaces that include living, dining and kitchens consolidate activity to these enlarged spaces and direct focus on the scenic backdrop. Balconies create shading to each level, and encourage indoor and outdoor living.

A central core is the basis for entry and circulation throughout the building and ties the individual units together in a cohesive and convenient hub. Pedestrian access is clearly visible and accessible from the street, creating a desirable residential identity and assists in activating the commercial streetscape.

Vehicle ramp and a driveway occupies the Hudson Lane boundary and leads to a secure car parking level where lift access to all the residential units is available. All units are provided with generous amounts of private storage in the car park and within the apartments. Secure ground floor parking is available for commercial tenants and visitors.





## 2.7 Principle 7: Safety

*Good design optimises safety and security, within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.*

*A positive relationship between public and private spaces is achieved through clearly defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.*

### **Response**

The central position within the Terrigal city centre, the north-east and south-west orientation of the units and vertical glass foyer maximizes the opportunity of casual surveillance of the public and private spaces below. The pedestrian entry point is clearly defined, visible from the streetscape and leads to a central and secure internal foyer.

The proposal has been assessed against the three primary principles of CPTED; Natural Surveillance, Access Control and Ownership (refer to the previous Crime and Safety Report). The entire circulation core is centralised and provisions made for timed illumination during night-time hours. Orienting a large glazed facade to the public streetscape, and carefully planned landscaping and window design to the side facades maintains internal privacy but also maximizes security.

Egress stairs exit to the rear lane and will not be accessible from the street to ensure security to the upper floors. There is to be a secure car park on the first floor, with internal access, and lockable storage.

---

## 2.8 Principle 8: Housing Diversity and Social Interaction

*Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.*

*Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.*

**Note: Please refer to Appendix A: SEPP 65 Compliance Table. Written response as follows:**

### **Response**

With its unique regional location, Terrigal has many scenic qualities, a mix of local residents and tourists, all coming to create a vibrant community. The variety of apartment sizes and bedroom mix in this development cater to a wide range of tenants now and for the future.

The thirteen (13) residential units are made up of 2 and 3 bedroom configurations which provide options for both permanent living arrangements and a market demand for privately owned holiday accommodation. The varied size, mix and aspect of the units ensure a good range of pricing across the development. 2 apartments have been made adaptable for conversion in the future.

## 2.9 Principle 9: Aesthetics

*Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.*

*The visual appearance of well-designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.*

### **Response**

The fashion of architecture is always transforming and evolving. History has proved however, that structures which complement the aesthetics of nature and their context seem to have more success and enduring qualities. There is a range of quality building materials that characterise the unique Terrigal area, which we seek to incorporate into the proposal.

A combination of modern, high quality materials are proposed, including commercial grade aluminium framed windows, timber look aluminium cladding and stainless steel fixings. The masonry elements of the building will be finished with a light, white-grey wall colour with various decorative patterns to create additional visual interest. Bronze finished aluminium will be used for screening elements to soften the buildings external appearance.

The proposed additional floor has been designed to create a light top with increased setbacks, generous cantilevered roof and glazed elements. The result is a built form that is elegant and in proportion with the surrounding context.

By applying creative aesthetic principles such as, symmetry, delineation, colour, texture, illumination and decoration to the building, the artistic composition can take on an inventive form which is visually engaging. Architecture when combined with its contextual surroundings and character can awaken the senses and evokes a sense of place.

### 3.0 ARCHITECT STATEMENT

Clause 50 (1A) of the Environmental Planning and Assessment Regulation 2000 states that a development application that relates to a residential flat development, and that is made on or after 1 December 2003, must be accompanied by a design verification from a qualified designer (a registered architect), being a statement in which the qualified designer verifies:

*(a) that he or she designed, or directed the design, of the residential flat development, and  
(b) that the design quality principles set out in Part 2 of State Environmental Planning Policy No 65 Design Quality of Residential Flat Development are achieved for the residential flat development.*

This statement verifies that the proposed development has been designed by myself and in accordance with all of the relevant state and local planning instruments. In my opinion the design outcome is generally consistent with the desired objectives and controls stated in the SEPP 65 and all associated plans and policies.

In this instance, every effort has been made to comply with Central Coast Council's specific planning requirements, including a thoughtful regard for the amenity of neighbouring properties and also for any potential environmental concerns. It is for the above reasons that we are of the opinion that this proposal should be supported and approved in its entirety.

Should you have any queries regarding the above please contact me on 02 4365 4458.

Yours faithfully



Cathy Slater MAM(Arch)AIA

Director  
Slater Architects  
Registration No.7158

#### **4.0 LIST OF APPENDICES**

- 4.1 *Appendix A: SEPP 65 Compliance Table*
- 4.2 *Appendix B: CA01 - Context Analysis (Plan)*
- 4.3 *Appendix C: CA02 - Context Analysis (Sections)*
- 4.4 *Appendix D: SA01 - Site Analysis*
- 4.5 *Appendix E: L01 - Landscape Planting Plan*

Mr. Robert Eyre  
Principal Development Planner  
Central Coast Council  
49 Mann Street  
GOSFORD NSW 2250

**RE: S. 4.55 (2) APPLICATION TO MODIFY DEVELOPMENT CONSENT  
NO. 52083/2017-PART 3 FOR 'SHOP TOP HOUSING' ON LOTS 19 & 20  
DP 7861, NOS. 5 & 7 CHURCH STREET, TERRIGAL.**

I refer to our recent meeting regarding the S.4.55 (2) application to modify Development Consent 52083/2017 – Part 3 for shop top housing at Nos. 5 - 7 Church Street, Terrigal, by providing an additional penthouse apartment level.

On the 1<sup>st</sup> March 2021, I provided a response to three particular objections (in response to the public notification of the above modification application) made on behalf of property owners by the following planning consultant and legal firms, which warranted a response on behalf of the applicant:

- Armstrong Behrens Planning Pty Ltd (4<sup>th</sup> February 2021);
- Michael Leavey Consulting (3<sup>rd</sup> February 2021); and
- Edge Legal Group (10<sup>th</sup> February 2021).

The submission made by Michael Leavey Consulting requested Council to require additional analysis in regard to the view impacts on DA 49519/2016 approved residential units on Level 4 (Units 11 and 12) and Level 5, No. 15 Kurrawyba Avenue, including views from both a sitting and standing position. This particular development is located on the western side of Church Street, opposite the subject proposed modified development at Nos. 5 and 7 Church Street.

In response to that submission, I provided Council on the 1<sup>st</sup> March 2021 with a *View Sharing Assessment*, having regard to the Planning Principal established by the Land and Environment Court in *Tenacity Consulting v Warringah Council* and the following View Analysis Diagrams prepared by Slater Architects (dated 22<sup>nd</sup> February 2021) in respect to the east facing units of Levels 3 – 5 of the development approved at No. 15 Kurrawyba Avenue, Terrigal (Consent 49519/2016):

- Drawing VA04 – View Impact Analysis from Level 3;
- Drawing VA05 – View Impact Analysis from Level 4 – East Unit;
- Drawing VA05B - View Impact Analysis from Level 4 – North Unit;
- Drawing VA06 - View Impact Analysis from Level 5 – East Unit;
- Drawing VA06B - View Impact Analysis from Level 5 – North Unit;

2/101 Excelsior St,  
Lisarow NSW 2250  
Tel: 02 4328 3851  
Mob: 0408 432 838  
sneddondoug@gmail.com  
ABN: 20 100 396 914

- Drawing VA07 - View Impact Analysis from Level 5 – East Unit (Sitting); and
- Drawing VA07B - View Impact Analysis from Level 5 – North Unit (Sitting).

(Note: All views are from a standing position other than for Diagrams VA07 and VA07B, which are both from a sitting position. All views are taken from the floor plans/floor levels approved for the development at 15 Kurrawyba Avenue under DA 49519/2016).

In order to attest to the voracity of the View Analysis Diagrams prepared by Slater Architects, I herewith provide an explanation of the methodology employed by Slater Architects in preparing these diagrams. Please refer to the correspondence from Slater Architects, dated 4<sup>th</sup> June 2021, provided in **Attachment A**.

For completeness, I also include in **Attachment B**, copies of the previously provided View Analysis Diagrams prepared by Slater Architects in relation to the potential impacts of the proposed modified development on future apartments at No. 15 Kurrawyba Avenue, Terrigal.

In conclusion, I also wish to emphasise the Contextual Analysis provided in the documents supporting the modification application. *Diagram DA CA02 – Context Analysis Section*, prepared by Slater Architects (Revision 2, dated 17<sup>th</sup> November 2020) shows that the maximum building height of the proposed additional penthouse level at Nos. 5 and 7 Church Street (RL 23.72), is either lower than, or similar to other multi-level mixed use buildings approved by Council in recent years in the immediate locality, namely No. 15 Kurrawyba Street (RL 26.75m); No. 6 Pine Tree Lane (RL 27.65m); and No. 13 Ash Street (RL 23.18m), all of which exceed the maximum building height development standard for Terrigal Town Centre of RL 18.5m. A copy of Diagram DA CA02 is again provided in **Attachment C**.

It would be appreciated if the information provided in this supplementary submission could be carefully considered by Council in finalising its assessment report and also be made available to members of the Local Planning Panel for consideration when undertaking their assessment and determination of Modification Application 52083/2017 – Part 4.

Yours Sincerely



Doug Sneddon  
7<sup>th</sup> June 2021

**ATTACHMENT A: METHODOLOGY - PREPARATION OF VIEW  
ANALYSIS DIAGRAMS BY SLATER ARCHITECTS**

(Slater Architects – 4<sup>th</sup> June 2021).

**Our Reference: 14181-CCC-02**

**Friday, 4 June 2021**

Attention: Robert Eyre  
Central Coast Council  
PO Box 21  
GOSFORD NSW 2250

SLATER ARCHITECTS



**Re: Section 4.55(2) Application for Proposed Shop  
Top Housing – Comprising of Two Shops, Thirteen  
Residential Units & Car Parking**  
**At: 5-7 Church Street, Terrigal NSW 2260**  
**For: Mr George Daaboul**

Dear Robert,

This view analysis encompassing 15 Kurrawyba Avenue and 5-7 Church Street, Terrigal was produced and documented with the Revit Lt 2020 software package by Slater Architects in May 2021. Drawings are titled VA04, VA05, VA05B, VA06, VA06B, VA07 and VA07B.

The methodology we deployed was to mass model all existing and proposed buildings in 3D using a variety of sources including photos, detailed survey information, previously approved DA plans and currently proposed architectural drawings. This has created a virtual three-dimensional scene of the immediate area including potential view corridors towards Terrigal Beach and distant horizon line.

Camera positions and angles have been positioned from selected units described as L3, L4 and L5 in the approved development at 15 Kurrawyba Avenue (refer to aerial image and view cone in top left corner of each sheet). Nominated floor levels have been used to determine the height of each camera (e.g. FFL 15.55) and each camera has been placed at the approximate eye level for both standing and seated positions. All written levels on the documentation are relative to Australian Height Datum (AHD) and are accurate according to the software.

The visible horizon line is at RL 0.0 (or sea level) and all existing Norfolk Pine trees have been diagrammatically modelled using the surveyed location, height and spread of each tree. The surveyed maximum height of each tree has been labelled on the diagrams for cross referencing (e.g. RL 36.90 AHD). The current DA approval outline as well as the proposed s4.55 increase in height is clearly shown on each image and labelled accordingly.

All care has been taken to represent these diagrams as accurately as possible with all information made available to us at the time. We have produced these drawings in good faith in order to assist the assessment process.

If you have any queries or require further information, please contact our office on 4365 4458.

Yours Faithfully,

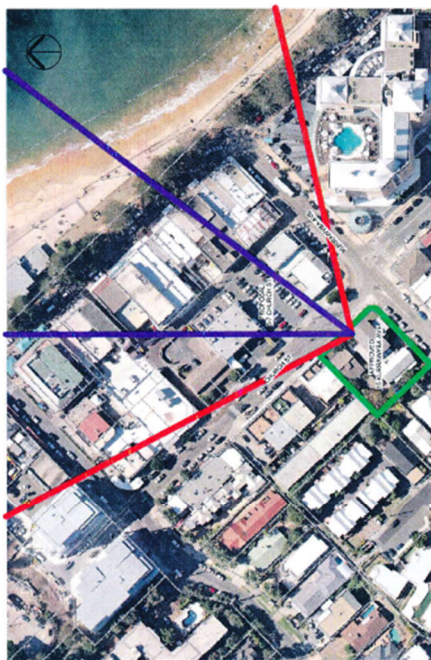
Cathy Slater  
Slater Architects



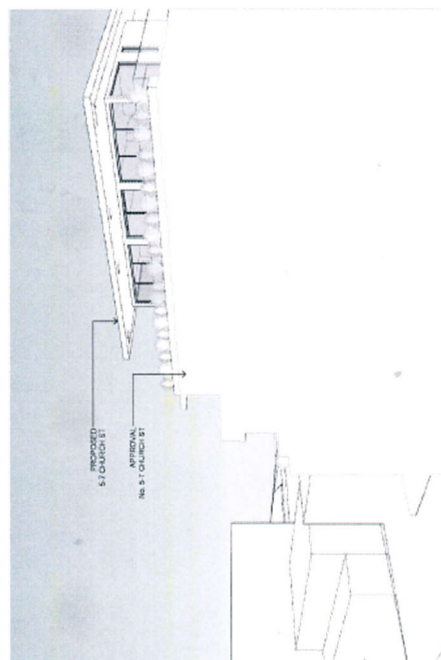
**ATTACHMENT B: VIEW IMPACT ASSESSMENT DIAGRAMS –**

**(Relating to the impacts of the proposed modified development on future  
apartments at No. 15 Kurrawyba Avenue, Terrigal)**

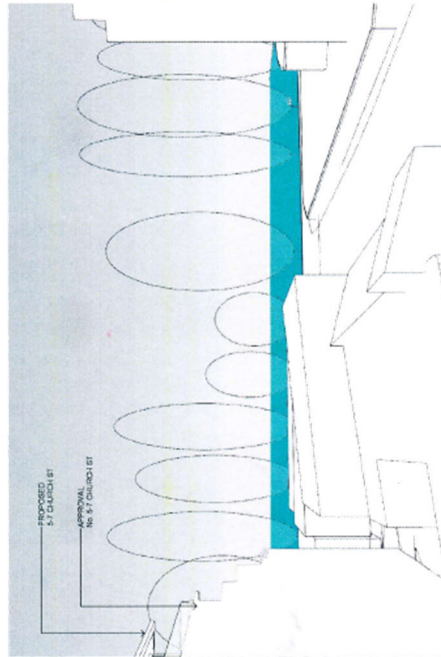
**(Slater Architects - 22<sup>nd</sup> February 2021.**



AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



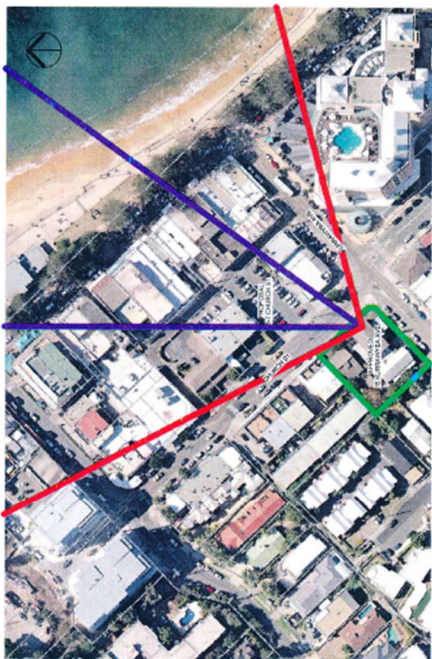
VIEW FROM APPROVED 15 KURRAWYBA AVE  
(CENTRE UNIT L3 FFL15.55) PROPOSED NORTH VIEW  
② @ A1



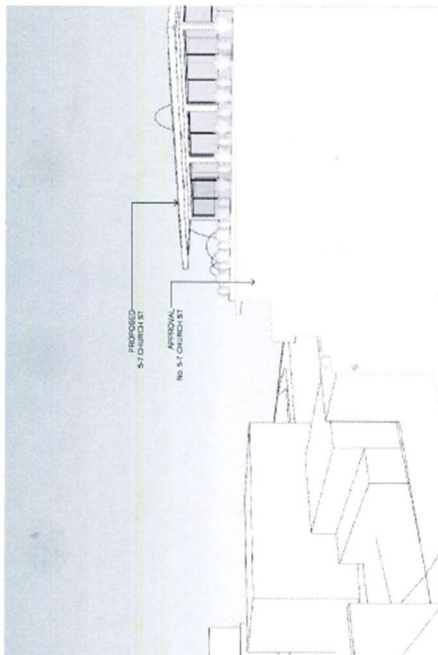
VIEW FROM APPROVED 15 KURRAWYBA AVE  
(CENTRE UNIT L3 FFL15.55) PROPOSED EAST VIEW  
① @ A1

NOT FOR CONSTRUCTION

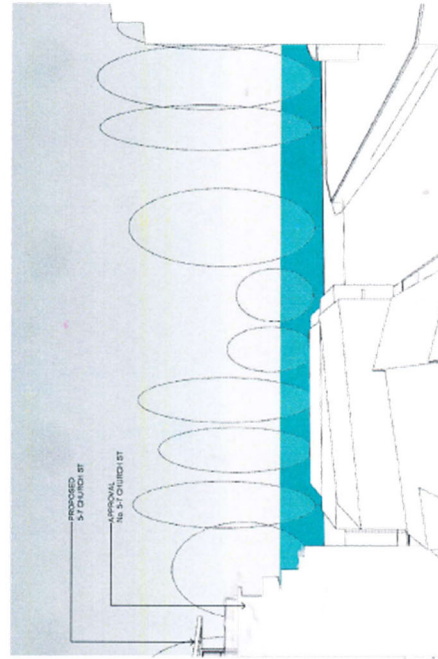
<p><b>SLATER</b> ARCHITECTURE &amp; INTERIORS 10/11-13/15 Church Street, Terrigal NSW 2260 Phone: 02 4393 1111 Fax: 02 4393 1112 www.slaterarchitects.com.au</p>		<p><b>VIEW ANALYSIS - 15 KURRAWYBA AVE</b> AS SCALE: 1:100 DATE: 08/11/17 PROJECT NO: 14181 VA04 DRAWING NO: 1</p>	
<p><b>ANGOLET PTY LTD</b> PROJECT: PROPOSED SHOP-TOP HOUSING PART LOTS 14 &amp; 15 09/16/1 5/7 CHURCH ST, TERRIGAL N.S.W 2260</p>		<p>DATE: 08/11/17 SCALE: 1:100 PROJECT NO: 14181 VA04 DRAWING NO: 1</p>	
<p>SECTION 4.55</p>		<p>DATE: 08/11/17 SCALE: 1:100 PROJECT NO: 14181 VA04 DRAWING NO: 1</p>	



AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



VIEW FROM APPROVED 15 KURRAWYBA AVE (EAST UNIT L4 FFL18.85) PROPOSED NORTH VIEW @ 1m



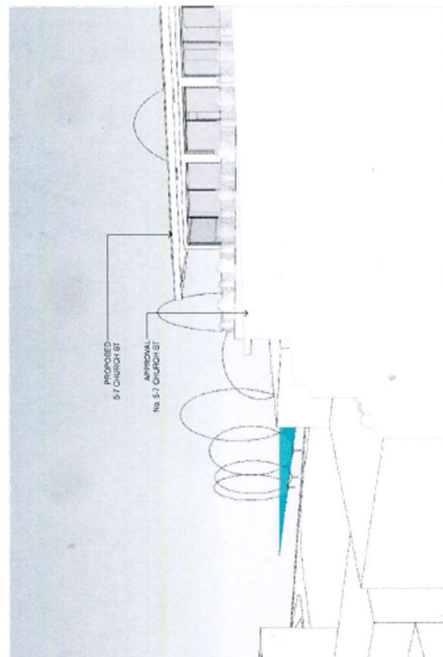
VIEW FROM APPROVED 15 KURRAWYBA AVE (EAST UNIT L4 FFL18.85) PROPOSED EAST VIEW @ 1m

NOT FOR CONSTRUCTION

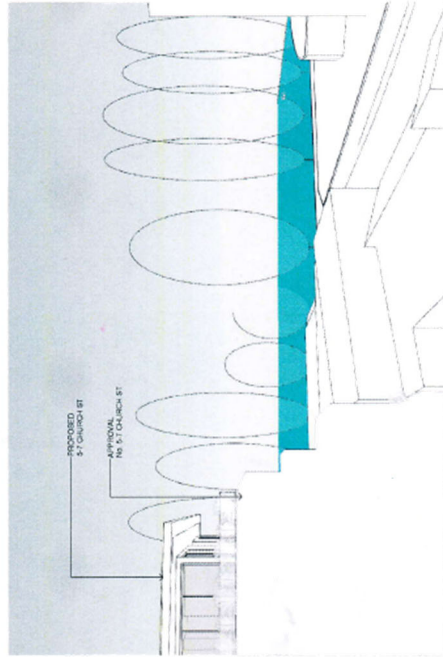
<p>Client: ANGOLET PTY LTD                  Project: PROPOSED SHOP-TOP HOUSING                  PART LOTS 84 &amp; 85 DP164                  5-7 CHURCH ST, TERRIGAL, N.S.W. 2260</p>		<p>Drawn by: [Name]                  Checked by: [Name]                  Date: [Date]</p>	
<p>Scale: 1:100                  Date: 14/04/2017                  Project No: 14181 VAO5</p>		<p>View Analysis - 15 KURRAWYBA AVE                  Date: 14/04/2017                  Project: 14181 VAO5                  Page: 1</p>	
<p>SECTION 4.55</p>		<p>SLATER GROUP                  15/16 The Esplanade, Terrigal, NSW 2260                  Phone: 02 4343 1111                  Fax: 02 4343 1112                  Email: info@slatergroup.com.au                  Website: www.slatergroup.com.au</p>	



AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



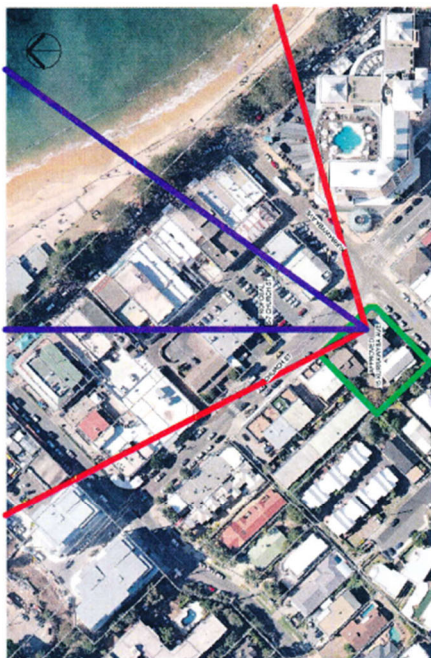
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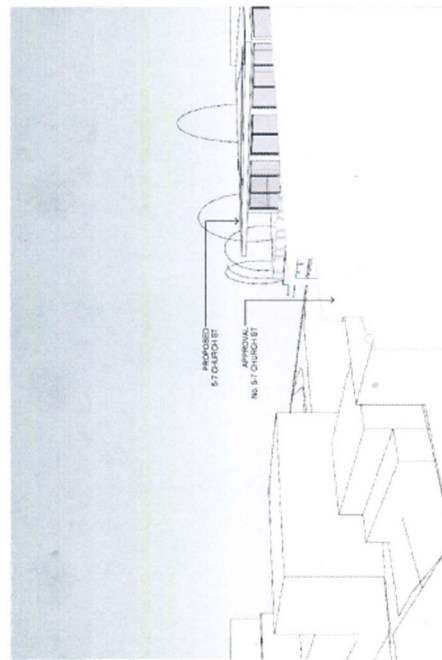
VIEW FROM APPROVED 15 KURRAWYBA AVE (NORTH UNIT L4 FFL18.85) PROPOSED EAST VIEW @A1

NOT FOR CONSTRUCTION

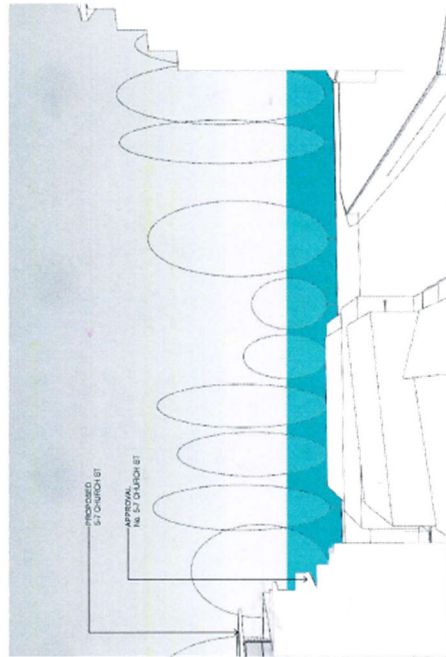
<p>Client: ANGOLET PTY LTD</p> <p>Project: PROPOSED SHOP-TOP HOUSING</p> <p>PART LOTS 14 &amp; 15 05/2461</p> <p>5-7 CHURCH ST, TERRIGAL N.S.W. 2260</p>		<p>Drawing Title: VIEW ANALYSIS - 15 KURRAWYBA AVE</p> <p>AS Scale: 1:100</p> <p>DATE: 14/11/2017</p> <p>Project No: 14181 VA05B</p> <p>Drawing No: 1</p>	
<p>Author: [Name]</p> <p>Checked: [Name]</p> <p>Drawn: [Name]</p> <p>Scale: 1:100</p> <p>Date: 14/11/2017</p>		<p>Scale: 1:100</p> <p>Date: 14/11/2017</p>	



AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



VIEW FROM APPROVED 15 KURRAWYBA AVE (EAST UNIT L5 FFL22.15) PROPOSED NORTH VIEW  
② @ A1



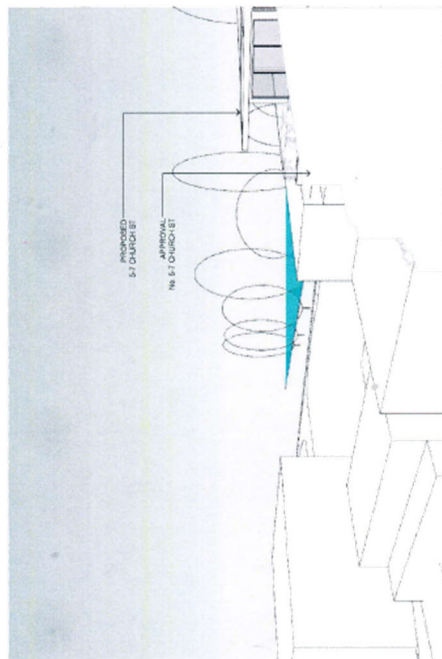
VIEW FROM APPROVED 15 KURRAWYBA AVE (EAST UNIT L5 FFL22.15) PROPOSED SOUTH VIEW  
① @ A1

NOT FOR CONSTRUCTION

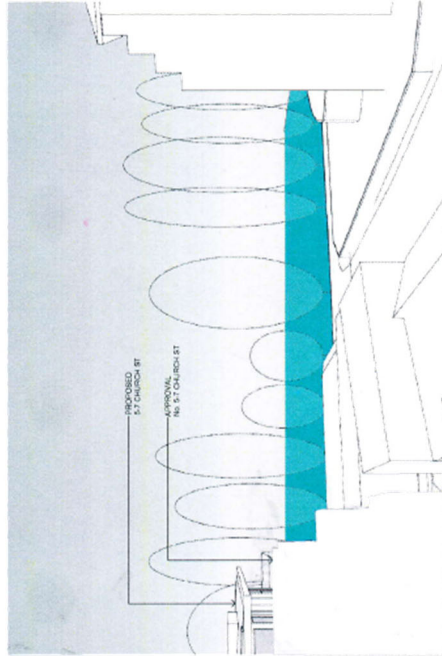
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<p>SECTION 4.55</p>		<p>Slater</p> <p>14191 VA06</p>	
<p>1. Copyright Data Australia. This drawing is the property of Slater Architects and copyright is reserved. No part of this drawing may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Slater Architects. This drawing is for the use of the client and is not to be used for any other purpose without the prior written permission of Slater Architects. The client is responsible for ensuring that the drawing is used for the intended purpose and for any legal requirements. Slater Architects is not responsible for any errors or omissions in this drawing.</p>		<p>VIEW ANALYSIS - 15 KURRAWYBA AVE</p> <p>AS SCALE: 1:100</p> <p>SCALE: 1:100</p> <p>DATE: 11/20/2017</p> <p>PROJECT: 14191 VA06</p> <p>NO. OF SHEETS: 1</p>	



AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



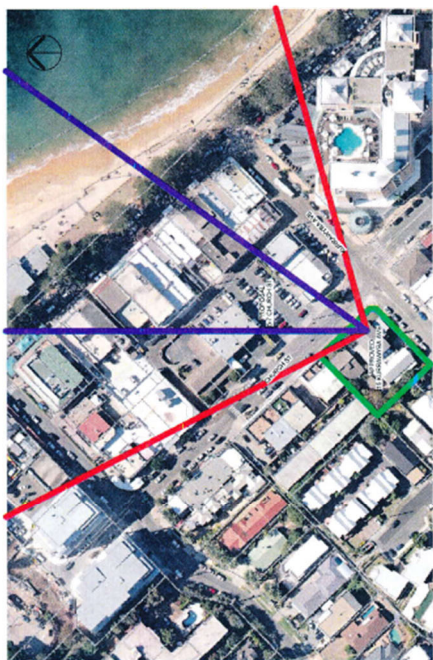
1  
VIEW FROM APPROVED 15 KURRAWYBA AVE  
(NORTH UNIT L5 FFL22.15) PROPOSED NORTH VIEW  
@ 1.1



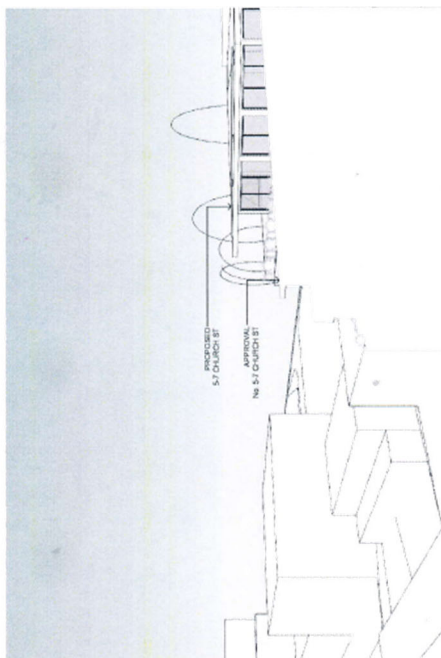
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VIEW FROM APPROVED 15 KURRAWYBA AVE  
(NORTH UNIT L5 FFL22.15) PROPOSED EAST VIEW  
@ 1.1

NOT FOR CONSTRUCTION

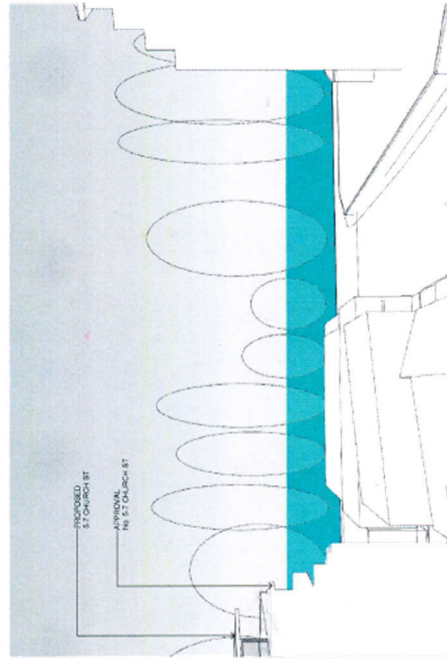
<p>Client: ANGOLET PTY LTD Project: PROPOSED SHOP-TOP HOUSING PART LOTS 148 &amp; 149 OFFPARK 5-7 CHURCH ST, TERRIGAL N.S.W 2260</p>		<p>Slater Slater &amp; Associates Pty Ltd 141/150 Pacific Highway, Newcastle NSW 2260 Phone: 02 4929 1111 Fax: 02 4929 1112 www.slater.com.au</p>		<p>Drawing Title: VIEW ANALYSIS - 15 KURRAWYBA AVE A Scale: AS SHOWN 1:100 Date: 14/11/2017 Project No: 14181 VA06B Drawing No: 1</p>	
<p>Author: [Blank] Date: [Blank] Check: [Blank] Date: [Blank] Drawn: [Blank] Date: [Blank] Reviewed: [Blank] Date: [Blank] Approved: [Blank] Date: [Blank]</p>		<p>Copyright © Slater &amp; Associates Pty Ltd. All rights reserved. This drawing is the property of Slater &amp; Associates Pty Ltd. It is to be used only for the purposes for which it was prepared. No part of this drawing may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Slater &amp; Associates Pty Ltd. The client and architect warrant that the information contained in this drawing is true and correct to the best of their knowledge and belief. Slater &amp; Associates Pty Ltd. is not responsible for any errors or omissions in this drawing.</p>			



AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



1 VIEW FROM APPROVED 15 KURRAWYBA AVE (EAST UNIT L5 FF22.15) PROPOSED NORTH VIEW SITTING



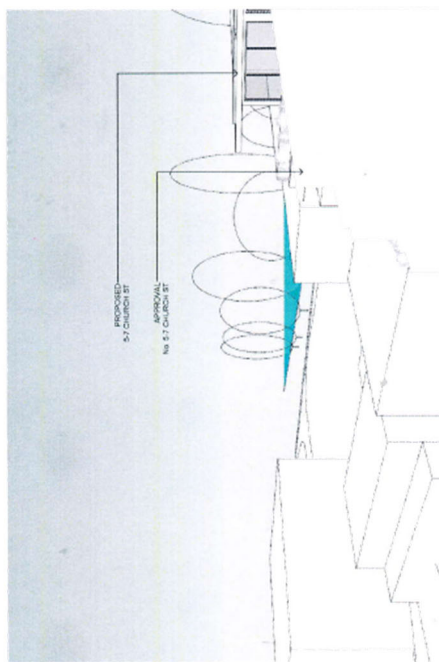
2 VIEW FROM APPROVED 15 KURRAWYBA AVE (EAST UNIT L5 FF22.15) PROPOSED SOUTH VIEW SITTING

**NOT FOR CONSTRUCTION**

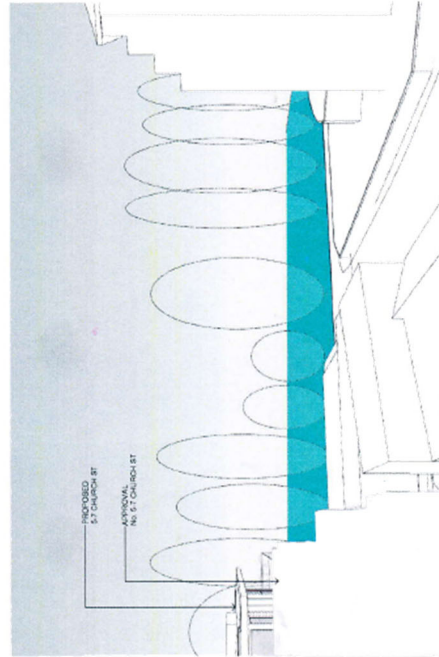
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<b>Drawn By:</b> [Blank] <b>Checked By:</b> [Blank]		Project No: <b>14181 VA07</b> Drawing No: [Blank]		
Date: [Blank]		Scale: [Blank]		



AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



2 VIEW FROM APPROVED 15 KURRAWYBA AVE (NORTH UNIT L5 FFL22.15) PROPOSED NORTH VIEW SITTING @ A1



1 VIEW FROM APPROVED 15 KURRAWYBA AVE (NORTH UNIT L5 FFL22.15) PROPOSED EAST VIEW SITTING @ A1

NOT FOR CONSTRUCTION

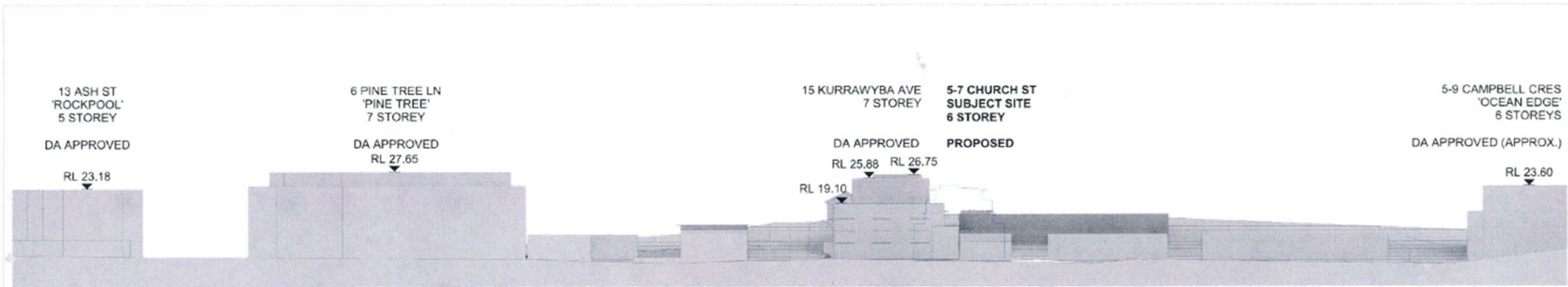
<p>Client: ANGOLET PTY LTD</p> <p>Project: PROPOSED SHOP-TOP HOUSING</p> <p>Part: PART 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100</p>		<p>Drawing Title: VIEW ANALYSIS - 15 KURRAWYBA AVE</p> <p>Client: ANGOLET PTY LTD</p> <p>Project: PROPOSED SHOP-TOP HOUSING</p> <p>Part: PART 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100</p>	
<p>Scale: 1:100</p> <p>Project No: 14191_VA07B</p> <p>Drawing No: 1</p>		<p>Scale: 1:100</p> <p>Project No: 14191_VA07B</p> <p>Drawing No: 1</p>	



ATTACHMENT C: CONTEXT ANALYSIS SECTION DIAGRAM DA CA02

(Slater Architects – 17<sup>th</sup> November 2020)

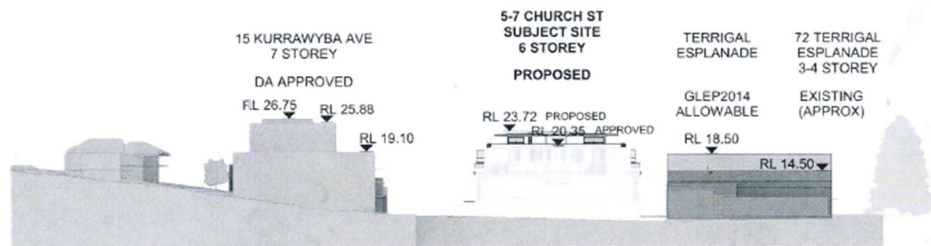
Attachment 6



1 Section 3 - EAST TO WEST ALONG CHURCH ST & PINE TREE LANE  
1: 500 @ A1



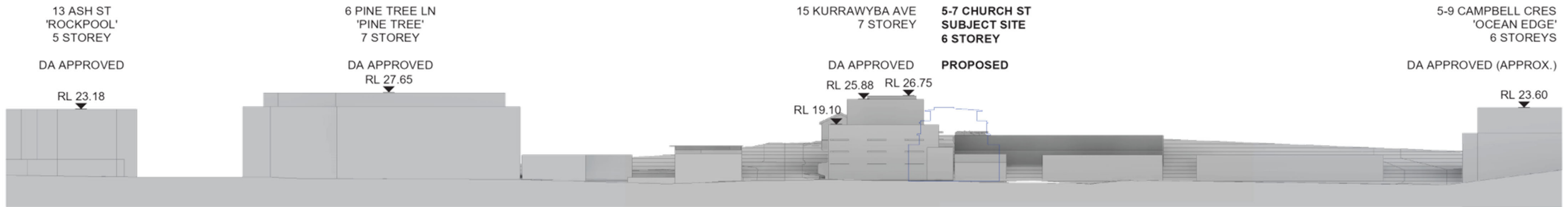
2 Section 4 - WEST TO EAST ALONG CHURCH ST & PINE TREE LANE  
1: 500 @ A1



3 Section 5 - SOUTH TO NORTH ALONG KURRAWYBA AVE  
1: 500 @ A1

NOT FOR CONSTRUCTION

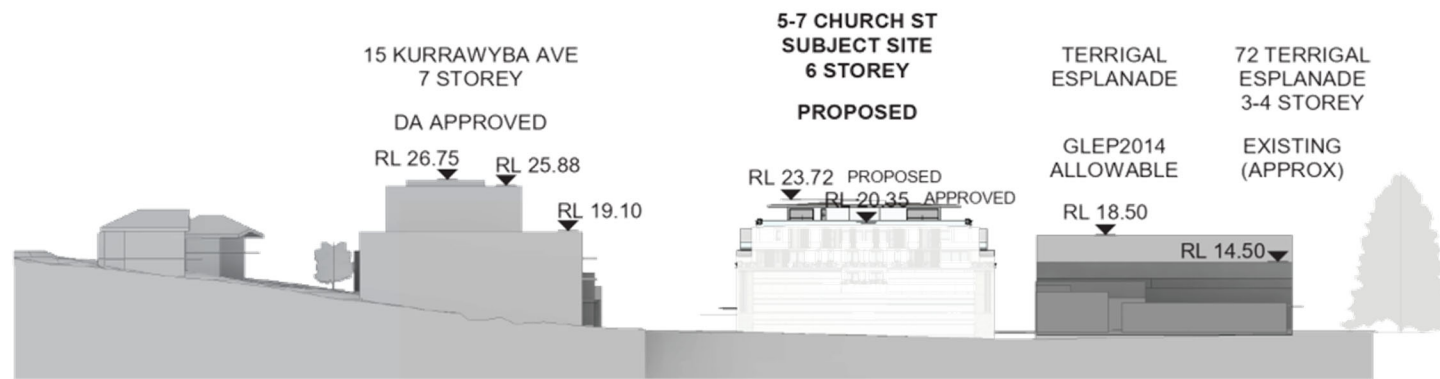
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			No.	Date	Description									
1	13/11/2018	ISSUED FOR REGIONAL DEVELOPMENT APPLICATION												
2	13/11/2018	ISSUED FOR DEVELOPMENT APPLICATION												
Scale: <b>1: 500</b>  Date: <b>13/11/2018</b>	Drawing No: <b>14181 DA CA02</b>	Drawing Title: <b>CONTEXT ANALYSIS - SECTION</b>												



1 Section 3 - EAST TO WEST ALONG CHURCH ST & PINE TREE LANE  
1 : 500 @ A1



2 Section 4 - WEST TO EAST ALONG CHURCH ST & PINE TREE LANE  
1 : 500 @ A1



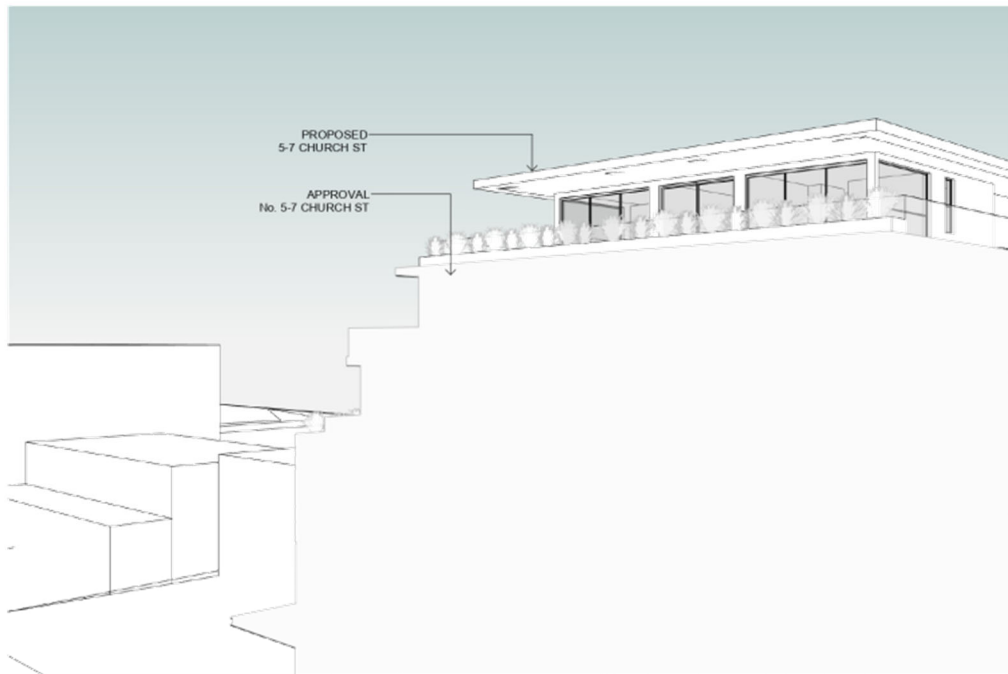
3 Section 5 - SOUTH TO NORTH ALONG KURRAWYBA AVE  
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NOT FOR CONSTRUCTION

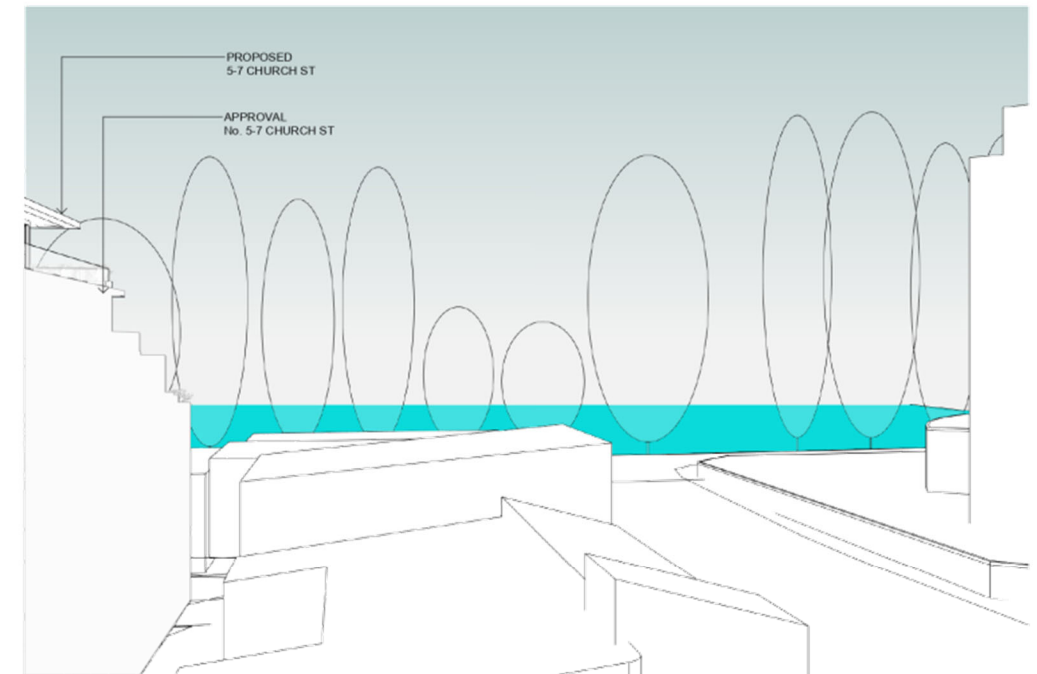
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Project No	Drawing No	Revision																												
14181	DA CA02	2																												



AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



2 VIEW FROM APPROVED 15 KURRAWYBA AVE  
(CENTRE UNIT L3 FFL15.55) PROPOSED NORTH VIEW  
@ A1



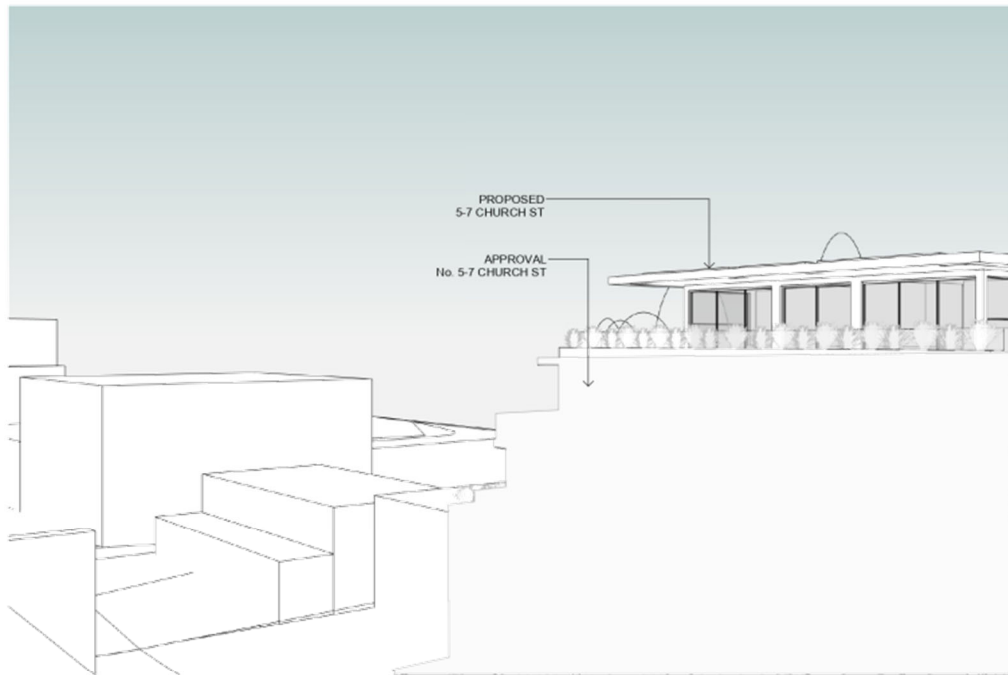
1 VIEW FROM APPROVED 15 KURRAWYBA AVE  
(CENTRE UNIT L3 FFL15.55) PROPOSED EAST VIEW  
@ A1

NOT FOR CONSTRUCTION

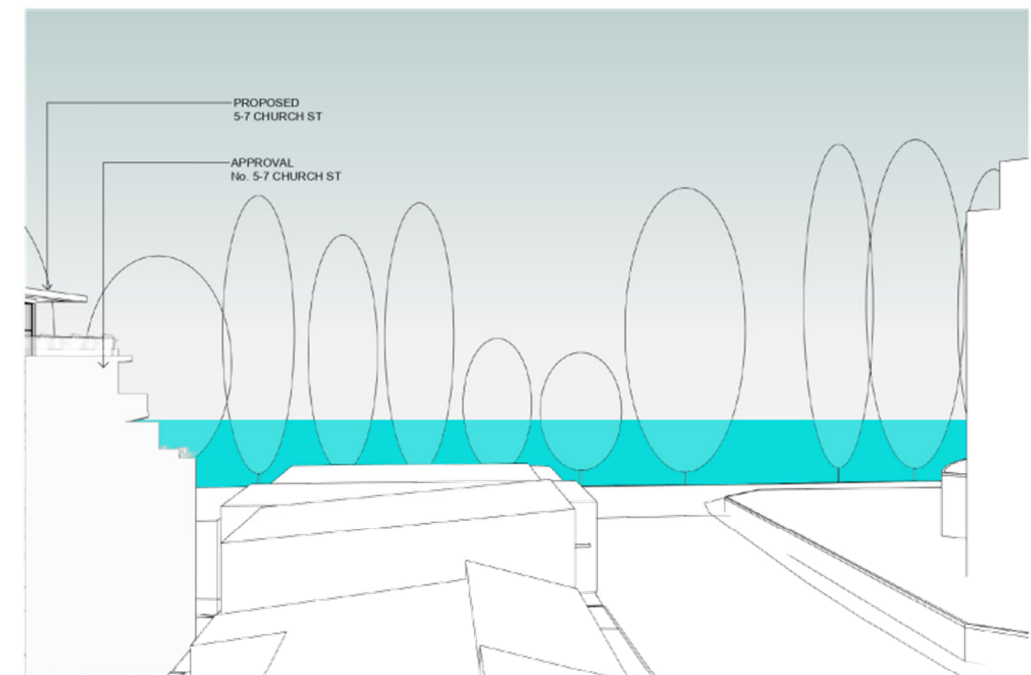
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Project No	Drawing No	Revision																											
14181	VA04	1																											
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AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



2 VIEW FROM APPROVED 15 KURRAWYBA AVE  
(EAST UNIT L4 FFL18.85) PROPOSED NORTH VIEW  
@ A1



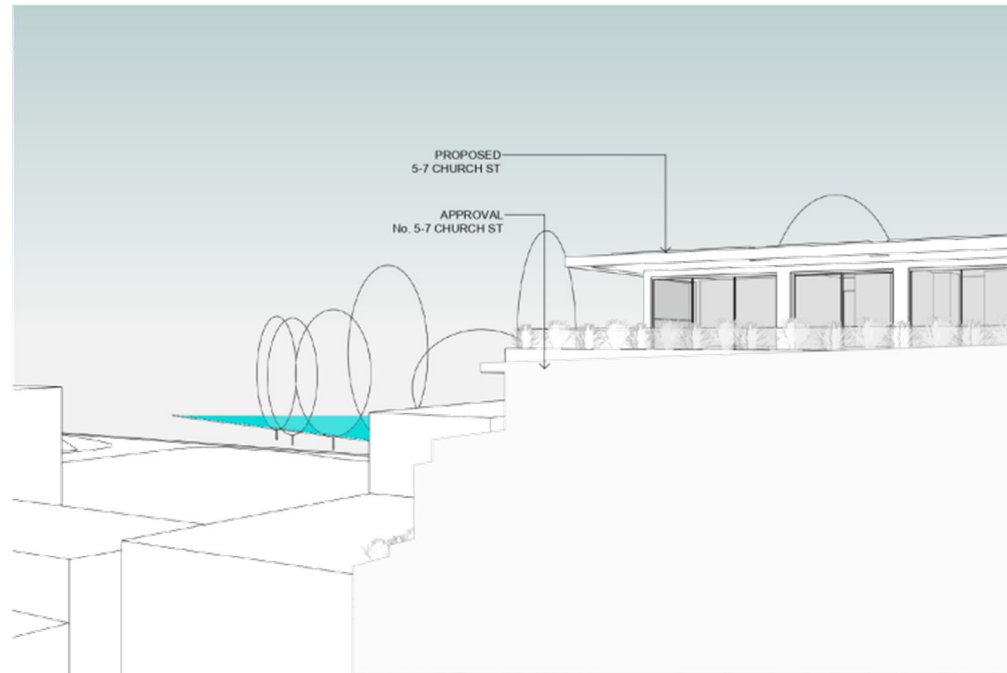
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(EAST UNIT L4 FFL18.85) PROPOSED EAST VIEW  
@ A1

NOT FOR CONSTRUCTION

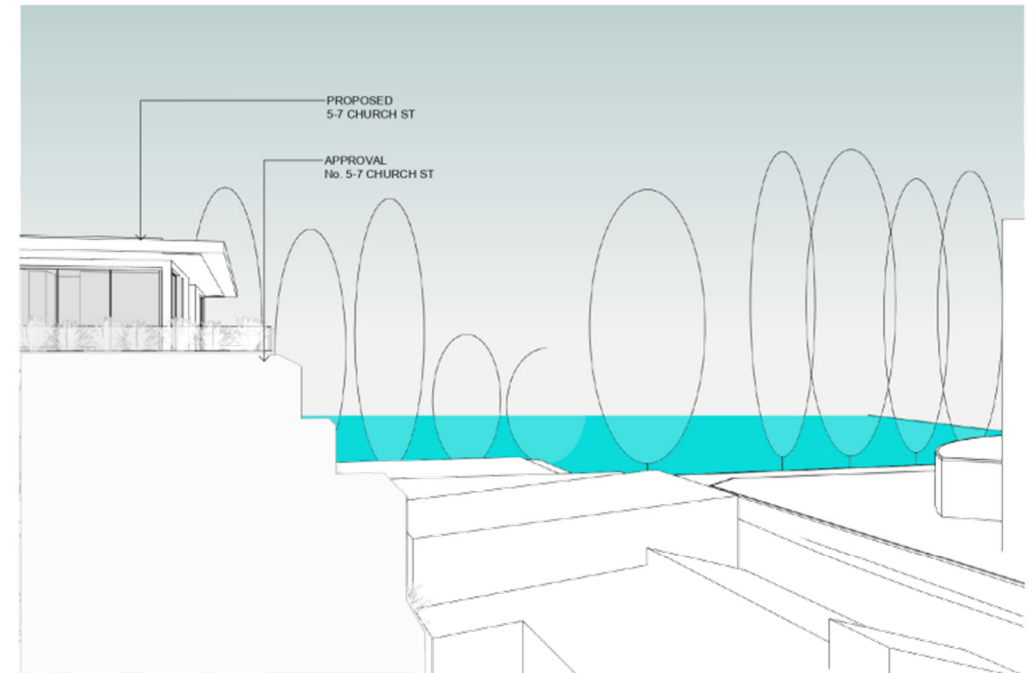
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			No	Date	Description	By									
1	22/02/2021	ADDITIONAL VIEW ANALYSIS	DS												
<p>A1 Scale</p> <p>1 : 100</p>	<p>A3 Scale</p> <p>HALF A1 SCALE</p>	<p>Design</p> <p>C.S./D.B.C</p>	<p>Drawn</p> <p>Author</p>	<p>Project No</p> <p>14181</p>	<p>Drawing No</p> <p>VA05</p>	<p>Revision</p> <p>1</p>									



AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)




2 VIEW FROM APPROVED 15 KURRAWYBA AVE  
(NORTH UNIT L4 FFL18.85) PROPOSED NORTH VIEW  
@ A1



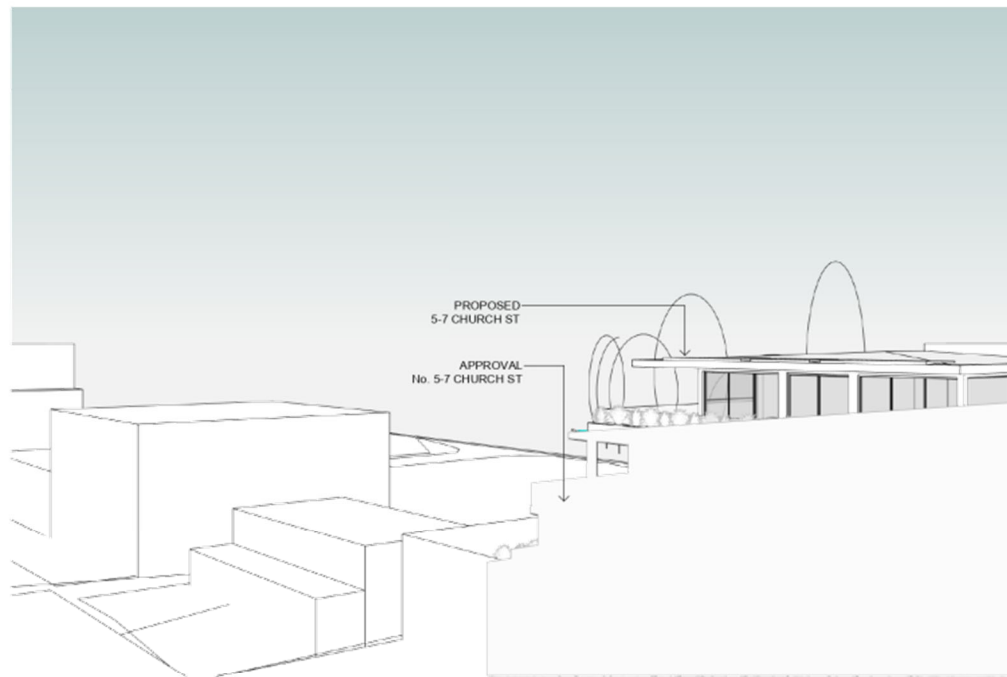
1 VIEW FROM APPROVED 15 KURRAWYBA AVE  
(NORTH UNIT L4 FFL18.85) PROPOSED EAST VIEW  
@ A1

NOT FOR CONSTRUCTION

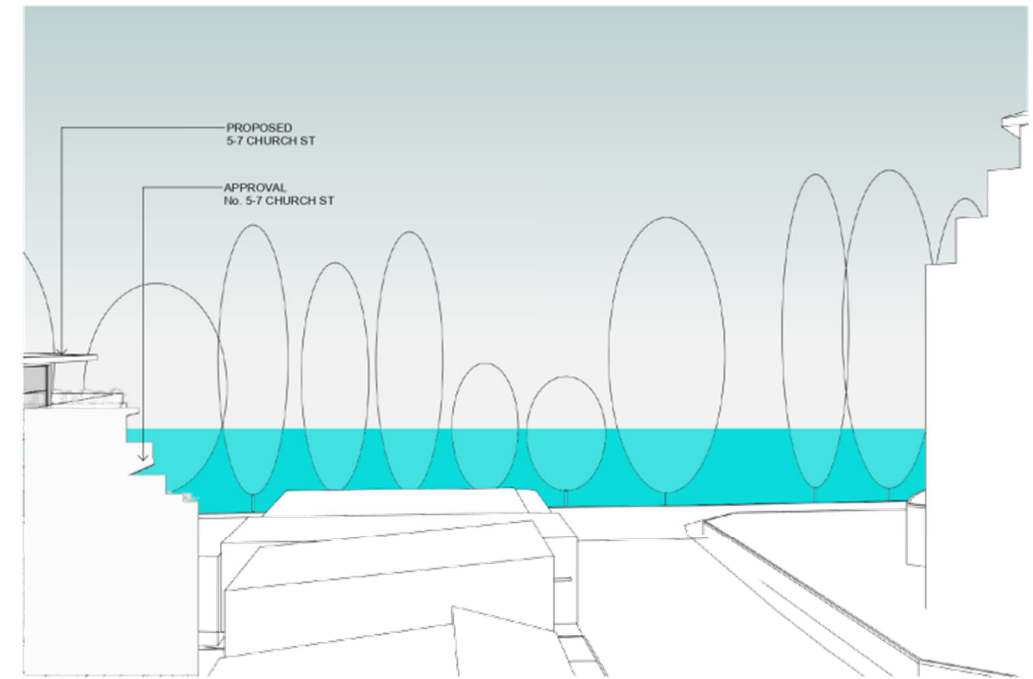
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A1 Scale 1:100	A3 Scale HALF A1 SCALE	Design C.S./D.B.C	Drawn Author					
Project No 14181	Drawing No VA05B	Revision 1						
		1 22/02/2021 ADDITIONAL VIEW ANALYSIS DS						



AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



2 VIEW FROM APPROVED 15 KURRAWYBA AVE  
(EAST UNIT L5 FFL22.15) PROPOSED NORTH VIEW  
@ A1



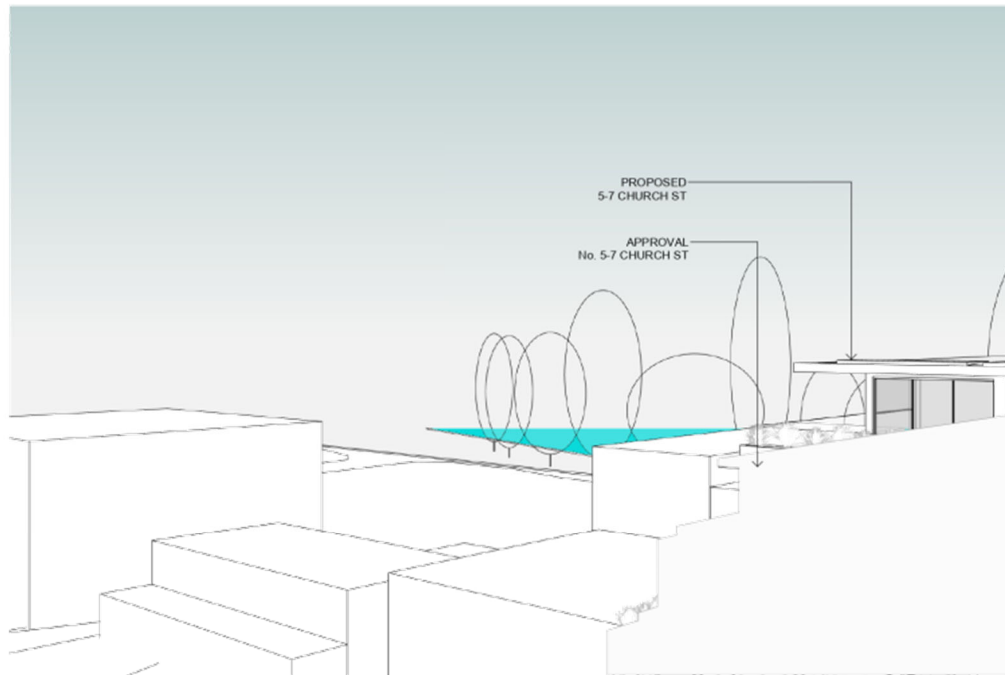
1 VIEW FROM APPROVED 15 KURRAWYBA AVE  
(EAST UNIT L5 FFL22.15) PROPOSED SOUTH VIEW  
@ A1

NOT FOR CONSTRUCTION

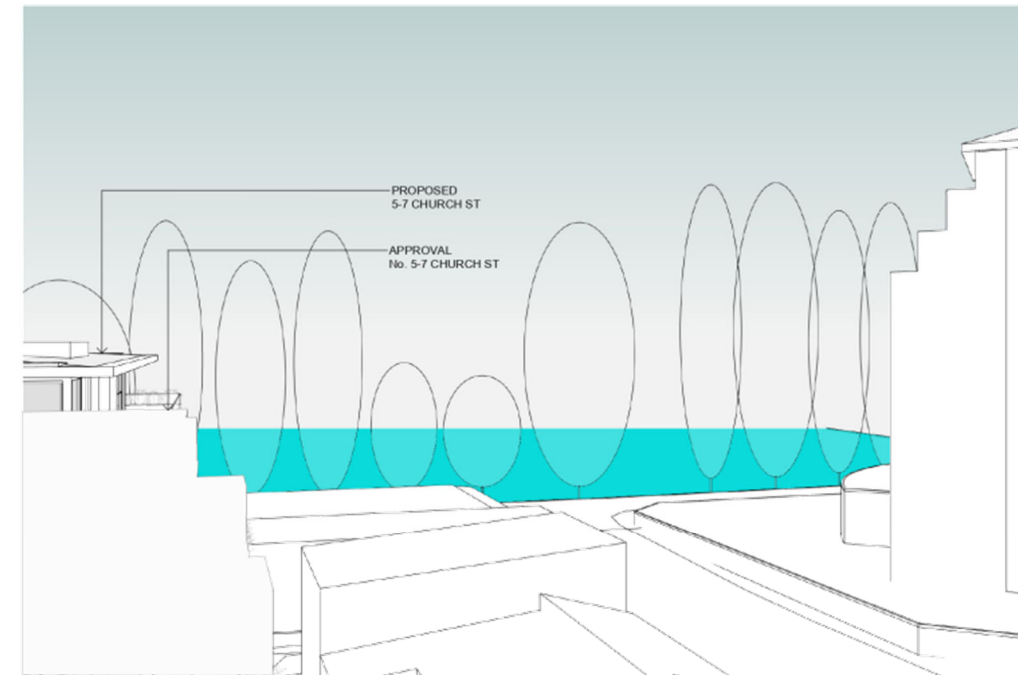
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			No	Date	Description	By									
1	22/02/2021	ADDITIONAL VIEW ANALYSIS	DS												
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AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



1 VIEW FROM APPROVED 15 KURRAWYBA AVE (NORTH UNIT L5 FFL22.15) PROPOSED NORTH VIEW @ A1



2 VIEW FROM APPROVED 15 KURRAWYBA AVE (NORTH UNIT L5 FFL22.15) PROPOSED EAST VIEW @ A1

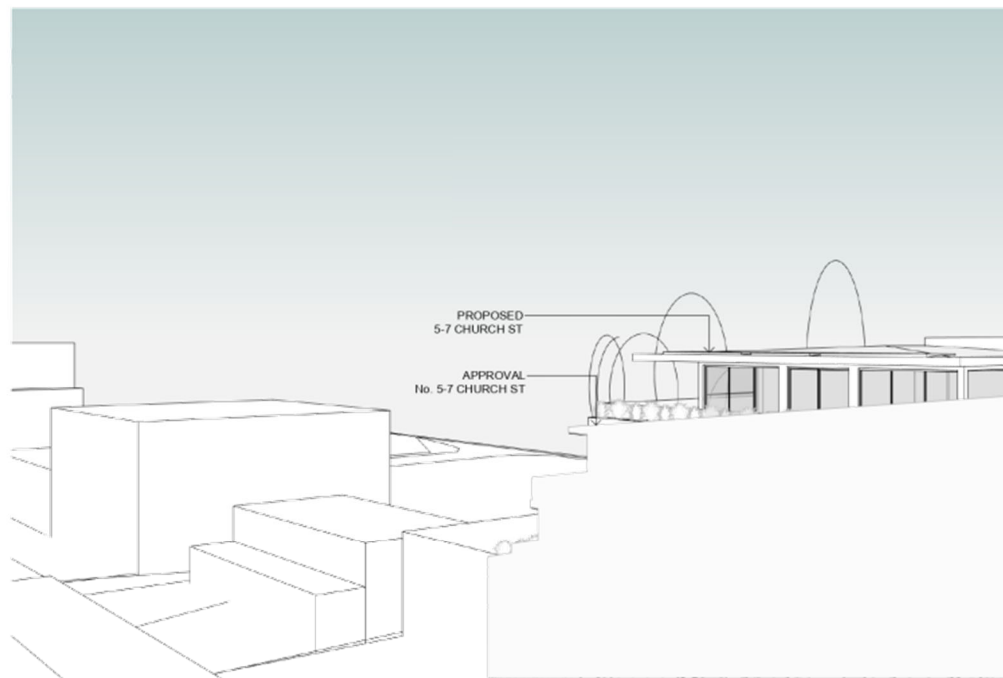
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			No	Date	Description	By									
1	22/02/2021	ADDITIONAL VIEW ANALYSIS	DS												
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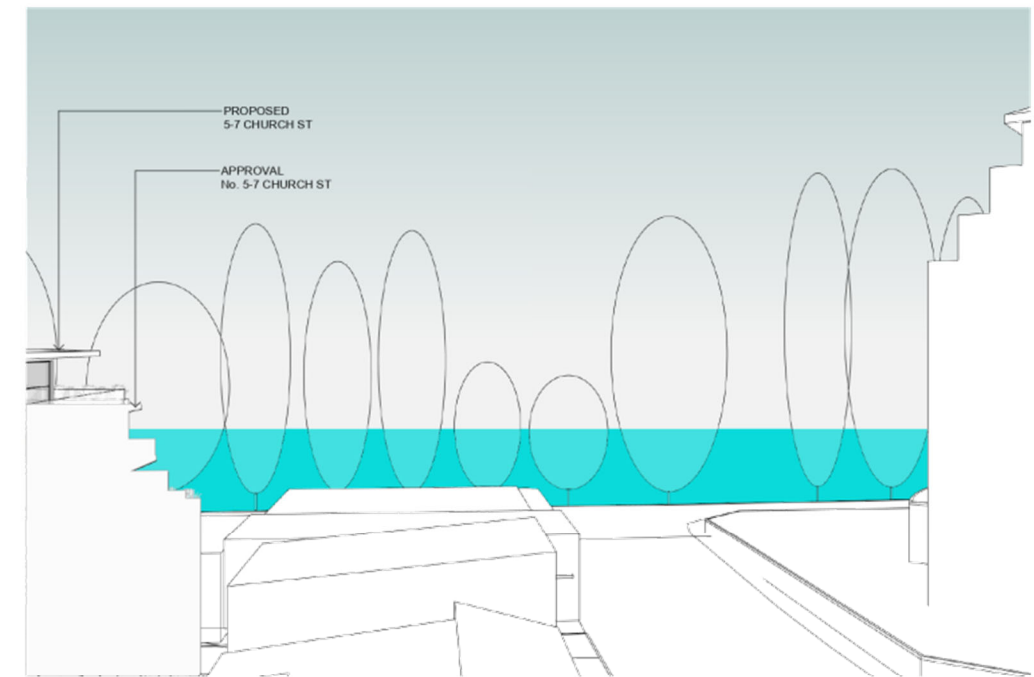




AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



1 VIEW FROM APPROVED 15 KURRAWYBA AVE (EAST UNIT L5 FFL22.15) PROPOSED NORTH VIEW SITTING @ A1



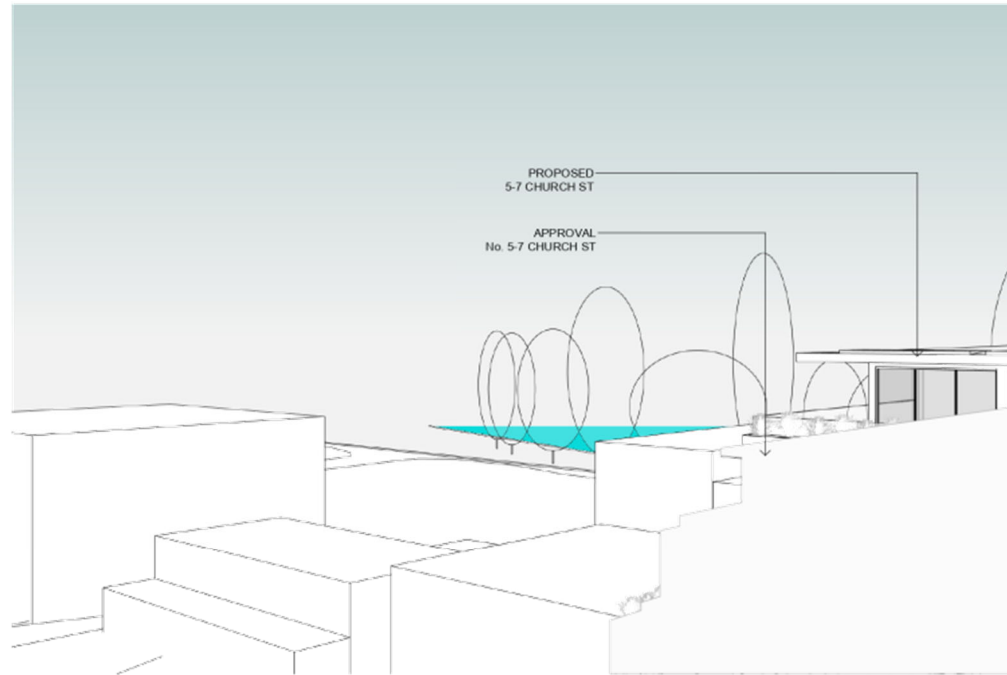
2 VIEW FROM APPROVED 15 KURRAWYBA AVE (EAST UNIT L5 FFL22.15) PROPOSED SOUTH VIEW SITTING @ A1

NOT FOR CONSTRUCTION

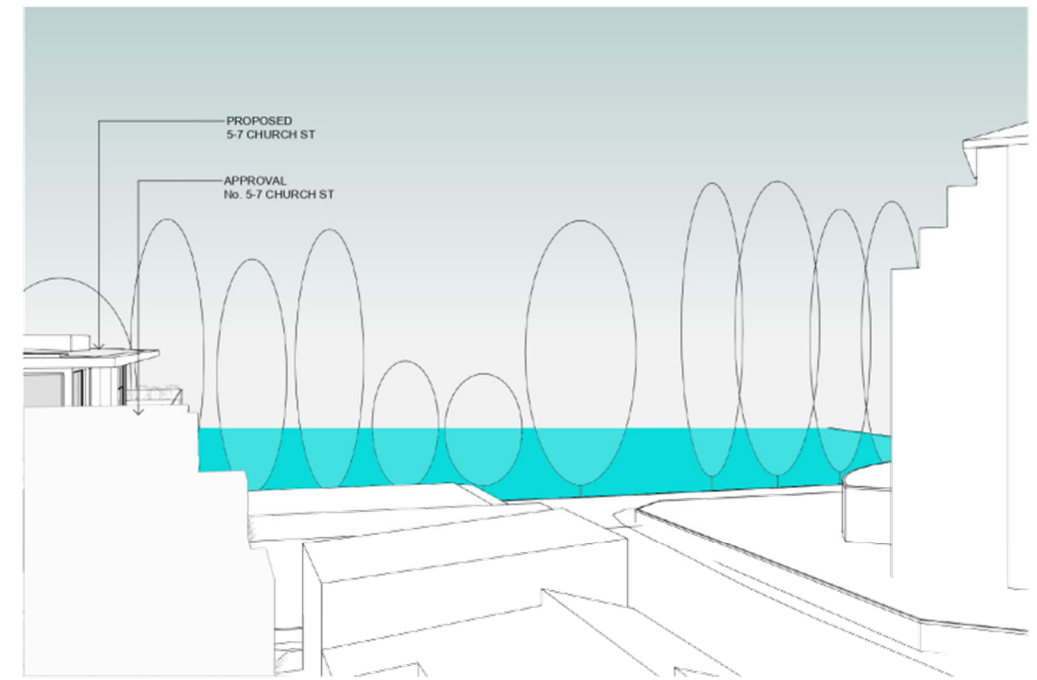
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			No	Date	Description	By									
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AERIAL IMAGE OF VIEW CONE WITHIN THE SITE CONTEXT (SOURCE: SIXMAPS)



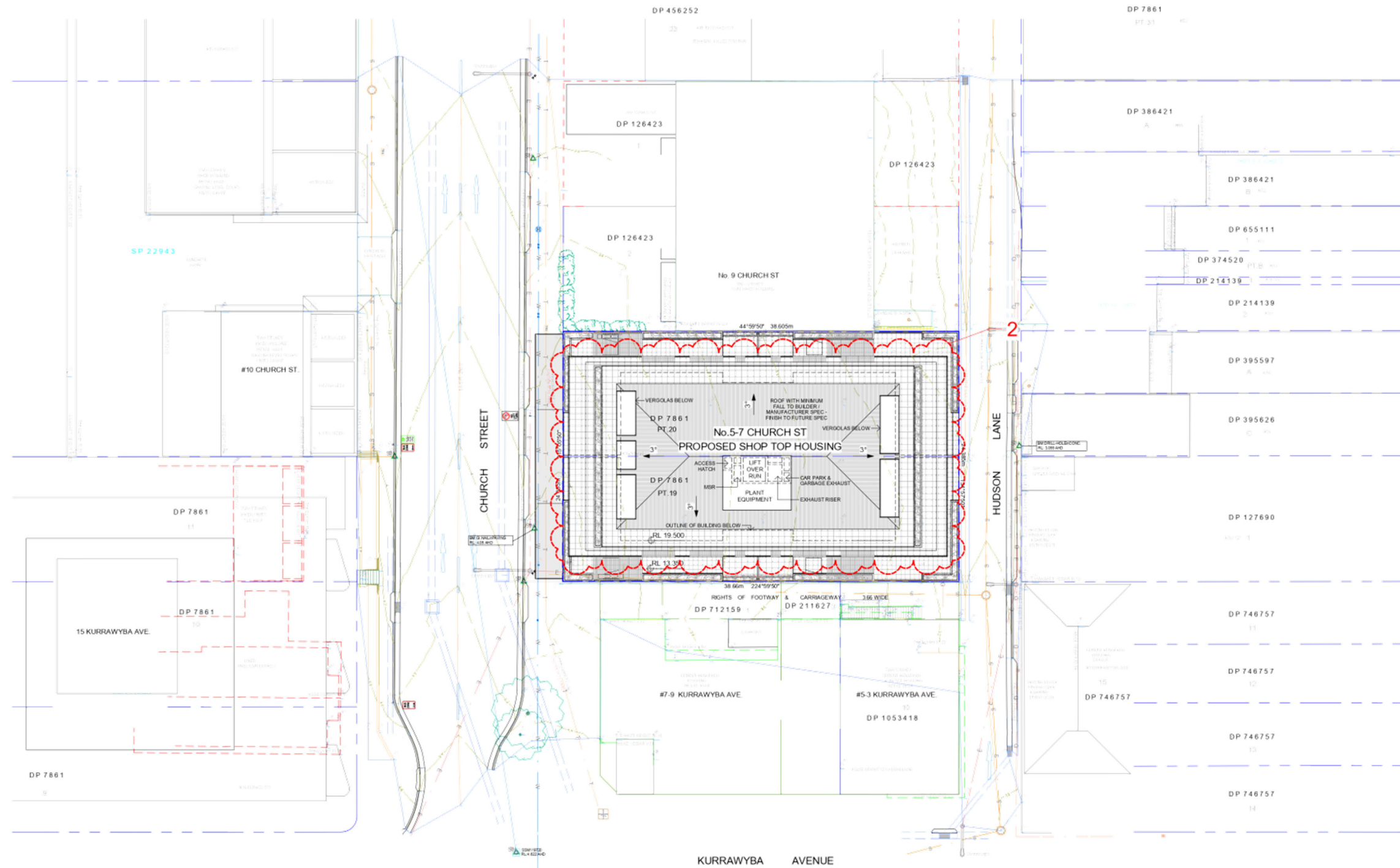
VIEW FROM APPROVED 15 KURRAWYBA AVE  
(NORTH UNIT L5 FFL22.15) PROPOSED NORTH VIEW SITTING  
② @ A1



VIEW FROM APPROVED 15 KURRAWYBA AVE  
(NORTH UNIT L5 FFL22.15) PROPOSED EAST VIEW SITTING  
① @ A1

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			No	Date	Description	By									
1	22/02/2021	ADDITIONAL VIEW ANALYSIS	DS												
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Project No	Drawing No	Revision													
14181	VA07B	1													



**GENERAL NOTES:**

- ALL LEVELS, CONTOURS AND R.L.'S. ARE TO AUSTRALIAN HEIGHT DATUM (AHD) AND ARE IN METRES U.N.O.
- DIMENSIONS ARE IN MILLIMETRES U.N.O.
- FIGURED DIMENSIONS TO BE TAKEN IN PREFERENCE TO SCALE.
- ALL DIMENSIONS SHALL BE CHECKED AND VERIFIED BY THE BUILDER PRIOR TO COMMENCEMENT OF WORKS.
- SITE INFORMATION SHOWN ON THIS DRAWING HAS BEEN SUPPLIED BY OTHERS. NO RESPONSIBILITY IS TAKEN FOR ITS AUTHENTICITY OR ACCURACY. THE BUILDER SHALL VERIFY THE LOCATION OF ALL SERVICES, VEGETATION AND DIMENSIONS PRIOR TO COMMENCEMENT. ANY DISCREPANCIES SHOULD BE REPORTED TO SLATER ARCHITECTS.
- ALL WORK TO BE CONSTRUCTED IN ACCORDANCE WITH THE BUILDING CODE OF AUSTRALIA AND ALL RELEVANT AUSTRALIAN STANDARDS AND STATUTORY REQUIREMENTS.
- ALL DRAWINGS AND DOCUMENTATION TO BE READ IN CONJUNCTION WITH SPECIALIST CONSULTANT REPORTS AND ENGINEERS DETAILS WHERE APPLICABLE.
- FLOOR STRUCTURE TO WET AREAS TO BE SET DOWN 50mm TO ALLOW FOR TILE FINISH / FALL AND FINISH FLUSH WITH ADJOINING FLOOR FINISHES.
- SMOKE DETECTORS TO BE INSTALLED IN ACCORDANCE WITH AS1926.1.
- ALL EXTERNAL FITTINGS, WHERE STAINLESS STEEL, MUST BE 316 MARINE GRADE WITH PROTECTIVE ANTI-CORROSIVE COATING.

**BASIX COMMITMENTS:**

- THE BUILDER AND/OR OWNER MUST ENSURE THAT ALL CONSTRUCTION IS DONE IN ACCORDANCE WITH THE SPECIFICATIONS LISTED IN THE CURRENT BASIX CERTIFICATE.

**SITE LEGEND**

- 6.00' CONTOURS (1.0m INTERVALS)
- S EXISTING SEWER LINE
- W EXISTING WATER LINE
- HYD EXISTING WATER HYDRANT
- T EXISTING TELSTRA LINE
- PP EXISTING POWER POLE
- SMH EXISTING SEWER MAINTENANCE HOLE
- SIO EXISTING SEWER INSPECTION OPENING
- EXISTING TREE TO REMAIN

**SECTION 4.55 SCHEDULE OF AMENDMENTS:**

- REVISED (INCREASED) LEVEL 5 TERRACE TO PROVIDE IMPROVED AMENITY FOR UNITS WITH INCREASED PRIVACY, SOLAR CONTROL, WEATHER PROTECTION AS WELL AS IMPROVED BUILT FORM AESTHETICS.
- NEW LEVEL 6 INCORPORATING 1 PENTHOUSE UNIT WITH ASSOCIATED BALCONY AREA PROVIDING AN IMPROVED BUILT FORM WITH A RECESSIVE TOP AND GENEROUS SETBACKS.
- UPDATED FSR CALCULATIONS TO REFLECT THE ABOVE REVISIONS.

CONTROL	MEASURE
SITE AREA	942sqm (BY SURVEY)
ZONING	B2 LOCAL CENTRE
PROPOSED USE	SHOP TOP HOUSING
CONSTRAINTS	FLOOD PRONE



NOT FOR CONSTRUCTION

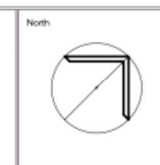
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Status  
**SECTION 4.55**

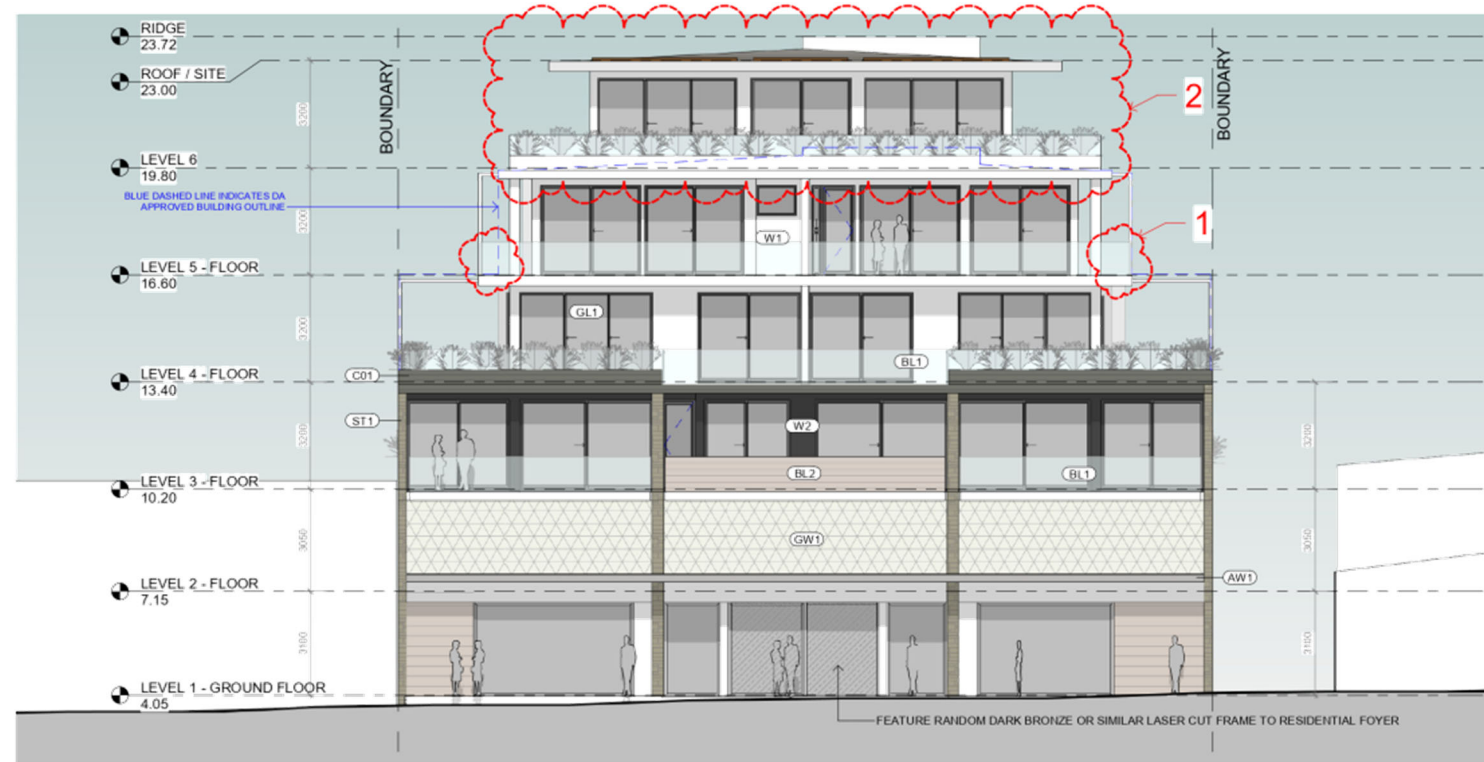
No	Date	Description	By
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5	11.06.2020	ISSUED FOR SECTION 4.55 MODIFICATION APPLICATION	DS
4	07.02.2018	BASEMENT LEVEL REMOVED, RESIDENTIAL UNITS REDUCED TO 12	JF
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2	31.07.2017	HEIGHT REDUCED 3M - CAR PARK RELOCATED TO BASEMENT	DBC
1	03.05.2017	ISSUED FOR DEVELOPMENT APPLICATION	DBC

Client  
**ANGOLET PTY LTD**  
 Project  
**PROPOSED SHOP-TOP HOUSING**  
 PART LOTS 19 & 20 DP7861  
 5-7 CHURCH ST, TERRIGAL N.S.W 2260

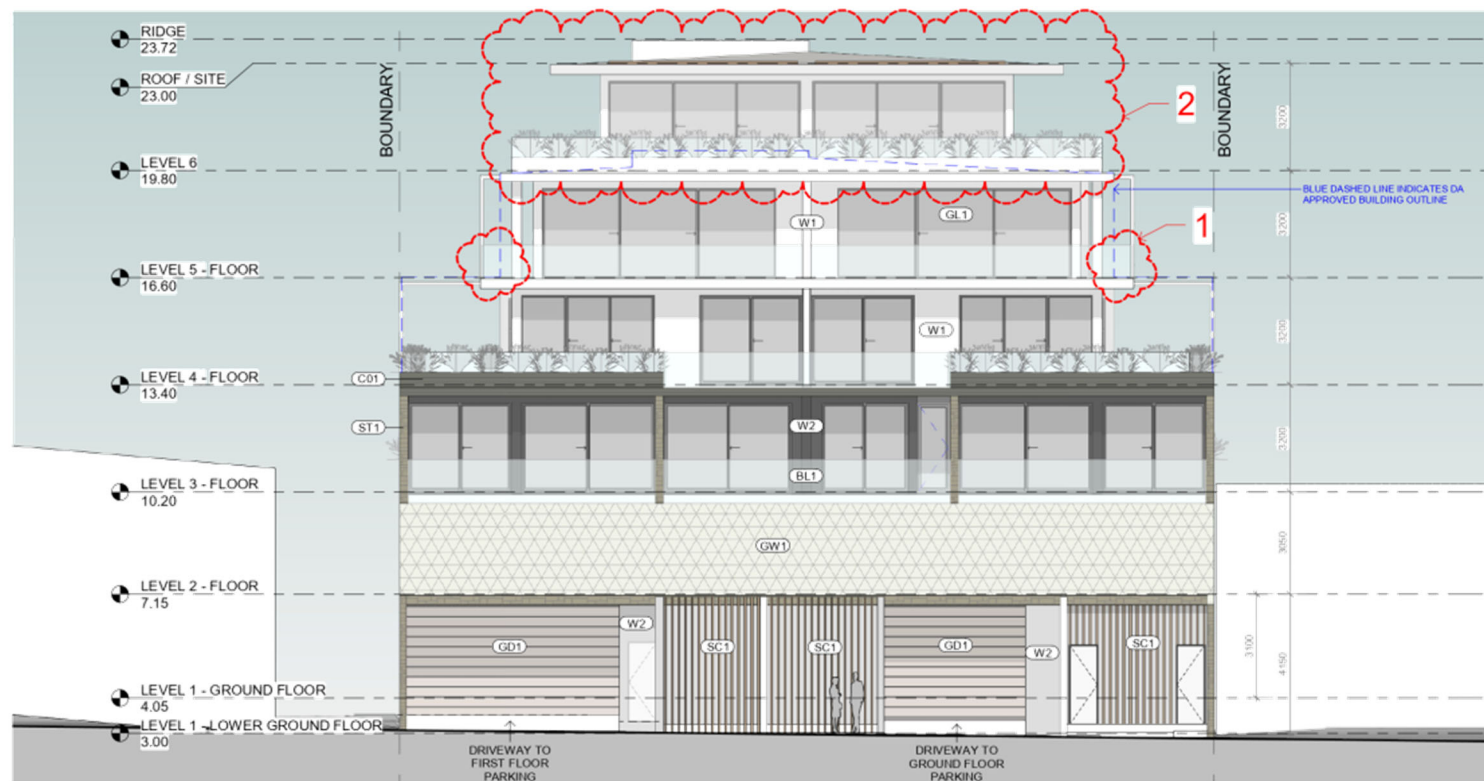
**SLATER ARCHITECTS**  
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 email: info@slaterarchitects.com.au  
 Catherine Slater - Registered Architect No. 71153  
 Mac2000 Pty Ltd Trading as Slater Architects, ABN 24001 616 282



Drawing Title			
SITE & ROOF PLAN			
A1 Scale	A3 Scale	Design	Drawn
As indicated	HALF AT SCALE	C.S./D.B.C	Author
Project No		Revision	
14181	DA001		6



2 SOUTH WEST ELEVATION (CHURCH ST)  
1 : 100 @ A1



1 NORTH EAST ELEVATION (HUDSON LANE)  
1 : 100 @ A1

**SECTION 4.55 SCHEDULE OF AMENDMENTS:**

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3. UPDATED FSR CALCULATIONS TO REFLECT THE ABOVE REVISIONS

MATERIAL FINISHES SCHEDULE	
CODE	DESCRIPTION
AW1	AWNING: STREET AWNING, STEEL FRAMED
BL1	BALUSTRADE - TYPE 1: GLASS WITH 316 SS FIXINGS AND CAPPING CHANNEL
BL2	BALUSTRADE - TYPE 2: SOLID, FACED WITH ALUMINIUM CLADDING - TIMBER LOOK
C01	OFF-FORM CONCRETE - CLASS 1 FINISH
FC1	FASCIA COLOUR TO MATCH ADJACENT WALLING
GD1	GARAGE DOOR - SEMI VENTILATED METAL DOOR - DARK BRONZE OR SIMILAR
GL1	GLASS: CLEAR GLAZING, ALUMINIUM FRAMED
GW1	GREEN WALL: MIXED VARIETY & COLOUR
SC1	DECO WOOD TIMBER LOOK COLOUR AS SPEC.
ST1	STONE WALL FACING 'SANDSTONE' 30-50MM WITH CORNER PIECES
W1	WALL - TYPE 1: MASONRY - 'WHITE' (OR SIMILAR) FINISH
W2	WALL - TYPE 2: MASONRY - 'CHARCOAL' (OR SIMILAR) FINISH

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SECTION 4.55

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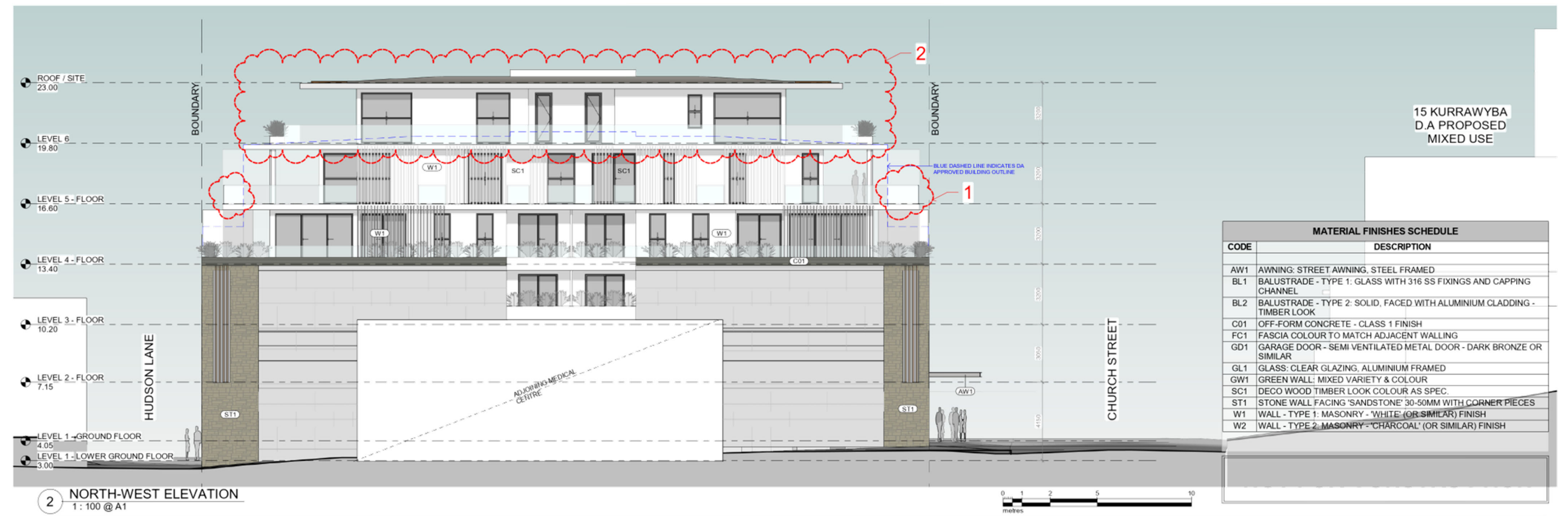
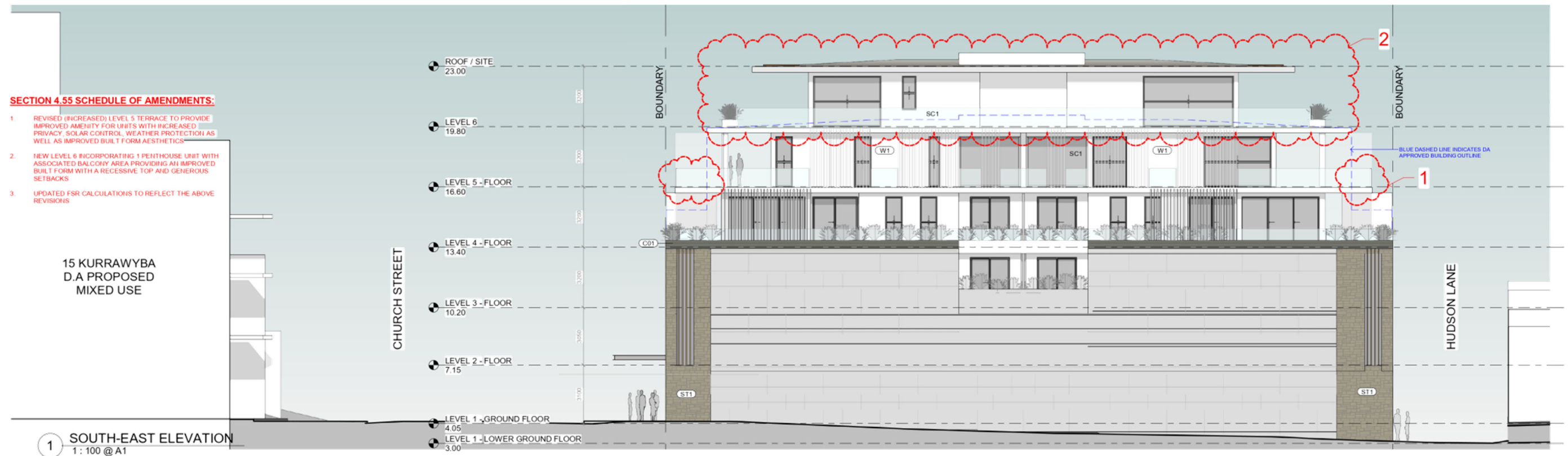
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Drawing Title			
ELEVATIONS - STREET & LANEWAY			
A1 Scale	A3 Scale	Design	Drawn
As indicated	HALF A1 SCALE	C.S./D.B.C	Author
Project No	Drawing No	Revision	
14181	DA200	7	



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**Item No:** 4.1  
**Title:** DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises

**Department:** Environment and Planning

---

24 June 2021 Local Planning Panel Meeting

Reference: DA/530/2019 - D14677046  
Author: Janice Buteux-Wheeler, Senior Development Planner  
Manager: Emily Goodworth, Section Manager, Development Assessment  
Approver: Andrew Roach, Unit Manager, Development Assessment

### **Recommendation**

- 1** *That the Local Planning Panel grant consent to DA/530/2019 – 2 & 11 Bryant Drive - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises 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 the Local Planning Panel vary the drainage scheme identified in the Wyong District 7.11 Contributions Plan having regard to the matters for consideration detailed in the report and Section 7.13 of the Environmental Planning and Assessment Act 1979.*
- 3** *That Council advise those who made written submissions of the Panel's decision.*
- 4** *That Council advise relevant external authorities of the Panel's decision.*

### **Summary**

An application has been received for a Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises at 2 & 11 Bryant Drive, Tuggerah. 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 referred to the Local Planning Panel for determination as the matter requires a variation to the Wyong District Section 7.11 Contributions Plan. Council officers are not delegated to make this variation.

**Applicant** Aventus Tuggerah Pty Ltd c/- ADW Johnson Pty Ltd  
**Owner** Aventus Tuggerah Pty Ltd

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

<b>Application No</b>	DA/530/2019
<b>Description of Land</b>	Lot 101 and Lot 102 DP 1209157
<b>Proposed Development</b>	Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises
<b>Site Area</b>	5.586 ha (Lot 102)
<b>Zoning</b>	B5 Business Development
<b>Existing Use</b>	B5 Business Development
<b>Employment Generation</b>	Yes
<b>Estimated Value</b>	\$29,777,000.00

**Key Issues**

- Drainage
- Traffic
- Amenity to neighbouring properties

**Precis:**

<b>Proposed Development</b>	Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises
<b>Permissibility and Zoning</b>	B5 Business Development zoning. Mixed use development combining the permissible uses of <i>business identification signage, food and drink premises and specialised retail premises</i>
<b>Relevant Legislation</b>	<i>Environmental Planning and Assessment Act 1979 State Environmental Planning Policy No. 64 – Advertising and Signage State Environmental Planning Policy No.55 – Remediation of Land State Environmental Planning Policy (Koala Habitat Protection) 2019 Wyong Local Environmental Plan 2013 Draft Central Coast Local Environmental Plan 2018 Wyong Development Control Plan 2013</i>
<b>Current Use</b>	Car parking, vacant.
<b>Integrated Development</b>	No
<b>Submissions</b>	Two

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use  
Development comprising Specialised Retail Premises, Signage and Food  
and Drink Premises (contd)**

---

**The Site**

The subject site is an irregular shaped site that has a 181 metre frontage to Bryant Drive. The site additionally has two "fingers" that each have a frontage to Lake Road of 20.125 metres and are separated from each other by approximately 100 metres. The site has an average depth of 255 metres and an area of 5.584 hectares. The topography of the site is generally flat, with a general fall towards the rear. The current and previous site uses have been predominantly vacant land with some use as overflow car park and a return and earn recycling collection point that are ancillary to the associated retail on the opposite side of Bryant Drive. The parts of the site that are not hardstand carpark are partly mown and partly remnant vegetation.

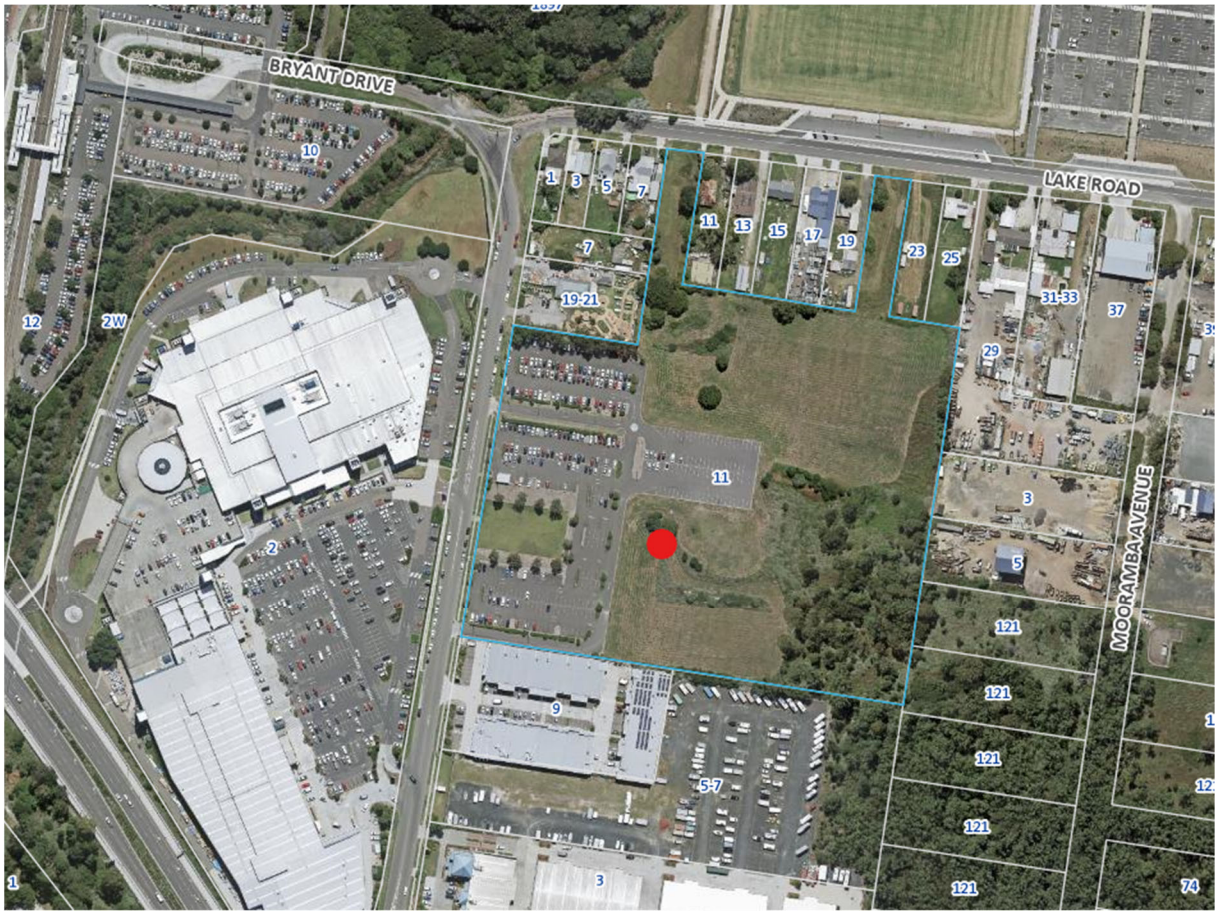
**Surrounding Development**

The site is located within a mixed-use large format commercial area with Bunnings and a retail Super Centre located to the west; bulky goods retailing located to the south; single residential dwellings with home business/home industry and the Tuggerah Regional Sporting Centre to the north. The Tuggerah Train Station is approximately 400 metres to the north west. To the east are industrial land uses that obtain access via Lake Road and Mooramba Avenue. Refer to Figure 1.

The single residential dwellings in the area are existing uses that predate the rezoning of the land to B5 Business Development. In this regard, the area is in transition towards the anticipated development outcomes of the zoning.



**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**



**Figure 1: Aerial photo showing the site and surrounding development**

The site is zoned B5 Business Development, as is directly adjoining land to the north, west and south of the site. To the east directly adjoining sites are zoned IN2 Light Industrial and SP2 Infrastructure.



**Figure 2: Locality aerial view with land zoning and aerial view of subject site**

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

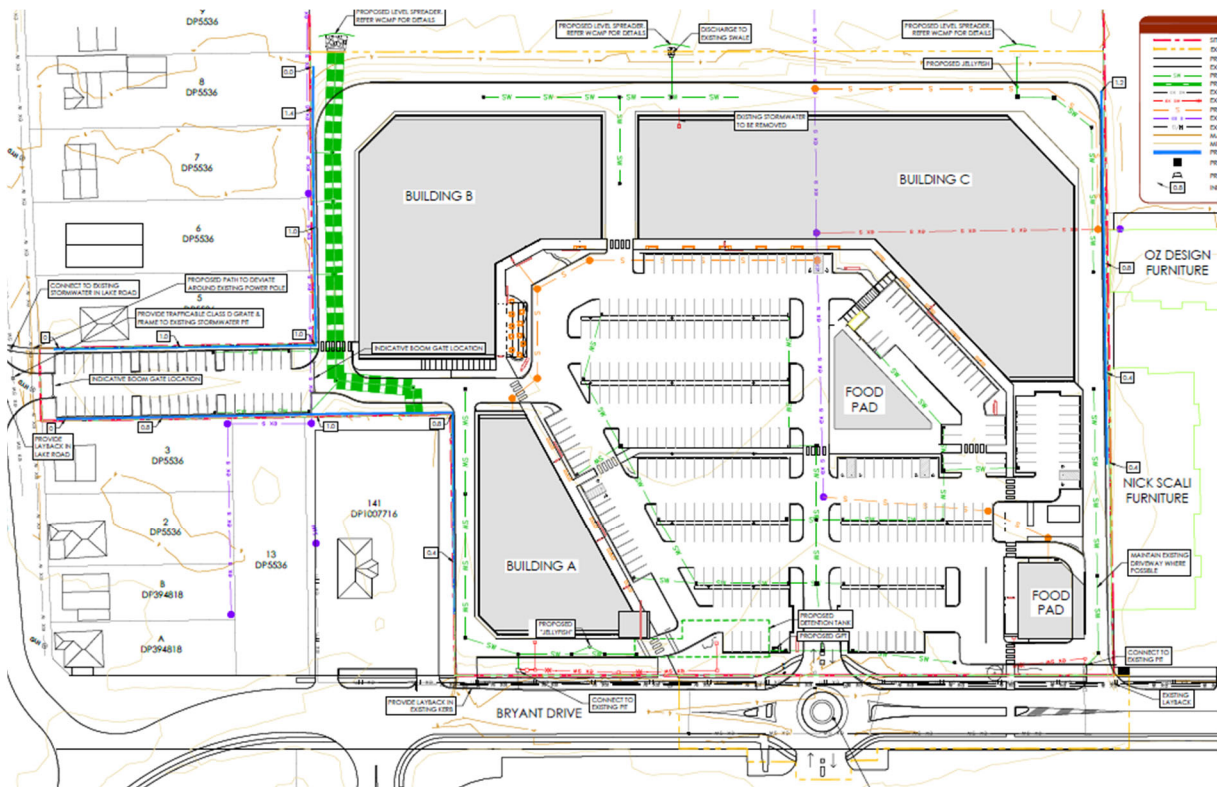
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**The Proposed Development**

Mixed Use Development comprising *Specialised Retail Premises, Business Identification Signage and Food and Drink Premises*. The proposed works include the following:

- Earthworks including the importation of fill to create a level and flood free building area;
- Three specialised retail premises, comprising:
  - Building A – 1,784m<sup>2</sup> of specialised retail floor area;
  - Building B – 3,526m<sup>2</sup> of specialised retail floor area and small cafe;
  - Building C – 5,364m<sup>2</sup> of specialised retail floor area;
- Two food and drink premises with attached alfresco dining, comprising the following:
  - Food Pad 1– 470m<sup>2</sup>;
  - Food Pad 2– 229m<sup>2</sup>;
- Supporting amenities;
- Signage;
- 389 onsite carparking spaces and internal driveways;
- Removal of existing northern entry access to the site;
- A central roundabout entry/exit access off Bryant Drive to be shared with the existing Super Centre opposite the site;
- Modification of the existing exit off Bryant Drive to accommodate service vehicles only and a new combined entry/exit access off Lake Road;
- Connection to all services including stormwater;
- Relocation of the existing NSW 'Return and Earn' container deposit facility; and
- Landscaping including Public Art elements.

The site layout is shown below.



**Figure 3: Site plan showing development layout**

## History

The site has historically been used for overflow car parking in association with the Super Centre site on the opposite side of Bryant Drive, with the remainder of the site being vacant. As these car parking spaces were surplus to the requirements of the Super Centre, Lot 102 was subdivided from Lot 101 under DA/285/2013.

## Pre-Lodgement Meeting/Discussions

A pre-lodgement meeting was held with Council on 28 February 2019. The development that has been submitted is generally aligned with the development presented at pre-lodgement, with peripheral changes.

## 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.

4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use  
Development comprising Specialised Retail Premises, Signage and Food  
and Drink Premises (contd)

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**Wyong Local Environmental Plan 2013 - Permissibility**

The subject site is zoned *B5 – Business Development* under *Wyong Local Environmental Plan (WLEP) 2013*. The proposal is best defined as a *mixed use development* combining the permissible uses of *business identification signage, food and drink premises* and *specialised retail premises*, each of which are permissible uses in the B5 zone.

The following definitions under WLEP are relevant to the proposal and read:

**business identification sign** means a sign—

(a) that indicates—

(i) the name of the person or business, and

(ii) the nature of the business carried on by the person at the premises or place at which the sign is displayed, and

(b) that may include the address of the premises or place and a logo or other symbol that identifies the business,

but that does not contain any advertising relating to a person who does not carry on business at the premises or place.

**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.

**specialised retail premises** means a building or place the principal purpose of which is the sale, hire or display of goods that are of a size, weight or quantity, that requires—

(a) a large area for handling, display or storage, or

(b) direct vehicular access to the site of the building or place by members of the public for the purpose of loading or unloading such goods into or from their vehicles after purchase or hire,

but does not include a building or place used for the sale of foodstuffs or clothing unless their sale is ancillary to the sale, hire or display of other goods referred to in this definition.

Note—

Examples of goods that may be sold at specialised retail premises include automotive parts and accessories, household appliances and fittings, furniture, homewares, office equipment, outdoor and recreation equipment, pet supplies and party supplies.

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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*Specialised retail premises are a type of **retail premises**—see the definition of that term in this Dictionary.*

**Wyong Local Environmental Plan 2013 - Zone Objectives**

Having regard for Clause 2.3 of WLEP, the B5 – Business Development zone objectives read as follows:

- *To enable a mix of business and warehouse uses, and specialised retail premises that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To encourage development that supports or complements the primary office and retail functions of Zone B2 Local Centre and Zone B3 Commercial Core.*
- *To enable other complementary land uses that do not detract from the viability of business and warehouse uses, including bulky goods premises.*

The proposal is found to be consistent with the stated zone objectives. In particular, the development provides specialized retail premises with large floor tenancies in an established specialized retail area and includes food and drink premises (including drive thru and take away) that will complement, and do not detract from, the viability of business, warehouse, and bulky goods premises in the area.

**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. The site does not have a mapped height control under the LEP.

**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. The site does not have a mapped FSR control under the LEP.

**Wyong Local Environmental Plan 2013 Clause 5.10 – Heritage Conservation**

The site is within the vicinity of the Pioneer Dairy (Item 103), however is sufficiently separated from the item that it will not result in any material impact of significance to the item. An Aboriginal Heritage Information Management System (AHIMS) search was undertaken by the applicant and submitted with the development application. This does not indicate that there are any items or places of significance that require further consideration.

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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**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 containing Class 3 and Class 4 on the Acid Sulphate Soils (ASS) Planning Map. The area of the site that is subject to development under this development application is identified as Class 4.

The clause requires the consideration of the need for an acid sulphate soils management plan where works are more than 2 metres below the natural ground surface or works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface. The proposal, which is predominantly located upon fill, does not include works that generate the need for an acid sulfate soils management plan.

A procedure for managing acid sulfate soils should they be encountered on site during works are required by condition **4.20**.

**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.*

The site is located within the Tuggerah Industrial Catchment and Council's records indicate that the site is affected by flooding and/or minimum floor level requirements.

The identified 1% AEP flood extent is 3.8m AHD. The proposal seeks to provide commercial buildings at or above 4.8m AHD. This is above the 1% AEP level and thus considered satisfactory.

#### **4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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Following a request for more information, the Applicant has submitted additional flooding information that details how the development manages the overland flows created in the 1% AEP event.

The Applicant has previously submitted a revised Water Cycle Management Plan that includes an alternative method to drain water to that identified in the Wyong District Development Contributions Plan. The Contributions Plan identifies a 20 metre wide open trapezoidal and vegetated channel. The Applicant has proposed a closed stormwater system containing reinforced box culverts.

The system has been designed for the 1% AEP extent with a 50% blockage factor applied for the underground system and a 25% inlet blockage for the secondary flowpath conveying overtopped stormwater from Bryant Drive (traverses through 19-21 Bryant Drive Tuggerah). The enclosed system will be private infrastructure. Council's Floodplain Management and Asset Management sections have been consulted as to the alternative drainage scheme and raise no objections. Conditions outlining the above have been included within consent conditions **2.7, 5.19, 5.20, 5.22, 5.23, 5.24** and **5.25**.

On this basis, the proposal is considered satisfactory having regard for the above considerations.

#### **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 demonstrated that all these services are adequately provided for the development and adjoining properties.

Road and access - Suitable access is to be achieved via a new roundabout fronting Bryant Drive, a new driveway fronting Lake Road, a heavy vehicle entry only driveway from Bryant Drive and an existing exit only driveway fronting Bryant Drive. Refer to road and access discussion under section 4.15 matters heading below.

Water supply – The proposed development is located outside the Zone of Influence (ZOI) of the water main servicing the area. Water hydrants require adjustment to facilitate the proposed driveway crossing and roundabout. Suitable protection of the 525mm Asbestos Cement water main will be required as part of the roundabout construction. The development will require a Section 307 Certificate under the *Water Management Act 2000*. (Conditions of consent **2.13** and **2.14**).

Sewer - The proposed development is located within the Zone of Influence (ZOI) of the 150mm uPVC sewer main traversing the property and the development will need to comply with Council's "Policy for Building Over or Adjacent to Sewer Mains". Re-diversion of the existing sewer main is also proposed to facilitate Proposed Building C. Shortening of the

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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existing sewer main can also be made as part of this arrangement. (Conditions of consent **2.13, 2.14** and **2.15**).

Stormwater Management - The revised proposal seeks to direct stormwater to Mooramba Road, Lake Road, Bryant Drive and the rear of the site. Refer to discussion under section 4.15 matters heading below. An on-site stormwater detention (OSD) and drainage system will be required to control the rate of runoff leaving the site (to the street drainage system).

The detention system must be designed to attenuate post developed flow rates to predevelopment flow rates for a full range of storm durations for the 5, 20 and 100-year average reoccurrence interval (ARI) design storms.

Accordingly, the proposal is satisfactory with regard to clause 7.9 of WLEP. Design detail for adjustment of water and sewer pipes, drainage and the OSD are required via conditions of consent.

**State Environmental Planning Policy No. 64 – Advertising and Signage**

The proposed development includes identified signage locations and sizes to control the signage available for future businesses. The content of the signs will be determined once the future tenants of the buildings are identified. The signs will in all cases be either “building identification signs” or “business identification signs”.

Clause 8 of the SEPP requires the consent authority to be satisfied that the proposal is consistent with the aims and objectives of the policy:

- (a) to ensure that signage (including advertising):*
  - (i) is compatible with the desired amenity and visual character of an area, and*
  - (ii) provides effective communication in suitable locations, and*
  - (iii) is of high-quality design and finish, and*

Clause 8 also requires a consent authority to consider the assessment criteria within Schedule 1. The proposed signage has been assessed using the Schedule 1 Assessment Criteria of the SEPP and is found to be consistent with the policy's aim to ensure that signage is compatible with the desired amenity and visual character of the area and is of a high quality design and finish.

Part 3 of the SEPP does not apply to building and business identification signs.

A compliance table of the provisions under Schedule 1 are provided at **Attachment 3**.

Having regard for the above, the subject proposal is acceptable.



**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use  
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**State Environmental Planning Policy No.55 – Remediation of Land**

Clause 7(1) of State Environmental Planning Policy No. 55 requires that the consent authority 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 proposal is for commercial/business uses. There are no known historical uses that are likely to have contributed to contamination of the site and there are no other identified contamination concerns that would prevent the site from being utilised for its intended use.

**State Environmental Planning Policy (Koala Habitat Protection) 2019**

The subject site is mapped within the Koala Development Application mapping. Clause 9 of the SEPP states as follows:

*(1) Before a council may grant consent to a development application for consent to carry out development on land to which this Part applies that it is satisfied is a potential koala habitat, it must satisfy itself as to whether or not the land is a core koala habitat.*

*(2) The council may be satisfied as to whether or not land is a core koala habitat only on information obtained by it, or by the applicant, from a person with appropriate qualifications and experience in biological science and fauna survey and management.*

*(3) If the council is satisfied—*

*(a) that the land is not a core koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or*

*(b) that the land is a core koala habitat, it must comply with clause 10.*

The ecological assessment report prepared by AEP has included an assessment of the likelihood of impacts to Koala. The report provides that whilst the site contains suitable koala feed trees these represent less than 15% and no evidence of koalas were recorded on site during surveys.

**Draft Central Coast Local Environmental Plan 2018**

Draft Central Coast Local Environmental Plan 2018 (Draft CCLEP) was adopted on 14 December 2020 but has not yet been gazetted. The CCLEP will replace the planning instruments relating to the former Local Government Areas. Under the provisions of Draft CCLEP, the site retains its B5 Business Development zoning. There are no additional or amended clauses or provisions warranting further discussion.

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use  
Development comprising Specialised Retail Premises, Signage and Food  
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**Wyong Development Control Plan 2013 (WDCP)**

Chapter 2.6 Signage of WDCP 2013

The proposal includes standardised signage throughout the site. This signage is classified as business identification signage, that is located upon the façade of the building or within a pylon sign. The DCP requires compliance with SEPP 64. An assessment against SEPP 64 has been undertaken and is included at **Attachment 3**.

Chapter 2.11 Parking and Access of WDCP 2013

A detailed discussion of car parking is contained in the Section 4.15 assessment discussion below.

The DCP requires 224 spaces for the bulky goods premises component and 9 service spaces. Additionally, the DCP requires 100 spaces for the food and drink premises on the site. The combined parking requirement for the proposal is 324 spaces. The proposal provides a total of 389 parking spaces, which is in excess of the DCP requirement and in this regard does not rely upon street parking. The proposal contains adequate manoeuvring for delivery and service vehicles.

Council's development engineer has undertaken an assessment of the dimensions and manoeuvring of the spaces and is satisfied, this is contained within the discussion under 4.15 matters below. Additionally, an assessment of the amenity outcomes to neighbouring properties as a result of the proposed parking area is contained within the discussion under 4.15 matters below.

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 floor plans for Buildings A, B and C include indicative waste storage areas. Sufficient area exists within the food pads for waste areas commensurate with food premises. The amended plans demonstrate that while the waste storage areas are located within the buildings, the servicing (collection) of these will be carried out externally. This will involve the tenants transferring their waste to the collection area at the rear of each building for collection as shown. Building C has an external waste storage area. The applicant has amended the plans to indicate that the area will be screened. All waste collection areas can be serviced by a heavy rigid vehicle.

Detailed comments are provided within the waste discussion under Clause 4.15 matters discussed below.

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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Chapter 3.3 Floodplain Management of WDCP 2013

The site is located within the Tuggerah Industrial Catchment and Council's records indicate that the site is affected by flooding and/or minimum floor level requirements. The applicant has submitted a Flood Impact Assessment Report by SKM that details how the development intends to manage the overland flows created in the 1% AEP event and this has been reviewed by Council's Development Engineer.

The proposal has been assessed having regard for the provisions of Chapter 3.3 Floodplain Management. The proposal has a ground floor level for commercial buildings at a minimum 4.8m AHD. This will satisfy the design requirements outlined in *Wyang Development Control Plan 2013*, Chapter 3.3 Floodplain Management.

Chapter 5.1 – Retail Centres of WDCP 2013

Wyang DCP Chapter 5.1 – Retail Centres applies to the development. The chapter includes specific provisions relating to the site and identifies the subject site and surrounding area as being a specialist bulky goods precinct. The key outcomes of the Retail Centres provisions of the DCP relating to this site are:

- *To ensure the development will not lead to the deterioration of any centre designated for retail activity*
- *To ensure the development will result in an increase in the total range of retail goods and services presently available to the community.*

The proposed development includes three buildings encompassing approximately 10,000m<sup>2</sup> of specialised large retail floor area providing an increase in the total range of retail goods to the community.

Additionally, the development proposes no standard retail floor space (only specialized) to ensure the existing viability of the Tuggerah Centre.

Chapter 6.14 – Tuggerah Precinct of WDCP 2013

Wyang DCP Chapter 6.14 – Tuggerah Precinct applies to the development and a summary of compliance with the relevant controls under the Chapter are outlined under the attached table (**Attachment 2**). The location specific DCP controls that apply to the site take precedent over Chapter 5.1 controls. The subject site is identified within "area C – Lake Road and subgroup "Area C1 Lake Road South and Supa Centre Complex". The following relevant provisions are identified:

- a. *No access to Wyong Road.*
- b. *Maximum floor space ratio = 0.8:1*

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

- c. *Maximum site coverage (building only) = 50%*
- d. *Council will consider the visual impact of the height, bulk and scale of a proposed building to ensure that a high-quality appearance is achieved, particularly as viewed from Bryant Drive and Wyong Road.*
- e. *Landscaping is to pay particular attention to providing an appropriate scale for the development. Buildings should not dominate the skyline and should include roof lines and facades which provide visual interest and an appropriate sense of scale.*

The proposal is compliant having regard for the above provisions. The buildings are single storey and low scale. Facades provide visual interest and appropriate scale through the provision of public art elements to the façade. These are detailed within the Landscape and Public Domain Design Report by Site Image that has been lodged with the development application.

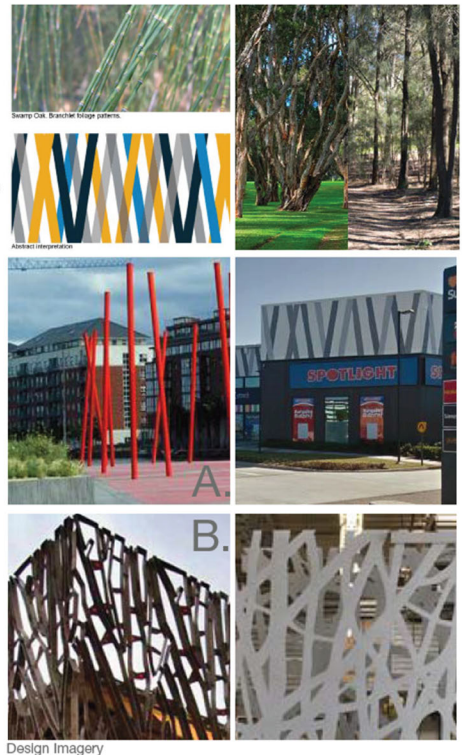
Public Art Strategy



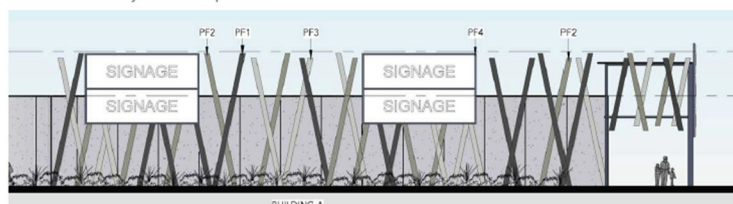
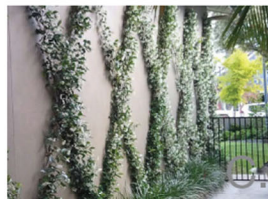
Site Image Public Art Consultants have been established for over 20 years, and have completed over 50 significant public art projects in numerous CBD areas. The Public Art Strategy for this project establishes indicative themes and locations, and outlines materiality and scale - with detailed proposals at CC stage to develop final detailing for proposals.

The repeating motif developed for the Tuggerah Super Centre project was based on Casuarina tree needs overlapping and on the branching structures of Casuarina and Paperbark trees all native to the area.

The proposal is to develop this motif into different 3d forms, with vertical poles, full facade expression with green climbers to Bryant Drive frontage, & as part of the covered walkway facade expression.



B - Covered walkway elevation expression



C - Larger facade expression with projected elements above building parapet, and climbers growing up the structure

**Figure 4 – Extract from Landscape and Public Domain Design Report by Site Image showing façade treatment.**

The development achieves the desired character as stipulated within the DCP to an acceptable degree.

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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**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 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. The proposed development is considered satisfactory with regard to the built environment.

Accessibility

The proposal provides accessible parking spaces that are practical and in accordance with AS/NZS 2890.6 (2009) – “Off-street parking for people with disabilities”. The proposal provides accessible pathways from the street to the building entry and common areas.

Traffic and transport

The development is located on Bryant Drive within a busy business precinct. Key locations for traffic congestion in proximity to the site are Wyong Road in proximity to the Wyong Road/Bryant Drive roundabout, and Bryant Drive.

The applicant has submitted a traffic impact assessment (TIA) by Intersect Traffic. This assessment has looked at the proposed traffic generation of the development in the context of the existing traffic and predicted traffic through to 2029 and has modelled traffic within the immediate surrounding road network including the Wyong Road/Pacific Highway signalised intersection to the west.

The traffic Impact assessment accompanying the application calculates a weekday PM traffic generation of 250 vehicle trips per hour and 254 during the weekend peak.

The traffic modelling of the intersection of Wyong Road and Bryant Drive undertaken by the consultant indicates that the intersection currently operates at a level of service ‘F’ during both the weekday and weekend peak periods. Observations by Council staff and TfNSW have also confirmed that the existing roundabout is currently at level of service ‘F’ in the AM, PM and weekend peaks.

#### **4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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The TIA acknowledges that this development will contribute to the deterioration of the operation of the roundabout, however given that the cost estimate for the development is \$29M and the cost to upgrade the intersection to traffic signals will be in excess of \$30M, it would be unreasonable to expect this development to fully fund the work. The TIA does not recommend any interim mitigation measures; however Council staff consider that any interim treatment would be at too high a cost and would likely become 'throw away work' as signalisation will be required in the near future.

The traffic Impact Assessment also modelled the proposed roundabout at the intersection of Bryant Drive and the proposed development access. The modelling indicated that the roundabout will operate at a level of service A to 2029 with development traffic.

Council's Traffic and Transport Engineer has reviewed the intersection modelling provided by the applicant and has confirmed that the results of the calibrated base model are an accurate indication of the existing traffic conditions at the intersection of Wyong Road and Bryant Drive.

While the increased traffic generated by the proposal will have some impact on the efficiency of the existing Wyong Road/ Bryant Drive roundabout during peak periods, the intersection has already reached capacity due to 25 years of background traffic growth and it would not be reasonable for this development to be required to mitigate the existing intersection condition.

Having regard for the existing traffic situation and the traffic outcomes resulting from the proposed development, the proposal is considered acceptable.

A further detailed summary of the Transport for NSW comments and the traffic impact assessment is included in the Transport for NSW discussion below.

##### Internal access and parking

Parking for the site is generally located within the centralised parking location that is surrounded by the large plate commercial tenancies. An additional parking area is located fronting Lake Road. The DCP requires 224 spaces for the specialised retail premises component and 9 service spaces. Additionally, the DCP requires 100 spaces for the food and drink premises on the site. The combined parking requirement for the proposal is 324 spaces. The proposal provides a total of 389 parking spaces, which is in excess of the DCP requirement and in this regard does not rely upon street parking. The proposal contains adequate manoeuvring for delivery and service vehicles. Council's development engineer has undertaken an assessment of the dimensions and manoeuvring of the spaces and is satisfied.

Suitable access is to be achieved via a new roundabout fronting Bryant Drive, a new driveway fronting Lake Road, a heavy vehicle entry only driveway from Bryant Drive and an existing exit only driveway fronting Bryant Drive.

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use  
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The Lake Road parking area contains 48 car parking spaces and includes tree planting areas, lighting, acoustic fencing and boom gate access. This parking area also serves as the access for large trucks entering the site. Directly adjoining this area on either side are residential dwellings that have existing use rights within the zone. Given that the area is in transition to fulfillment of the uses identified in the B5 zoning, additional amenity considerations are warranted for this parking area.

In order to achieve an appropriate outcome that does not encourage antisocial behavior or security concerns for neighbouring properties, the area is to be secured by solid acoustic fencing and boom gates to limit vehicular access. The parking spaces are in excess to the required spaces of the uses as stipulated by the DCP, and in this respect are to have limited access via the boom gates for trucks and staff vehicles only. Conditions of consent regarding limits on vehicle access have been imposed (conditions of consent **6.20, 6.21** and **6.22**). Additionally, lighting is to be installed within the area to ensure the area achieves appropriate safety and limits opportunities for antisocial behavior. This is particularly important as the area does not benefit from passive surveillance from within the centre. A condition of consent relating to the proposed lighting and requiring CCTV camera surveillance of the area is proposed (condition of consent **5.7**).

Acoustic amenity for the neighbouring residential properties shall be achieved via an acoustic rated boundary fence that is a minimum of 2.1 metres in height above the finished level of the car park and driveway, and additionally through conditions of consent that limit truck movements during the "night time" noise criteria (conditions of consent **5.10 6.21**, and **6.22**). The landscape plan indicates that *Tristanopsis laurina* water gum will be planted within the car park area. These are a native species related to eucalypts and will grow from 5m to 15m in height depending upon the growing conditions. The tree planting is considered appropriate in the location proposed.

External works and road infrastructure

The development will necessitate the completion of road infrastructure in accordance with the relevant provisions of Council's Civil Works Specification Design Guidelines. Conditions have been recommended below requiring the provision of a new roundabout, (Bryant Drive), minor existing driveway widening (Bryant Drive), heavy-duty driveway crossings (Bryant Drive & Lake Road), stormwater pit upgrade (Lake Road), removal of the redundant driveway crossings (Bryant Drive & Lake Road), pram ramp relocation, new pram ramps, pedestrian refuge relocation, new pedestrian refuges and regulatory signage relocation in the frontage road reserves.

The potential for the new roundabout to obstruct likely through traffic (including semi-trailers and truck and dog) has been considered and found to be acceptable. Additionally, possible interim traffic safety measures that might be employed to Bryant Drive in future have been considered, to ensure the roundabout does not obstruct achievement of future traffic improvements, should they be necessary.

#### **4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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A Road Safety Audit is required in accordance with Section 3.12 from Council's Civil Works Specification Design Guidelines to ensure the safety of all road users. This audit is generally carried out in conjunction with advanced Construction Certificate issue plans.

The applicant's submitted traffic report concludes that the proposed development will not have an adverse impact upon the surrounding road network, and this position has been reviewed and is supported by Council's Traffic & Transportation Engineer.

#### Drainage

The revised proposal seeks to direct stormwater to Lake Road, Bryant Drive and the rear of the site. Stormwater runoff is intended to be managed in the following manner:

- Catchment 1A – Bryant Drive North – Stormwater piped to Bryant Drive via OSD and water quality measures.
- Catchment 1B – Bryant Drive North – Stormwater piped to Bryant Drive via water quality measures. This will bypass the proposed OSD system in Catchment 1A.
- Catchment 2 – Bryant Drive South – Stormwater piped to Bryant Drive via water quality pit inserts. Additional stormwater runoff will be directed to Lake Road (0.44 ha). This arrangement cannot be avoided due to the flat grade through the site.
- Catchment 3 – Lake Road - Stormwater piped from carpark areas to Lake Road via water quality pit inserts. Concern is noted from an adjoining property regarding this arrangement. When compared to the existing scenario, a formal piped drainage system to Lake Road as well as a formal piped system proposed as part of the development will provide a significantly improved outcome.
- Catchment 4 – Drainage Channel – Stormwater piped to the northern drainage channel system.
- Catchment 5 – EEC – Outlet discharge headwall mimicking existing flows

An on-site stormwater detention and drainage system will be required to control the rate of runoff leaving the site (to the street drainage system). The detention system is to be designed to attenuate post developed flow rates to predevelopment flow rates for a full range of storm durations for the 5, 20 and 100-year average reoccurrence interval (ARI) design storms.

With the reconstruction of Lake Road and the associated drainage system, the lots fronting Lake Road can drain to the Lake Road system. Connection points at the rear of the lots to the trunk drainage system are also being provided to further assist with any potential drainage issues.



**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

Water and sewer

Water supply is available from Bryant Drive via an existing 150mm asbestos cement pipe. Council's existing system is adequate to provide water supply to the proposed development.

The proposed roundabout will necessitate the replacement and relocation of the existing asbestos cement water mains from the new pavement area. The applicant will be required to provide detailed design plans with the application for a 307 (*Water Management Act 2000*) approval, to determine suitable requirements for protecting existing asbestos cement 525mm water trunk main. (Conditions of consent **2.13** and **2.14**)



**Figure 5: Water Supply Arrangements**

The site is currently connected into Council's sewer network. An existing gravity sewer line traverses the proposed development site. Sufficient capacity exists in Council's sewerage network for the proposed development.

4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)

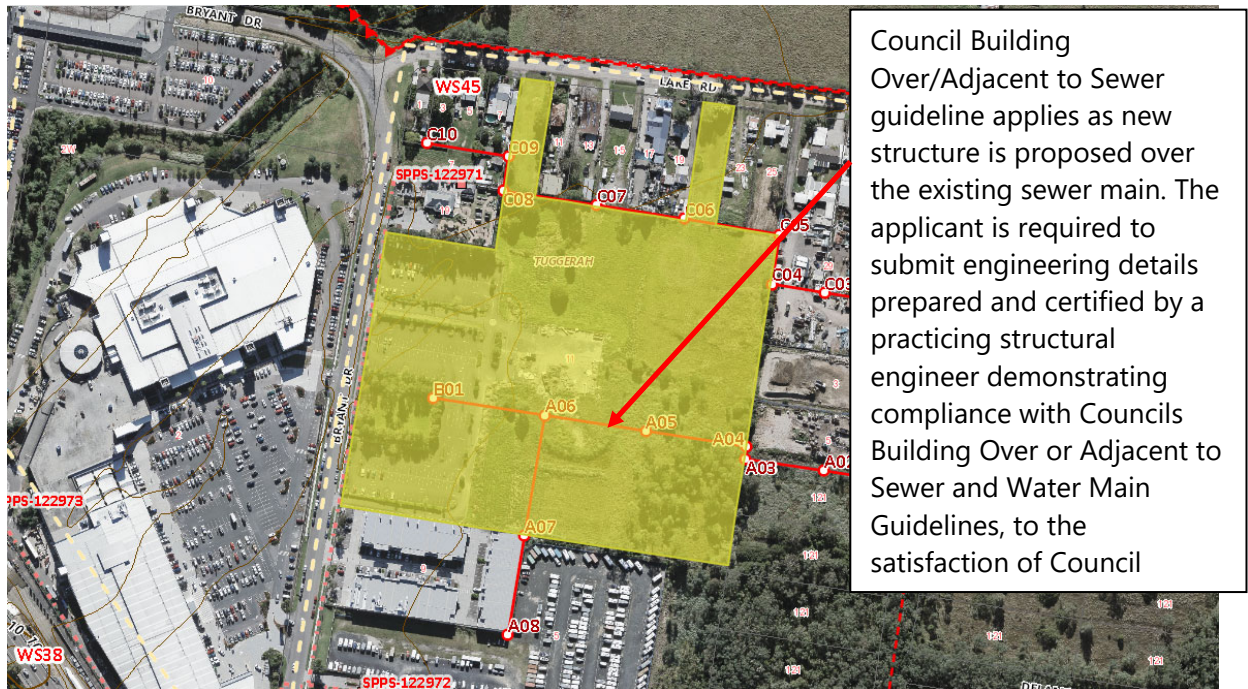


Figure 6: Sewerage Arrangements

Council Building Over/Adjacent to Sewer guideline applies as new structure is proposed over the existing sewer main. The applicant is required to submit engineering details prepared and certified by a practicing structural engineer demonstrating compliance with the guidelines. Any proposed adjustments to Council's sewerage assets will require a detailed design to be prepared by the applicant and submitted to Council for approval prior to the issue of the Construction Certificate. This is reflected in conditions of consent **2.13**, **2.14** and **2.15**.

Waste disposal

The floor plans for Buildings A, B and C include indicative waste storage areas. Sufficient area exists within the food pads for waste areas commensurate with a food premises. The amended plans demonstrate that while the waste storage areas are located within the buildings, the servicing (collection) of these will be carried out externally. This will involve the tenants transferring their waste to the collection area at the rear of each building for collection. Building C has an external waste storage area. The applicant has amended the plans to indicate that the area will be screened. All waste collection areas can be serviced by a heavy rigid vehicle.

Waste volumes have been provided by the applicant having regard for the waste volumes of the operation of the Supa Centre directly opposite the site and operated by the applicant. This is an appropriate indicator given the size, and similar type operators anticipated for the proposed centre. The waste management plan submitted with the application reflects these volumes.

#### **4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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The site currently includes a bottle and can recycling "return and earn" facility along the Bryant Drive frontage. It is proposed to relocate this facility further south, behind food pad 2. This will improve the acoustic impact to nearby residential properties that has been expressed in public submissions. The return and earn facility will operate between 7am and 10pm 7 days a week. In this regard, the facility does not operate during the nighttime noise criteria. A condition of consent for the operation of the facility has been imposed (condition **6.19**). Additionally, this condition limits collection times to outside of the nighttime noise criteria, excluding collection between 10pm and 7am.

##### Locality and streetscape

The proposal, subject to conditions of consent regarding ongoing operation and management, will not adversely impact on the character and amenity of the locality and streetscape. The proposal will result in a change to the character of the area that is consistent with the gradual transition of the area to achieve the outcomes anticipated by the B5 zoning. The scale, form, character and density of the development is considered acceptable within the locality given the B5 zoning of the site.

The proposal involves the development of an area undergoing transition to achieve the large floor plate commercial outcomes identified for this precinct in Tuggerah. Conditions of consent have been placed to limit amenity impacts to residual residential uses within the area, to the extent that they are directly related to the proposed development.

##### Privacy and boundary treatments

The nearby dwellings to the north of the site are the most sensitive of potentially affected neighbouring properties that are most likely to be impacted by the development. These dwellings are located within an area that is undergoing transition, and as a result some short-term impacts may result. These properties have a B5 zoning, are not isolated sites, benefit from future amalgamation and are to a large degree unencumbered in a manner that would enable them to be redeveloped in the future consistent with the anticipated uses of the zoning.

The proposal has been assessed having regard for the interim scenario that requires the development to respond to the existing land uses in the area and provides for transitional mid-term amelioration of impacts. The proposal includes large vehicle manoeuvring, loading docks (to service reverse alarm vehicles) and car parking on top of areas of as much as 1.4 metres fill up to the common property boundary with residential neighbours. It is considered that the proposal will need to ameliorate these impacts through the provision of the following measures:

- Solid acoustic attenuating fencing of at least 2.1 metres in height above the finished ground level directly adjoining the north boundary.

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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- Restricted access (via boom gate) to the northern car park that is only limited to staff vehicles and service trucks. The boom gate is always to be closed and accessed electronically as required for the above identified vehicles.
- Lighting and CCTV surveillance of the car park is to be provided
- Landscaping and tree planting is to be provided consistent with the landscape plan.

These measures are required by conditions of consent **5.5, 5.7, 5.8, 5.9, 5.10, 5.13, 6.21, 6.22** and **6.23**).

Overshadowing

Being located on the southern side of existing residential neighbours, the development is unlikely to result in any shadow impact of significance to neighbouring properties.

Air quality

Dust suppression and control during demolition, earthworks and construction can 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

The impacts to adjoining properties as a result of the proposed development has been considered in the assessment of the application. The closest noise sensitive receptors are residential dwellings located on the Lake Road on the northern boundary of the property. Parking and site access are proposed adjacent to No. 7 and 11 Lake Rd. Loading zones are also proposed adjacent to residential lots on Lake Road.

The applicant has addressed the noise impacts to neighbouring properties by the provision of an acoustic fence of at least 2.1 metres, limiting access to the car park area on Lake Road, and locating the return and earn recycling facility as far as possible from residential properties.

In addition to these measures which are enforced via conditions **5.10, 6.19, 6.20** and **6.22**, the following additional measures are proposed to be imposed via conditions of **consent 6.19, 6.20, 6.21 and 6.22**:

- 1 The return and earn facility is limited in operation so that it is unavailable and does not have any collection or servicing during night time noise restriction hours of 10pm to 7am.

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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- 2 The Lake Road service truck access and access to the Lake Road car park for all vehicles is to be restricted so that access into the area via the boom gate is unavailable during nighttime noise restriction hours of 10pm to 7am.
- 3 The development is not to be serviced by truck deliveries or collections between the hours of 10pm and 7am.
- 4 An acoustic report to be prepared by a suitably qualified acoustic consultant that details the predicted noise levels to be emitted from the proposed development and any required noise attenuation measures to be implemented to demonstrate that offensive noise as defined by the Protection of the Environment Operations Act 1997 will not be caused onto neighbouring residential properties.
  - The report should consider noise sources which include but are not limited to:
    - Vehicle movements
    - Boom gate
    - Loading docks
    - Waste collection including the bottle recycling facility (conditions of consent **2.19** and **5.5**)
- 5 The operation of all plant (including rooftop and all mechanical ventilation) in combination is 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 (condition of consent **6.24**).

Having regard for the above, Council's Environmental Health Officer has reviewed the proposal and advises that the above measures should ensure that the development achieves acceptable acoustic amenity for adjoining properties.

Safety, security and crime prevention

The principles of Crime Prevention Through Environmental Design (CPTED) have been considered within the design of the proposed new development. The applicant has included a CPTED assessment with the development application.

The design has appropriate regard for the principles of CPTED through employment of the following strategies:

- Surveillance – casual surveillance is achieved through the varied uses on the site that ensures that tenants are active in surveillance, and the site does not rely on passing surveillance from the street. The Lake Road car park is to have CCTV surveillance installed as required via condition of consent **5.7** and **6.25**.

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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- Access control – all internal spaces are capable of maintaining controlled access. The Lake Road car park which has limited casual surveillance will have boom gated access and lighting is proposed.
- Space management – the proposal will be managed by a caretaker and will ensure appropriate management of common areas.

Having regard for the principles of CPTED and safer by design, the proposal adequately discourages anti-social behaviour and minimises the opportunities for criminal activities.

Isolation of sites and future development potential of adjoining sites

The assessment of the application has included an assessment for the potential isolation or constraint of development potential of adjoining sites to either side of the proposed development on Lake Road. These lots are zoned B5 Business Development.

The application has been assessed having regard for whether the development proposed prevents or impacts the likely amalgamation of adjoining sites and whether orderly and economic use and development of the separate sites can be achieved. In this instance, six sites to the north west of the subject site could be amalgamated for future development. The adjoining five sites to the north east could also achieve development of a scale consistent with the B5 Business Development zoning upon amalgamation.

4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)



Figure 7: aerial image showing site (blue) and opportunities for amalgamation of adjoining lots (orange)

Overall built environment impacts

The proposal will be subject to a number of conditions of consent that will ensure that the proposal does not result in a significant adverse impact on the amenity of the locality and streetscape. The scale, form, character and density of the development are acceptable within the locality and the B5 zoning.

A thorough assessment of the proposed development's impact on the built environment has been undertaken having regard for the provisions of WLEP 2013 and WDCP and built environment impacts are considered reasonable within the context of the site.

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use  
Development comprising Specialised Retail Premises, Signage and Food  
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Natural environment

The proposal will not result in a significant impact upon the natural environment beyond that anticipated in the development of the site consistent with the zoning. The following further detail is provided:

Flooding

The site is located within the *Tuggerah Industrial Catchment* and Council's records indicate that the site is affected by flooding and minimum floor level requirements. The 1% AEP flood extent is identified as 3.8m AHD

The proposed commercial buildings have a ground floor level at or above 4.8m AHD. This is above the 1% AEP level and satisfies the design requirements outlined in *Chapter 3.3 Floodplain Management of Council's Development Control Plan 2013*.

During the assessment, the Applicant submitted additional flooding information that details how the development intends to manage the overland flows created in the 1% AEP event, a Flood Impact Assessment Report and a Water Cycle Management Plan.

The site is identified as part of a broader storm water strategy for the area within the Wyong District Development Contributions Plan. The plan specifies that the site is subject to a 20 metre wide open trapezoidal and vegetated channel. The applicant has proposed an alternative drainage scheme within the part of the lot being developed that comprises a closed stormwater system containing reinforced box culverts.

The system is designed for the 1% AEP extent with a 50% blockage factor applied for the underground system and a 25% inlet blockage for the secondary flowpath conveying overtopped stormwater from Bryant Drive (traverses through 19-21 Bryant Drive Tuggerah). The enclosed system will be private infrastructure. Council's Floodplain Management and Asset Management sections have been consulted as to the alternative and raise no objections. Conditions outlining the above have been included within conditions of consent **2.7, 5.19, 5.20, 5.22, 5.23, 5.24 and 5.25**.

Vegetation impacts and water quality

The direct ecological impacts are anticipated to be minimal as the proposal is in an area of mostly cleared land with exotic grasses, a small number of scattered trees and high levels of weed infestation.

Vegetation in the south-eastern corner of the site comprises Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community (EEC) and includes the threatened plant species *Melaleuca biconvexa*. The EEC areas on the site have not been surveyed for



**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use  
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*Melaleuca biconvexa*, and consequently the presence on the site is not acknowledged in the EAR other than being "likely to occur" in the EEC area. Council's Ecologist can confirm the species has been recorded on the site within the EEC.

The potential for direct and indirect impacts to the EEC are dependent on the stormwater management system and the ability of the system to maintain flow regimes and water quality to the EEC area.

The applicant's proposed alternate stormwater management system proposes to discharge water from part of the development (Catchment 5) to the EEC. The Water Cycle Management Plan and site regrading plans have been updated to propose additional measures to maintain pre-development flow regimes and water quality to the EEC area.

The application documentation has 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.

Ecological impact mitigation measures

The site contains the endangered ecological community Swamp Sclerophyll Forest and *Melaleuca biconvexa*. In order to mitigate impacts of the development on this community and threatened species, a Vegetation Management Plan (VMP) is required for the areas of the site that are not developed. Although requested from the applicant, this information has not been provided. As such a condition is recommended for the VMP to be provided for approval by Council prior to works commencing (condition of consent **3.6**). The VMP is to include measures for weed and litter control.

The site currently has a high weed load, and as recognised in the Environmental Assessment Report (EAR) as there is a high potential for weeds to be spread during site works. Weed control measures will be conditioned and form part of the VMP.

Section 13 of the EAR submitted by the applicant makes a number of recommendations in relation to the site. The implementation of these recommendations has been conditioned (conditions of consent **3.8** and **4.9**):

- Secure fencing should be erected between the proposed work and the EEC on eastern boundary.
- Required clearing supervised by a suitably experienced Ecologist. Any displaced native fauna should be taken into care and dealt with appropriately.
- Landscape tree plantings to use of species of the surrounding vegetation community where possible.
- Best practice erosion and sedimentation controls.

#### **4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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- Equipment should be cleaned thoroughly and disinfected before entering site to prevent weed and disease introduction.

Having regard for field surveys, habitat assessments and impact assessments and the conditions of consent, Council's Ecologist has concluded that the proposed development is not likely to have a significant impact on any threatened species, populations or ecological communities, or their habitats, which are listed under the *Biodiversity Conservation Act 2016*. The proposed development does not trigger the Biodiversity Offsets Scheme.

##### Acid sulfate soils

As previously discussed, the site is identified as containing Class 3 and Class 4 on the Acid Sulphate Soils (ASS) Planning Map. The area of the site that is subject to development under this development application is identified as Class 4. The clause requires the consideration of the need for an acid sulphate soils management plan where works are more than 2 metres below the natural ground surface or works by which the watertable is likely to be lowered more than 2 metres below the natural ground surface. The proposal, which is predominantly located upon fill, does not include works that generate the need for an acid sulfate soils management plan.

Generally, having regard for the matters raised above, the development application has included sufficient information to address impacts on the natural environment.

##### Economic impacts

The development is likely to result in positive economic impacts through the provision of employment generation for the construction of the building and ongoing for the use of each tenancy of specialised retail premises within an area identified for such uses.

##### Social impacts

The development is consistent with the anticipated outcomes for the zoning of the area. The development is considered acceptable having regard for likely social impacts upon the area.

All other relevant issues regarding the likely impacts of the development have been discussed throughout this report. In general, it is considered that the property is suitable for the proposed development subject to conditions.

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

The site is situated within a precinct that has been identified for a mix of business and warehouse uses and specialised retail premises that are close to, and that support the viability of, the primary office and retail functions of Zone B2 Local Centre and Zone B3 Commercial Core. The site is located within an area that has been established consistent with this purpose,

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use  
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in proximity to the Tuggerah Business Park and retail centre. The site is well serviced by public transport via Tuggerah railway station and bus interchange.

The site is located within an area that is undergoing transition and includes some low-density residential dwellings. The development is one storey in height and compatible with surrounding development that has responded to the B5 Business Development zoning and is considered consistent with the planned future character of the area.

The design of the proposed development is in an appropriate form, layout and scale that suitably balance the opportunities and constraints of the site. There are no significant site constraints or hazards that would render the location of the development as unsuitable. The building form is compatible with the streetscape and will not adversely impact on the character and amenity of the locality having regard for the intended purposes identified by the zoning.

**Submissions**

The application was notified between 18 June 2019 and 2 July 2019 and as a result of subsequent amended plans the application was re-notified between 29 May and 19 June 2020 in accordance with DCP 2013 – Chapter 1.2 Notification of Development Proposals with two submissions received. The general issues raised in relation to the proposal are included below:

- *Noise impacts as a result of location of car park, movement of trucks, collection of garbage, return and earn facility operation*

Comment:

The impacts to adjoining properties as a result of the proposed development has been considered in the assessment of the application. The closest noise sensitive receptors are residential dwellings located on Lake Road on the northern boundary of the property. Parking and site access are proposed adjacent to No. 7 and 11 Lake Rd. Loading zones are also proposed adjacent to residential lots on Lake Road.

The applicant has addressed the noise impacts to neighbouring properties by the provision of an acoustic fence (at least 2.1 metres high), limiting access to the car park area on Lake Road, and locating the return and earn recycling facility as far as possible from residential properties.

In addition to these measures which are enforced via conditions of consent **5.10, 6.20, 6.21** and **6.22**, the following additional measures are proposed to be imposed via conditions of consent **2.19, 5.4, 5.5, 6.19, 6.20, 6.21, 6.22, 6.23, 6.24, 6.25**:

- 1 The return and earn facility is limited in operation so that it is unavailable and does not have any collection or servicing during night time noise restriction hours of 10pm to 7am.

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- 2 The Lake Road service truck access and access to the Lake Road car park for all vehicles is to be restricted so that access into the area via the boom gate is unavailable during night time noise restriction hours of 10pm to 7am.
- 3 The development is not to be serviced by truck deliveries or collections between the hours of 10pm and 7am.
- 4 An acoustic report to be prepared by a suitably qualified acoustic consultant that details the predicted noise levels to be emitted from the proposed development and any required noise attenuation measures to be implemented to demonstrate that offensive noise as defined by the *Protection of the Environment Operations Act 1997* will not be caused onto neighbouring residential properties.
  - The report should consider noise sources which include but are not limited to:
    - Vehicle movements
    - Boom gate
    - Loading docks
    - Waste collection including the bottle recycling facility
- 5 The operation of all plant (including rooftop and all mechanical ventilation) in combination is 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.

Having regard for the above, Council's Environmental Health Officer has reviewed the proposal and advises that the above measures should ensure that the development achieves acceptable acoustic amenity for adjoining properties.

- *Drainage concerns as a result of fill and retaining walls, redirection of storm and flood water, incorrect catchments*

Comment:

Future development of the adjoining lots will require them to be filled to similar levels to the proposed development in accordance with the Contributions Plan. In the interim the Applicant/Developer is proposing to provide drainage connection points for the lots to connect to the trunk drainage system proposed with the development.

- *Privacy and security concerns from car park and commuter use*

Comment:

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The nearby dwellings to the north of the site are the most sensitive of potentially affected neighbouring properties that are most likely to be impacted by the development. The proposal has been assessed having regard for the interim scenario that requires the development to respond to the existing land uses in the area and provides for transitional mid-term amelioration of impacts.

The proposal includes large vehicle manoeuvring, loading docks (to service reverse alarm vehicles) and car parking on top of areas of as much as 1.4 metres fill up to the common property boundary with residential neighbours. It is considered that the proposal will need to ameliorate these impacts through the provision of the following measures:

- Solid acoustic attenuating fencing of at least 2.1 metres in height above the finished ground level directly adjoining the north boundary.
- Restricted access (via boom gate) to the northern car park that is limited to staff vehicles and service trucks at all times. The boom gate is to be closed at all times and accessed electronically as required for the above identified vehicles.
- No vehicular entry access via the boom gates between the hours of 10pm and 7am.
- Lighting and CCTV surveillance of the car park is to be provided
- Landscaping and tree planting is to be provided consistent with the landscape plan.

This will prevent the use of the carpark by commuters. These measures are required by conditions of consent **5.8, 5.9, 5.10, 6.20, 6.21** and **6.22**).

- *Excessive car parking*

Comment:

The applicant has proposed the car park on Lake Road as a staff car park. The amelioration measures identified for the car park on Lake Road will result in an acceptable outcome that is consistent with the planning outcomes derived from the B5 zoning.

- *Habitat for green and golden bellfrogs*

Comment:

A revised Ecological Assessment Report (EAR) by Andersen Environment and Planning dated March 2020 was submitted. The revised report included additional targeted surveys for the Green and Golden Bell Frog that were undertaken after rainfall in January and February 2020.

The Revised EAR states that targeted frog surveys were undertaken on 17 January 2020 after approximately 29mm of rainfall and on 17 February 2020 after approximately 22mm of rainfall.

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There was also significant rain between the 7 to 10th February 2020, and Green and Golden Bell Frogs were known to be calling at Avoca during that week.

The surveys are sufficient to conclude the species is unlikely to occur on the site.

#### Submissions from Public Authorities

##### Transport for NSW

The proposal does not constitute Traffic Generating Development as set out in Schedule 3 of SEPP (Infrastructure) 2007, however, the application was referred to Transport for NSW (TfNSW) given the proximity of the development to the arterial traffic network. TfNSW have responded with the following comments:

- *The TIA demonstrates that the average delay and queue length (95th percentile) at the Wyong Road and Bryant Drive roundabout in 2029 weekday (PM) and 2029 (PM) weekend doubles and the level of service deteriorates from LoS D to LoS F with development traffic. TfNSW considers that the proposed development reduces serviceable life of the intersection to such an extent that within the 10-year horizon upgrades will need to be brought forward.*

Council response:

While it is agreed that this development will contribute to delays at this intersection it is already at or near capacity due to background traffic growth.

- *As such, it is considered there is a demonstrable nexus between the development and the deterioration of this intersection to the point where additional work will be required. However, the TIA fails to acknowledge this, and to identify mitigation measures to address the potential development impacts.*

Council response:

The TIA acknowledges that this development will contribute to the deterioration of the operation of the roundabout, however given that the cost estimate for the development is \$29M and the cost to upgrade the intersection to traffic signals will be in excess of \$30M, it would be unreasonable to expect this development to fully fund the work. The TIA does not recommend any interim mitigation measures, however Council staff consider that any interim treatment would be at a high cost and would likely become 'throw away work' as signalisation will still be require in the near future.

- *TfNSW highlights that there is currently no State funding commitments for any upgrade works at the Wyong Road/Bryant Drive roundabout. All works having nexus with the subject development shall be undertaken at full cost to the*

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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*developer and at no cost to TfNSW or Council, and to TfNSW and Council requirements.*

Council response:

Council's current contributions plan collects funds that are attributed to the construction of the existing roundabout which was undertaken approximately 25 years ago. The traffic assessment at the time would have estimated that the intersection would have a design life of approximately 20 years. It is not feasible for Council to seek contributions from the few remaining development sites to further fund an intersection that has already been funded by developer contributions. Council's contributions staff have also advised that Council no longer collects funds for works on Classified roads due to the excessive cost and the need for a focus on upgrading local road infrastructure through development.

- *TfNSW raises concern regarding the cumulative traffic impact of the subject development, and other proposed/approved developments accessed by Bryant Drive and Lake Road, on the operation of Wyong Road/Bryant Drive roundabout. As such, shared contributions framework for this development and other developments to contribute to required upgrade works is a matter for Council to consider and initiate as the relevant planning authority.*

Council response:

As identified above, Council has an existing contributions plan that includes funding of the Bryant Drive/Wyong Road roundabout. These works have already been undertaken. Any further necessary funding of upgrading of the state network will need to occur via a state government funding mechanism. Meetings held with TfNSW have identified that TfNSW are currently preparing a Tuggerah Integrated Transport Plan that will form the basis for future upgrade of the intersection.

*TfNSW recommends that the following matters should be considered by Council in determining this development:*

- *TfNSW has no proposal that requires any part of the property.*
- *It is noted the proposed development represents a large percentage increase in the amount of traffic entering and exiting Bryant Drive. TfNSW is also aware that a five lot industrial subdivision development application (DA/1005/2020) at 25-27 Bryant Drive proposes to use Bryant Drive to access the site.*

Council response:

DA/1005/2020 has been approved, however the traffic impact identified as part of the subdivision is limited to construction traffic. Consultation with TfNSW over that DA has

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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identified the need for a comprehensive Construction Traffic Management Plan in order to ensure the safety of the roundabout at the corner of Bryant Drive and Wyong Road. This requirement has also been applied to the subject development (condition of consent **3.12**). The applicant has undertaken further traffic studies including 'back of queue' assessment (Traffic and Parking Assessment, Intersect Traffic, June 2021). This further detailed assessment indicates:

- The Traffic Impact Assessment accompanying the application calculates a weekday PM traffic generation of 250 vehicle trips per hour and 254 during the weekend peak.
- During peak hours 50% of trips will be inbound and 50% will be outbound;
- Traffic will be split 50%:50% from and to Wyong Road east and west, respectively;
- 90% of traffic will utilise the new roundabout access to enter the site while 10% of traffic will utilise the Lake Road access for entry to the site;
- 80% of traffic will exit the site via the new roundabout access, 10% will exit the site via Lake Road and 10% of traffic will exit via the exit only access to Bryant Drive.
- With approximately three vehicle deliveries occurring during peak traffic periods and with a delivery vehicle split of 80% heavy rigid vehicles or smaller and 20% semi-trailers there will be two deliveries via the new service vehicle access in Bryant Drive in the peak traffic periods.

The traffic modelling of the intersection of Wyong Road and Bryant Drive undertaken by the consultant indicates that the intersection currently operates at a level of service F during both the weekday and weekend peak periods. Observations by Council staff and TfNSW have also confirmed that the existing roundabout is currently at level of service F in the AM, PM and Weekend peaks.

The TIA acknowledges that this development will contribute to the deterioration of the operation of the roundabout, however given that the cost estimate for the development is \$29M and the cost to upgrade the intersection to traffic signals will be in excess of \$30M, it would be unreasonable to expect this development to fully fund the work. The TIA does not recommend any interim mitigation measures, however Council staff consider that any interim treatment would be at too high a cost and would likely become 'throw away work' as signalisation will still be required in the near future.

The traffic Impact Assessment also modelled the proposed roundabout at the intersection of Bryant Drive and the proposed development access. The modelling indicated that the roundabout will operate at a level of service A to 2029 with development traffic.



**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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Council's Traffic and Transport Engineer has reviewed the intersection modelling provided by the applicant and has confirmed that the results of the calibrated base model are an accurate indication of the existing traffic conditions at the intersection of Wyong Road and Bryant Drive.

While the increased traffic generated by the proposal will have some impact on the efficiency of the existing Wyong Road/ Bryant Drive roundabout during peak periods, the intersection has already reached capacity due to 25 years of background traffic growth and it would not be reasonable for this development to mitigate the exiting intersection condition.

- *TfNSW recommends Council ensure the capacity, accessibility and safety of Bryant Drive is not compromised by the traffic generated by this development and other proposed/approved developments accessed from Bryant Drive and Lake Road.*

Council response:

The Traffic Impact Assessment accompanying the application calculates a weekday PM traffic generation of 250 vehicle trips per hour and 254 during the weekend peak.

The traffic Impact Assessment also modelled the proposed roundabout at the intersection of Bryant Drive and the proposed development access. The modelling indicated that the roundabout will operate at a level of service A to 2029 with development traffic.

Council's Traffic and Transport Engineer has reviewed the intersection modelling provided by the applicant and has confirmed that the results of the calibrated base model are an accurate indication of the existing traffic conditions at the intersection of Wyong Road and Bryant Drive.

- *Council should ensure that the proposed internal and external road work provides an efficient and safe access for public transport, pedestrians and bicycles and ensure alignment with the overall vision outlined in the draft Tuggerah to Wyong Economic Corridor Strategy.*

Council response:

The draft Tuggerah to Wyong Economic Corridor Strategy identifies the following vision for Tuggerah:

- |  |
|--|
| <ul style="list-style-type: none"><li>• <i>Tuggerah will continue to provide employment, destination retail and transport opportunities.</i></li></ul>   |
| <ul style="list-style-type: none"><li>• <i>The precinct will maintain and improve its employment lands and continue to offer an attractive place for business to locate close to regional road and rail transport.</i></li></ul> |

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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- Improved public domain connections to the train station will maximise the benefits of this important piece of public infrastructure whilst opportunities for future transport oriented development will be encouraged.*

The development caters for pedestrian movements both within the development and at the Bryant Drive frontage of the site.

- TfNSW is aware Council is currently upgrading the intersection of Bryant Drive and Lake Road. TfNSW recommends Council to ensure that necessary intersection augmentation works are implemented in the future to cater for additional traffic, pedestrian and cyclist movements generated by proposed and approved developments in the area.*

Council response:

The proposed upgrading of the intersection of Lake Rad and Bryant Drive will be designed to cater for additional traffic and pedestrian and cyclist movements.

- TfNSW is currently undertaking preliminary investigations to identify an appropriate land for constructing a commuter car park (additional 220 spaces) in the vicinity of Tuggerah railway station.*

Council response:

Council has considered the proposed roundabout on Bryant Drive in the context of likely future local upgrades to Bryant Drive to accommodate through traffic for Bryant Drive and Lake Road.

- As part of the proposed Tuggerah Integrated Transport Plan, TfNSW will work with Council to identify network demands and infrastructure needs within the study area.*

Council response:

Council will provide comment within the consultation process on the proposed transport plan.

- Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.*

Council response:

A comprehensive Construction Traffic Management Plan in order to ensure the safety of the roundabout at the corner of Bryant Drive and Wyong Road will be required via conditions of consent **3.12, 3.14**.

- Council should have consideration for appropriate sight line distances in accordance with Section 3 of the Austroads Guide to Road Design Part 4A (Unsignalised and*

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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*Signalised Intersections) and the relevant Australian Standards (i.e. AS2890:1:2004) and should be satisfied that the location of the proposed driveway promotes safe vehicle movements*

Council response:

The TIA has addressed sight distance in accordance with AS 2890.1 – 2004.

**Internal Consultation**

The application has been referred to and reviewed by the following experts in council and is generally supported subject to conditions of consent.

Environmental Health	Supported with conditions including 2.13, 2.14, 5.4, 5.5, 6.24, 6.25.
Ecology	Supported with conditions including 3.4 - 3.8, 4.6 - 4.11, 5.2, 5.3, 6.2.
Engineering	Supported subject to conditions.
Engineering – Traffic and Transport	Supported subject to general conditions.
Water and Sewer	Supported subject to conditions including 2.13, 2.14, 2.15
Waste Services	Supported subject to conditions including 4.12, 4.16, 6.3 - 6.10 ,
Contributions	Supported with conditions including 2.17

**The Public Interest**

The proposal, which provides specialised retail premises within an area identified within the local planning controls for that purpose, will not detract from the main retail centres, and provides employment and business opportunities that will cater for the demand of the local community, is in the local and broader public interest.

**Ecologically Sustainable Principles**

The proposal has been assessed having regard to ecologically sustainable development principles and it is considered that the development adequately demonstrates that it is consistent with the principles.

The proposed development demonstrates 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.

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use  
Development comprising Specialised Retail Premises, Signage and Food  
and Drink Premises (contd)**

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**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

The application falls under Wyong District s7.11 Contributions Plan. The following contributions are applicable:

Tuggerah Industrial estate stage 3 drainage land & works  
Tuggerah Industrial Estate drainage – segment D  
Roads – Wyong Rd/Bryant Dr/Pacific Hwy/ Cobbs Rd  
Roads – Tuggerah Industrial Estate stage 3

The contributions have been calculated based on a total net developable area (NDA) of 3.55 ha. Only part of the proposed development (2.21ha) is within the drainage scheme for segment D, and that specific contribution has been calculated on that basis.

The total s7.11 contributions are \$659,075.13. The contributions are indexed by CPI quarterly and are required to be paid prior to the release of the Construction Certificate (condition of consent **2.17**).

Contributions infrastructure

The current adopted drainage strategy for the area is identified in Figure 16 from Wyong District Development Contributions Plan. Stormwater for this catchment is to be directed to the east, via stormwater management / water quality facilities. The contributions plan includes the provision of drainage over the site.

The development of other sites in the area (particularly in Maroomba Avenue and Church Road) have been undertaken having regard for and in accordance with this strategy and the contributions plan, particularly the filling of land and the provision of drainage easements.

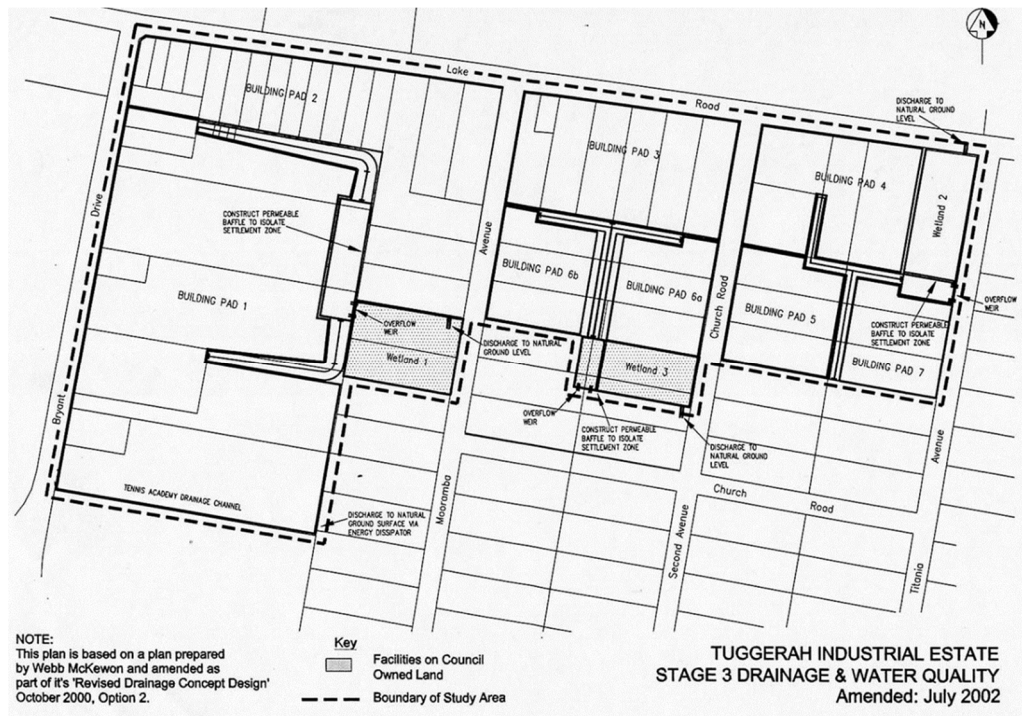
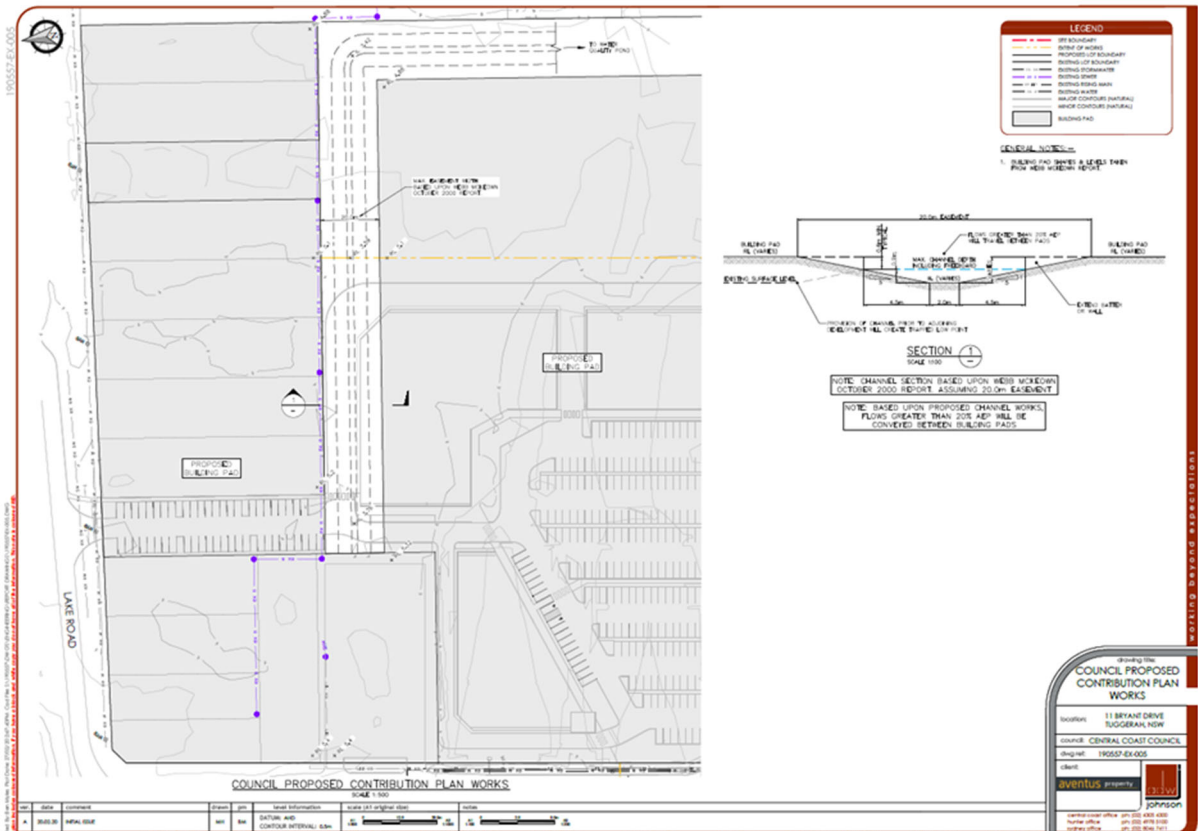


Figure 8: Extract of the contributions plan showing Figure 16 (drainage strategy)

The drainage scheme adopted by the contributions plan requires an open drainage channel. The plan is informed by the Tuggerah Station Industrial Area Revised Drainage Concept Design prepared by Webb McKeown & Associates dated October 2000 Technical Report 1991 Tuggerah Industrial Area Stage 3 )ct 2000)- Tuggerah Area Drainage Concept Report (Webb McKeown) Oct 2000 - Flooding Engineers Report Nov 2000 - Land Valuation (SVO) Oct 2000 - D11699645:

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**



**Figure 9: Plan showing drainage strategy as it applies to the site in accordance with the contributions plan**

The applicant has proposed an alternative drainage scheme to that identified within the Wyong District Development Contributions Plan. The applicant has proposed a boxed culvert system that is informed by their Water Cycle Management Plan prepared by ADW Revision E dated March 2021.



**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use Development comprising Specialised Retail Premises, Signage and Food and Drink Premises (contd)**

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- 2 The alternative scheme has addressed all the infrastructure requirements of the contributions plan, including drainage works are complementary to the implementation of the strategy.
- 3 Council's contributions section will be undertaking a review of the Wyong District Contributions plan, however the timeframe for the review to commence is more than 12 months away. At this point in time Council do not have any specialist advice in relation to a broad strategy for an alternative drainage scheme for the area.
- 4 Broadly, the overall delivery of the drainage infrastructure currently adopted by the contributions plan will be complicated by the presence of Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community (EEC) and *Melaleuca Biconvexa* which is a threatened species that is known to be in the area, and in the future alternatives that do not cause an impact may need to be explored. The proposed scheme does not impact on threatened species.
- 5 The Environmental assessment report (EAR) submitted with the DA does not assess the impact of construction of the adopted stormwater system shown in the Council's section 7.11 contributions plan for the Tuggerah area. Construction of the stormwater works depicted in the contributions plan would result in increased ecological impacts on the EEC and *Melaleuca biconvexa* that are not covered by the EAR submitted with this DA and would require further ecological impact assessment.
- 6 The alternate stormwater management system proposed by the applicant does not require clearing of any of the EEC.
- 7 Recent development including the playing fields on Lake Road have changed the hydrological performance of the area and this is not captured by the current drainage scheme within the contributions plan.
- 8 The scheme generally:
  - 9 achieves the outcomes of the adopted strategy being varied.
  - 10 manages overland flow and flooding events to an equivalent or better degree.
  - 11 Does not obstruct the integrity of the adopted drainage scheme.
  - 12 Is more costly to maintain, however will be maintained wholly as private drainage infrastructure by the applicant (refer to condition of consent **5.23**).

The works proposed as part of the alternative drainage scheme will not have the benefit of "works in kind" value in terms of the contributions plan. There is no credit available to the applicant. The contributions plan is collecting for the implementation of the entire drainage strategy. The applicant is obtaining additional development value out of that part of the land that would ordinarily be constrained and dedicated to the provision of drainage infrastructure under the contributions plan.



**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use  
Development comprising Specialised Retail Premises, Signage and Food  
and Drink Premises (contd)**

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Based on the above, Council recommends that the Local Planning Panel vary the Contributions Plan to the extent identified within this report and the submitted drainage plans.

The ability of the Local Planning Panel to determine an application that applies the contributions plan in a varied form is obtained from the provisions of Section 7.13 of the *Environmental Planning and Assessment Act 1979*.

Water and Sewer Contributions

Water and sewer contributions are applicable to the development and a Section 307 Certificate issued under the *Water Management Act 2000* is required. Prior to the issue of a Section 207 Certificate, payment to Council of the following developer contributions is required. Contributions have been calculated based on the maximum water supply and sewerage capacity utilisation:

- a) Water supply - \$190,618.23 (\$3,406.33/ET x 55.96)
- b) Sewerage - \$133,484.19 (\$2,385.35 /ET x 55.96)

A credit is provided within the above calculation for the existing services to the development site. The contributions are required to be paid as part of the 307 Certificate.

Planning Agreements

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

**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 suitable for the proposed development in its current form.

The proposal is consistent with the objectives of the B5 Business Development zoning of the site. The development provides specialized retail premises with large floor tenancies in an established specialized retail area and includes food and drink premises (including drive thru and take away) that will complement and do not detract from the viability of business, warehouse, and bulky goods premises in the area.

The development is a permissible use within the B5 Business Development zone of the *Wyong Local Environmental Plan 2013*.

**4.1 DA/530/2019 - 2 and 11 Bryant Drive, Tuggerah - Mixed Use  
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The proposal is suitable for the site having regard for any likely contamination and the provisions of *State Environmental Planning Policy 55 – Remediation of Land*.

The proposal includes mitigation measures and is acceptable having regard for the Tuggerah Industrial Catchment and the flood affectation of the site and surrounding properties.

The proposed development is not likely to have a significant impact on any threatened species, populations or ecological communities, or their habitats, which are listed under the *Biodiversity Conservation Act 2016*. The proposed development does not trigger the Biodiversity Offsets Scheme.

The development application provides sufficient information and detail to adequately assess the impacts of the proposed development application. The proposal is acceptable having regard for the existing traffic situation and the traffic outcomes resulting from the proposed development.

The proposed drainage infrastructure achieves the required outcomes of the Wyong District Development Contributions Plan.

The proposal is in the public interest.

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

**Attachments**

<b>1</b>	Conditions of Consent		D14682371
<b>2</b>	DCP Chapter 6.14 Compliance Table		D14677165
<b>3</b>	SEPP 64 Compliance Table		D14677226
<b>4</b>	Amended Plans (Revision F)	Provided Under Separate Cover	D14598147
<b>5</b>	Amended Water Cycle Management Plan	Provided Under Separate Cover	D14598146
<b>6</b>	Transport for NSW Comments		D14392903

## 1. PARAMETERS OF THIS CONSENT

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

### Architectural Plans by: Team2 Architects

Drawing	Description	Sheets	Issue	Date
843	Site Plan	DA002	7	28.04.20
843	Demolition and Existing Conditions Plan	DA010	5	27.03.20
843	Overall Elevations	DA020	5	27.03.20
843	Building A – Ground Floor Plan	DA100	6	02.04.20
843	Building B – Ground Floor Plan	DA101	7	28.04.20
843	Building C & Food Pad 1 – Ground Floor Plan	DA102	7	28.04.20
843	Food Pad 2 – Ground Floor Plan	DA103	6	28.04.20
843	Building A – Elevations	DA200	5	27.03.20
843	Building B – Elevations	DA201	5	27.03.20
843	Building C – Elevations	DA202	5	27.03.20
843	Food Pad – Elevations	DA203	6	28.04.20
843	Building Sections	DA300	5	27.03.20
843	Signage Details	DA900	6	27.03.20
843	Signage Details	DA901	5	27.03.20
843	Signage Details	DA902	2	27.03.20

### Landscape Plans by Site Image:

Drawing	Description	Sheets	Issue	Date
SS19-4043	Landscape Masterplan	100	E	17.04.2019
SS19-4043	Landscape Plan	101	E	17.04.2019
SS19-4043	Landscape Precinct Plan	102	E	17.04.2019
SS19-4043	Landscape Precinct Plan	103	E	17.04.2019
SS19-4043	Landscape Precinct Plan	104	E	17.04.2019

**Civil Plans by:**

Drawing	Description	Sheets	Issue	Date
190557	Exhibit 002 - Concept Stormwater Design	EX-002	E	26/02/2021
190557	Exhibit 003 – Proposed Catchments	EX-003	E	26/02/2021
190557	Exhibit 004 – ECC Flows	EX-004	E	26/02/2021
190557	Alternative Stormwater Contribution Works	EX-006	E	26/02/2021
190557	Exhibit 007 – Erosion and Sediment Control Plan	EX-007	E	26/02/2021

Drawing	Description	Sheets	Issue	Date
190557	Detail Plan	003	F	03.03.21
190557	Stormwater Plan	004	F	03.03.21
190557	Site Regrade Plan	005	F	03.03.21
190557	Site Sections – Sheet 1	006	F	03.03.21
190557	Site Sections – Sheet 2	007	F	03.03.21
190557	Site Sections – Sheet 3	008	F	03.03.21
190557	Site Sections – Sheet 4	009	F	03.03.21
190557	Indicative Roundabout Design	010	F	03.03.21
190557	Roundabout Turning Paths	011	F	03.03.21
190557	Linemarking & Signage Plan	012	F	03.03.21
190557	Water & Sewer Plan	013	F	03.03.21
190557	Turning Paths Overall Plan	014	F	03.03.21
190557	Turning Paths Detail Plan – Inset 1	015	F	03.03.21
190557	Turning Paths Detail Plan – Inset 2	016	F	03.03.21
190557	Turning Paths Detail Plan – Inset 3	017	F	03.03.21
190557	Turning Paths Detail Plan 0 Inset 4	018	F	03.03.21

**Supporting Documentation:**

Document	Title	Date
-	Water Cycle Management Plan Rev E (ADW)	March 2021
CC190039	Waste Management Plan (Barker Ryan Stewart)	May 2020
1895	Ecological Assessment Report (AEP)	March 2020
18/191 Rev I	Traffic & Parking Assessment (Intersect Traffic)	01/06/21
SS19-4043	Landscape and Public Domain Design Report (Site Image)	18 April 2019

- 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. **Roadworks - Design Requirements**

Where conditions of this consent require approval from Council under Section 138 of the *Roads Act 1993*, Section 68 of the *Local Government Act 1993* or Section 305 of the *Water Management Act 2000*, a completed Works application form must be lodged with Council and be accompanied by detailed design drawings and supporting information. Upon submission to Council, fees and charges will be calculated in accordance with Council's Management Plan. The fees and charges must be paid prior to Council commencing the design assessment.

- 2.3. The submission to Council of Civil Works design drawings and specifications detailing the following design requirements:
- Pavement marking & signage.
  - Street trees
  - Pavement design.
  - Vehicle access crossing(s).
  - The restoration of any vehicle access rendered redundant by the development, to standard kerb and footpath formation.
  - Any associated works to ensure satisfactory transitions to existing infrastructure
  - The submission to Council as the Roads Authority of street lighting and reticulation design drawings. The design shall be prepared in accordance with AS/NZS 1158 and AS 4282-1997, including the provision of current best practice energy efficient lighting, documentation confirming a minimum of twenty (20) year design life and be approved by the Council as the Roads Authority prior to issue of a Construction Certificate.

- Adjustment of services as required.
- Roundabout in Bryant Drive generally in accordance with ADW Johnson Plan 190557-DA-010 Version F dated 3/3/2021

Required design drawings are to be prepared in accordance with Council's *Civil Works Specification Design Guidelines 2018* and must be approved by Council as the Roads Authority prior to the issue of a Construction Certificate.

- 2.4. The submission of a comprehensive road signage and pavement marking design drawings identifying parking restrictions, accesses and traffic management facilities to Council for approval by the Local Traffic Committee prior to issue of the Construction Certificate.
- 2.5. Prior to the commencement of detailed design works within any public road, contact should be made with the National Community Service "Dial before you Dig" on 1100 regarding the location of underground services in order to prevent injury, personal liability and even death. Enquiries should provide the property details and the nearest cross street/road.
- 2.6. The submission to the Council as the Roads Authority of a Design Concept stage' Road Safety Audit for the roundabout and site accesses prepared by a Level 3 and level 2 Road Safety Audit Team recognised on the NSW Register of Road Safety Auditors. Any deficiencies identified within the audit must be resolved in consultation with Council prior to the approval of design drawings.
- 2.7. **Stormwater Drainage - Design Requirements**

The submission to the Accredited Certifier of a detailed stormwater management plan featuring:

- Stormwater disposal in accordance with the Watercycle Management Plan prepared by ADW Johnson dated March 2021 issue E incorporating:
- The provision of an onsite stormwater detention system. The detention system must be designed to attenuate post developed flow rates to predevelopment flow rates for a full range of storm durations for the 5, 20 and 100 year average recurrence interval (ARI) design storms.
- The provision of stormwater quality control 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.

The plans must be prepared in accordance with *AS/NZS3500.3:2018* and Council's *Civil Works Specification Design Guidelines 2018*, and be approved by the Accredited Certifier prior to issue of the Construction Certificate.

## 2.8. **Structural Design Requirements**

Any excavation below the adjoining land level requires the retaining of that land and the preservation and protection of any improvements or buildings upon that land including public roads and utilities from damage. If necessary, the improvements or buildings are to be supported in a manner designed by a suitably qualified Registered Structural Engineer. Any design proposals prepared in order to comply with this condition are to include geotechnical investigations and are to be submitted for the approval of the Accredited Certifier and in the case where excavation impacts upon public infrastructure, Council, prior to issue of the Construction Certificate.

- 2.9. Prior to the issue of a Construction Certificate, suitable detailed design drawings for all retaining wall structures on the site are to be provided for the approval of the Accredited Certifier. Such design drawings are to be prepared by a suitably qualified Registered Structural Engineer in accordance with the requirements of AS 4678-2002 - *Earth Retaining Structures*. All retaining walls must be contained wholly within the property and designed so as to accommodate possible surcharge loading from vehicles or structural improvements within the adjoining property.

#### 2.10. Subdivision - Design Requirements

The submission to the Accredited Certifier of detailed design drawings for all subdivision works in accordance with Council's *Civil Works Specification Design Guidelines 2018*. The design drawings, including an overlay of the vegetation plan identifying trees to be retained as per the approved development plans, and any trees to be removed must be approved by the Accredited Certifier prior to issue of a Construction Certificate.

#### 2.11. Vehicle Access and Parking - Design Requirements

The submission to the Accredited Certifier of a detailed car parking design. The design shall include:

- Pavement marking, appropriate signage and physical controls detailed for the carpark, access driveway and circulation roads.
- Pavement design able to withstand anticipated vehicle loading.
- Control point/boom gates to Lake Road access

The design drawings shall be prepared in accordance with the requirements of AS/NZS 2890 – *Parts 1, 2 and 6*, and be approved by the Accredited Certifier prior to the issue of a Construction Certificate.

- 2.12. The submission to the Accredited Certifier of lighting design drawings for the carpark and public places. The design shall be prepared in accordance with the requirements of AS/NZS 1158 and AS 4282-1997, including the provision of current best practice energy efficient lighting and be approved by the Accredited Certifier prior to issue of a Construction Certificate.

### 2.13. Water and Sewer Services - Design Requirements

All water and sewer works or works impacting on water and sewer assets must be designed and constructed to the requirements of Council as the Water Supply Authority. The requirements are detailed in the Section 306 Notice of Requirements letter attached to this consent. **Note:** The Section 306 Notice contains requirements associated with the development that must be completed prior to the issue of the Construction Certificate.

2.14. The developer must submit an application to Council under Section 305 of the *Water Management Act 2000* for any requirements for the obtaining of a Section 307 Certificate of Compliance. The application must be made prior to the issue of the Construction Certificate. **Note:** The Section 305 Notice may contain requirements associated with the development that must be completed prior to the issue of the Construction Certificate.

2.15. The submission to Council as the Water Supply Authority of detailed structural design drawings and supporting information for structures within the zone of influence of the sewer main. The design shall indicate the proposed method of protecting the sewer main in accordance with Council's *Requirements for Building Over or Adjacent to Sewer Mains* policy. Design details must be approved by Council as the Water Supply Authority prior to the issue of a Construction Certificate.

2.16. The submission to the Accredited Certifier of lighting design drawings for the carpark and public places. The design shall be prepared in accordance with the requirements of *AS/NZS 1158* and *AS 4282-1997*, including the provision of current best practice energy efficient lighting and be approved by the Accredited Certifier prior to issue of a Construction Certificate.

### 2.17. Wyong District Development Contributions Plan

Pursuant to Section 7.11 of the *Environmental Planning and Assessment Act 1979* pay to Council a total contribution amount of **\$659,075.13** that may require adjustment at the time of payment, in accordance with the Wyong District Development Contributions Plan with the applicable amounts as follows:

Cobbs Area 1/2/3 Roads	\$ 26,666.89
Tuggerah Industrial Est Drainage	\$ 6,950.56
Tuggerah Industrial Stage 3 Drainage Land	\$ 99,357.40
Tuggerah Industrial Stage 3 Drainage Works	\$ 275,645.66
Tuggerah Industrial Stage 3 Roads	\$ 250,454.62
<b>Total</b>	<b>\$ 659,075.13</b>



The contributions amount 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 contributions plan.

Contact Council 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 Contribution Plan may be inspected at the offices of Central Coast Council, 2 Hely Street Wyong or 49 Mann Street Gosford or on Council's website: [Development Contributions](#)

- 2.18. An Unexpected Finds Management Plan must be developed and implemented prior to the issue of any Construction Certificate for the discovery of any asbestos fragments, or any other unexpected contamination during any future construction works at the site.
- 2.19. Prior to the issue of any Construction Certificate a Noise Impact Assessment must be undertaken by a suitably qualified acoustic consultant who is an active member of the Association of Australasian Acoustical Consultants. This Noise Impact Assessment will be required to provide recommended attenuation measures that address all potential acoustic impacts being generated on the site, these activities are to include but not limited to:
- Vehicle movements, Parking & Congregational noise
  - Boom gates
  - The use of Loading docks and vehicles associated with this activity
  - Waste collection including the bottle recycling facility
  - Mechanical Plant

### 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
  - a) Implementation of environmental protection measures, such as erosion control and the like that are required by this consent
  - b) 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.
  - a) Submit to Council a Notice of Commencement of Building Works or Notice of Commencement of Subdivision Works form giving at least two (2) days' notice of the intention to commence building or subdivision work. The forms can be found on Council's website: [www.centralcoast.nsw.gov.au](http://www.centralcoast.nsw.gov.au)
- 3.4. Erect a sign in a prominent position on any work site on which building, subdivision or demolition work is being carried out. The sign must indicate:
  - a) The name, address and telephone number of the Principal Certifying Authority for the work; and
  - a) The name of the principal contractor and a telephone number at which that person can be contacted outside of working hours; and
  - b) That unauthorised entry to the work site is prohibited.
  - c) Remove the sign when the work has been completed.
- 3.5. Clearly mark and identify all trees and native vegetation proposed for retention and removal onsite and on all final engineering and development plans. All fenced tree protection areas must be clearly marked as "No Go Area" on all plans.
- 3.6. Prior to commencement of any works submit to Council's Ecologist for approval a Vegetation Management Plan for all areas of retained native vegetation on Lot 102/DP1209157 . The Vegetation Management Plan must be prepared to Council's satisfaction prior to the commencement of any works. The Vegetation Management Plan must be prepared by a suitably qualified Ecologist and in accordance with Central Coast Council's Flora and Fauna Survey Guidelines 2019. The VMP must include as a minimum:

- Site specific management actions to protect and mitigate the impacts of the development on the Swamp Sclerophyll Forest on Coastal Floodplains Endangered Ecological Community (EEC) and *Melaleuca biconvexa* on the property.
- Integrate with the Erosion and Sediment Control or Soil and Water Management Plan.
- Clearly stage management actions to identify works required prior to commencement of construction works, during works, prior to occupation certificate and ongoing.
- Include a protocol to prevent the transfer of weeds or pathogens onto or off the site, including during construction.
- A monitoring program and performance objectives.
- Detail ongoing reporting requirements.
- Be implemented for no less than five years.

Progress reports are to be submitted to Council's Ecologist by the 30th June each year for a minimum of 5 years after the commencement of works. Reports are to detail the progress of the works and any recommended additional actions, with a final report certifying completion of the Vegetation Management Plan at the end of the implementation period, or once the specific objectives of the plan have been met. Any recommended additional actions must be completed to the satisfaction of Council prior to lodgement of the final report.

### 3.7. **Install temporary fencing**

Prior to works associated with the development commencing, vegetation nominated for retention is to be suitably protected by a 1.8 metre high fence. The fence is to be clearly marked as a "No Go Area" on the fencing itself. No clearing of vegetation, storage of vehicles or machinery, stockpiling, materials storage or unauthorised access is to occur within the fenced conservation area.

- 3.8. Implement the mitigation measures outlined the "Revised Ecological Assessment Report (EAR)- PROPOSED RETAIL AND CARPARK –STAGE 1 AT 11 BRYANT DRIVE, TUGGERAH, NSW" Andersen Environment and Planning, March 2020 (section 13.0). Where the measures are inconsistent, the conditions of consent prevail.

### 3.9. **Erosion and Sediment Control Requirements**

Prior to the commencement of construction an initial Erosion and Sediment Control Plan (ESCP) prepared in accordance with the latest edition of the Landcom Publication *'Soils and Constructions- Volume 1'* (The Blue Book) shall be provided to the Principal Certifying Authority. This plan shall be modified and updated during construction to reflect any changes due to the on-ground/site conditions. A copy of any modifications or updates to the ESCP shall be provided to the PCA and provided to Council upon request.

Erosion and sediment controls shall be monitored, maintained and adapted in accordance with the most recent ESCP until the site is fully stabilised and landscaped. Failure to comply with this condition may result in fines under the provision of the *Protection of the Environment Operations Act*

### 3.10 Protection of Adjoining Property Requirements

Prior to works associated with the development commencing, the applicant must supply the Principal Certifying Authority with a dilapidation report for the adjoining properties, which documents and photographs the condition of buildings and other improvements. The report must be submitted to and approved by the Principal Certifying Authority prior to the commencement of any works. **Note:** The report is to be made available by the Principal Certifying Authority in any private dispute between neighbours regarding damage arising from construction works upon the development site.

### 3.11 Roads - Preconstruction Requirements

Prior to commencing any works upon public roads the developer and their contractor will be required to:

- Obtain a copy of the Council approved Civil Works plans and pavement design (if applicable).
- Obtain a copy of Council's *Civil Works Specification Construction Guidelines 2018*. This is Council's Specification for Civil Works and is available on Council's web site.
- Arrange a meeting on-site with Council's Principal Development Construction Engineer on 1300 463 954.

3.12 Prior to works associated with the development commencing, a Plan of Management is to be submitted to and approved by Council as the Roads Authority for any works or deliveries that impact on any public roads or public land as a result of the construction of the development. The plan must include a Traffic Control Plan prepared by a person holding Roads and Traffic Authority (RTA) accreditation for selecting and modifying traffic control plans. Fees and charges are applicable to the review and approval of the required management plan in accordance with Council's Plan of Management.

3.13 Prior to works associated with development commencing, a dilapidation report must be prepared and submitted to Council as the Roads Authority. The required dilapidation report must document and provide photographs that clearly depict any existing damage to the road, kerb, channel, footpath, driveways, water supply, sewer works, street trees, street signs or any other Council assets in the vicinity of the development. **Note:** The report will be used by Council to determine the extent of damage arising from site and construction works.

### 3.14 Construction Traffic Management Plan

Prior to the commencement of any works, the Applicant shall prepare a Construction Traffic Management Plan for the development. The plan shall include Traffic Control Plans prepared by a suitably qualified and experienced consultant. All works must ensure the safety of all vehicles and pedestrians within the frontage service road.

- 3.15 Provide and maintain a garbage receptacle at the work site until the works are completed. The garbage receptacle must have a tight fitting lid and be suitable for food scraps and papers.
- 3.16 Erect a temporary hoarding or temporary construction site fence between the work site and adjoining lands before the works begin and must be kept in place until after the completion of the works, if the works:
- could cause a danger, obstruction or inconvenience to pedestrian or vehicular traffic, or
  - could cause damage to adjoining lands by falling objects, or
  - involve the enclosure of a public place or part of a public place.

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

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

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

Each toilet must:

- be a standard flushing toilet connected to a public sewer, or
- have an on-site effluent disposal system approved under the *Local Government Act 1993*, or
- be a temporary chemical closet approved under the *Local Government Act 1993*.

## 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
  - a) The Office of Environment and Heritage must be advised of the discovery in accordance with section 89A of the *National Parks and Wildlife Act 1974*.

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

- 4.4. Implement and maintain all erosion and sediment control measures at or above design capacity for the duration of the construction works and until such time as all ground disturbed by the works has been stabilised and rehabilitated so that it no longer acts as a source of sediment.
- 4.5. Keep a copy of the stamped approved plans on-site for the duration of site works and make the plans available upon request to either the Principal Certifying Authority or an officer of Council.
- 4.6. Conduct all works in accordance with the approved Vegetation Management Plan.
- 4.7 Supervision by a suitably qualified Ecologist is required for all vegetation clearing works. The Ecologist must:
- Mark trees and native vegetation for retention and removal.
  - Supervise the installation of fencing around all trees and vegetation to be retained.
  - Provide an environmental induction to civil contractors and subcontractors.
  - Undertake pre clearing surveys for fauna and directly supervise all clearing to mitigate any animal welfare issues.

The Ecologist must provide updates in writing to Council's Ecologist within five business days after completion of the environmental protection measures.

- 4.8 Maintain the fence around the retained vegetation. The fence must be maintained for the duration of construction works. No storage of vehicles or machinery, waste, fill or materials or unauthorised access is to occur within the fenced vegetation protection areas.

- 4.9 Implement the mitigation measures outlined the "Revised Ecological Assessment Report (EAR)- PROPOSED RETAIL AND CARPARK –STAGE 1 AT 11 BRYANT DRIVE, TUGGERAH, NSW" Andersen Environment and Planning, March 2020 (section 13.0). Where the measures are inconsistent, the conditions of consent prevail.
- 4.10 Design, locate and install underground services to minimise or prevent tree root damage in accordance with Australian Standard AS 4970-2009: Protection of Trees on Development Sites.
- 4.11 Vehicles and other equipment to be used on site must be completely free of soil, seeds and plant material before entering/leaving the site to prevent the spread of exotic plant species and pathogens. All vehicles and machinery must be inspected prior to site entry/exit and those failing inspection should be sent away for cleaning. Appropriate records of inspections shall be maintained.
- 4.12 Re-use, recycle or dispose of all building materials during the demolition and construction phase of the development in accordance with the Waste Management Plan signed by Barker Ryan Stewart, dated 7 May 2020.
- 4.13 The developer is solely responsible for any costs relating to alterations and extensions of existing roads, drainage, water and sewer infrastructure and other utilities for the proposed development.
- 4.14 Other public authorities may have separate requirements and should be consulted prior to commencement of works in the following respects:
- Australia Post for the positioning and dimensions of mail boxes in new commercial and residential developments;
  - AGL Sydney Limited for any change or alteration to gas line infrastructure;
  - Ausgrid for any change or alteration to electricity infrastructure or encroachment within transmission line easements;
  - Telstra, Optus or other telecommunication carriers for access to their telecommunications infrastructure.

Full implementation of the recommendations of the Anderson Environment & Planning (2019). Ecological Assessment Report for the Construction of a two storey office premises containing a medical centre 23-25 Anzac Road, Tuggerah, NSW, August 2019.

- 4.15 Re-use, recycle or dispose of all building materials in accordance with the Waste Management Plan submitted with the subject application.
- 4.16 Place all building materials, plant and equipment on the site of the development during the construction phase of the development so as to ensure that pedestrian and vehicular access within adjoining public roads, footpaths and reserve areas, is not restricted and to prevent damage to public infrastructure. Further, no construction work is permitted to be carried out within the road reserve unless the works are associated with a separate approval issued under the provisions of the *Roads Act 1993*.

- 4.17 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, and/or Excavated Natural Material which is compliant with the Excavated Natural Material Exemption 2014 issued under clauses 91 and 92 of the Protection of the Environment Operations Act 1997.
- 4.18 All excavated material removed from the site must be classified in accordance with NSW EPA (1999) Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes prior to disposal. All excavated material must be disposed of to an approved waste management facility and receipts of the disposal must be kept on site.
- 4.19 In the event that construction works causes the generation of odours or uncovering of previously unidentified contaminants, works must immediately cease, Council and the Principal Certifying Authority must be notified in writing within 7 days and an appropriately qualified environmental consultant appointed to undertake an assessment of the potential contaminant and works required to make the site safe from potential human health and environmental harm.
- 4.20 **Cease excavation if ASS identified**
- Cease all excavation works if acid sulfate soils are identified until such time as details of mitigation and treatment measures are submitted to, and approved by, the Principal Certifier.
- 4.21 During construction works, all fill is to be placed on site in such a manner that surface water will not be permanently or temporarily diverted to adjoining land.



## 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 Permanent solid fencing of the Swamp Sclerophyll Forest Endangered Ecological Community is to be installed prior to issue of Occupation Certificate. Locked access gates are to be provided for maintenance.
- 5.3 The area subject to the Vegetation Management Plan will be placed under a 'Restriction on Use' pursuant to section 88B and 'Public Positive Covenant' 88E of the Conveyancing Act 1919. These instruments must require the land to be managed under an approved Vegetation Management Plan for the conservation of endangered ecological communities and threatened species. The public positive covenant must be created to require the implementation of the Vegetation Management Plan.

The public positive covenant must permit Council or its nominee to enter and inspect the site and carry out any works required under the Vegetation Management Plan, at the owner's cost, if the owner fails to implement and maintain the site in accordance with the Vegetation Management Plan as amended and approved by Council.

The public positive covenant must be submitted to Council's General Counsel for approval. The authority empowered to release, vary or modify the Restriction is Central Coast Council.

- 5.4 Prior to the issue of any Occupation Certificate the completed Noise Impact Assessment must be provided to Councils Senior Environmental Health officer for endorsement prior to implementing any of the recommended acoustic attenuation measures.
- 5.5 Prior to the issue of any Occupation Certificate a compliance certificate must be provided to the Principal Certifying Authority demonstrating that all recommended attenuation measures from the Noise Impact Assessment have been implemented.
- 5.6 Prior to the issue of an Occupation Certificate, any damage not shown in the Dilapidation Report submitted to and approved by the Principal Certifying Authority prior to site works commencing, will be assumed to have been caused as a result of the site works undertaken with respect to the development and must be rectified at the applicant's expense.
- 5.7 Install CCTV

Install a system of Closed Circuit Television (CCTV) of a type and in locations on the site that will provide high-quality images of all public areas within the site. CCTV surveillance of the Lake Road car park shall be installed.

- 5.8 Complete the landscaping works.
- 5.9 Provide the Principal Certifying Authority with written certification from a qualified landscape designer certifying that landscaping has been implemented in accordance with the approved landscape plan as amended by any conditions of this consent.
- 5.10 Solid acoustic attenuating fencing of at least 2.1 metres in height above the finished ground level shall be provided directly adjoining the north boundary. Where the recommendations of the acoustic report dictate a higher fence, this must be provided.

**5.11 Dilapidation Rectification Requirements**

Prior to the issue of an Occupation Certificate, any damage not shown in the Dilapidation Report submitted to and approved by the Principal Certifying Authority prior to site works commencing, will be assumed to have been caused as a result of the site works undertaken with respect to the development and must be rectified at the applicant's expense.

**5.12 Filling and Haulage- Completion Requirements**

All filled areas are to be compacted in accordance with the requirements of AS 3798-1996. The submission of test results and appropriate documentation attesting to this requirement having been achieved is to be provided for the approval of the Accredited Certifier prior to issue of the Occupation/Subdivision Certificate.

**5.13 Lighting Requirements**

Prior to the issue of an Occupation Certificate, suitable lighting to car park areas shall be provided in accordance with the requirements of AS/NZS 1158 and AS/NZS 2890.1.

**5.14 Authorities – Compliance Requirements**

Prior to the issue of an Occupation Certificate, the developer must comply with the requirements (including financial costs) of any relevant utility provider (for electricity, water, sewer, drainage, gas, telecommunications, roads, etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.

- 5.15 All road signage and pavement marking works must be completed in accordance with the plans approved by the Local Traffic Committee and approved by Council as the Roads Authority prior to the issue of any Occupation Certificate.

- 5.16 The provision of any additional civil works required to ensure satisfactory transitions to existing work as a result of work conditioned for the development works are to be approved by Council as the Roads Authority prior to issue of the Occupation Certificate.
- 5.17 All works within the public road must be completed in accordance with the approved Civil Works design drawings and Council's *Civil Works Specification Construction Guidelines 2018* and be approved by Council as the Roads Authority prior to the issue of any Occupation Certificate.
- 5.18 The submission to the Council as the Roads Authority of certification from an Accredited Service Provider (ASP) that the street lighting installation has been completed in accordance with *AS/NZS 1158* and *AS 4282-1997*, the approved design drawings and will achieve a minimum of twenty (20) year design life. The certification must be received by Council prior to the issue of the Occupation Certificate.
- 5.19 The construction of the stormwater management system in accordance with the approved Stormwater Management Plan and *AS/NZS 3500.3-2018*. Certification of the construction by a suitably qualified consultant shall be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.
- 5.20 The construction of stormwater drainage works external to the site and discharging into a public system or public land in accordance with the approved Stormwater Management Plan and Council's *Civil Works Specification Construction Guidelines 2018*. All works must be approved by Council under Section 68 of the *Local Government Act 1993* prior to issue of the Occupation Certificate. All other stormwater management works must be approved by the Principal Certifying Authority.
- 5.21 Prior to the issue of an Occupation Certificate, stormwater generated from roof areas of the building and any overflows from rain water tanks installed in conjunction with the development, is to be disposed of to the existing stormwater disposal system servicing the allotment.
- 5.22 Prior to the issue of the final Occupation Certificate, a 'Restriction on the Use of Land' shall be created on the title of the land restricting any alteration to the on-site stormwater detention system. The terms of the Restriction are to be prepared to Council's standard requirements. Central Coast Council shall be nominated as the party to release, vary or modify the restriction.
- 5.23 Prior to the issue of the final Occupation Certificate, a 'Positive Covenant' shall be created on the title of the land requiring the registered proprietor to ensure the continued maintenance and performance of the on-site stormwater detention structure. The terms of the positive covenant are to be prepared to Council's standard requirements. Central Coast Council shall be nominated as the party to release, vary or modify the restriction.

- 5.24 Prior to the issue of the final Occupation Certificate, a 'Restriction on the Use of Land' shall be created on the title of the land prohibiting the registered proprietor from altering the overland stormwater drainage flow path, or erecting any structure within the overland stormwater drainage flow path, without the express written consent of Council. Central Coast Council shall be nominated as the party to release, vary or modify the restriction.
- 5.25 Creation of an easement over the trunk drainage line benefitting the adjoining properties connected to the trunk drainage line.
- 5.26 The construction of the carpark and accesses in accordance with *AS/NZS 2890*. Certification of the construction of the carpark and associated accesses by a suitably qualified consultant shall be provided to the Principal Certifying Authority prior to issue of the Occupation Certificate.
- 5.27 Prior to the issue of an Occupation Certificate, all water and sewer works for the development must be approved by Council as the Water and Sewer Authority.
- 5.28 The obtaining of a satisfactory final plumbing & drainage inspection advice or Section 307 Certificate of Compliance under the *Water Management Act 2000* for water and sewer requirements for the development from Central Coast Council as the Water Supply Authority, prior to issue of the Occupation Certificate. All works for the development must be approved by Council prior to the issue of a Certificate of Compliance.
- 5.29 Prior to the issue of an Occupation Certificate, Works as Executed information for the development as identified in Council's *Civil Works Construction Specification* is to be submitted to and approved by Council.
- 5.30 Prior to the issue of any Occupation Certificate, land required for the roundabout on both sides of Bryant Drive is to be dedicated at no cost to Council as Public Road.

## 6. ONGOING

- 6.1 Use external lighting that minimises overspill into retained vegetated areas.
- 6.2 Implement the works specified in the approved Vegetation Management Plan. Progress reports are to be submitted to Council's Ecologist by the 30th June each year for a minimum of 5 years after the commencement of works.
- 6.3 Store all waste generated on the premises in a manner so that it does not pollute the environment.

- 6.4 Transport all waste generated on the premises to a facility which is licensed to receive that material.
- 6.5 No obstructions to the wheel out of waste bins are permitted including grills, speed humps, barrier kerbs etc.
- 6.6 Comply with all commitments as detailed in the Waste Management Plan signed by Barker Ryan Stewart, dated 7 May 2020.
- 6.7 Locate the approved waste storage enclosure / area as indicated on Dwg No. DA100, Revision 6 dated 2 April 2020, Dwg No's. DA 101 and 102 Revision 7 dated 25 April 2020 and Dwg No. DA 103 Revision 6 dated 28 April 2020.
- 6.8 Do not place or store waste material, waste product or waste packaging outside the approved waste storage enclosure.
- 6.9 Waste bin storage area/s to be screened from public view.
- 6.10 Waste containers to be wheeled out on arrival of the commercial waste contractors for servicing and immediately returned to the screened waste bin storage area/s after servicing.
- 6.11 Load and unload delivery vehicles wholly within the site. Delivery vehicles must enter and exit the site in a forward direction.
- 6.12 Do not obstruct loading bays when not in use.
- 6.13 Ensure the garbage / recycling bins do not encroach on the car parking or vehicle manoeuvring areas.
- 6.14 Maintain the site landscaping for the life of the development.
- 6.15 Do not store goods, equipment, packaging material or machinery exposed outside the building so as to be visible from any public road or thoroughfare.
- 6.16 Do not erect advertising sign(s) on or in conjunction with the use and / or development without development consent unless the advertisement is exempt development or otherwise permitted without development consent.
- 6.17 Do not use any flashing light, animated or reflective or moving parts, iridescent or fluorescent colours or materials on the external surface of the advertising sign. The colours exhibited on the sign must be in keeping with the amenity of the surrounding area.
- 6.18 Maintain internal pavement and pavement marking.

- 6.19 The return and earn facility is limited in operation so that it is unavailable and does not have any collection or servicing during night time noise restriction hours of 10pm to 7am.
- 6.20 The Lake Road service truck access and access to the Lake Road car park for all vehicles is to be restricted so that access into the area via the boom gate is unavailable during night time noise restriction hours of 10pm to 7am.
- 6.21 The Lake Road carpark shall be boom gated at both entry points and shall be available for parking by staff vehicles only. Restricted access (via boom gate) to the northern car park is limited to staff vehicles and service trucks at all times. The boom gate is to be closed at all times and accessed electronically as required for the above identified vehicles.
- 6.22 The development is not to be serviced by truck deliveries or collections between the hours of 10pm and 7am.
- 6.23 Ongoing compliance with the recommendations of the approved acoustic report.
- 6.24 The operation of all plant (including rooftop and all mechanical ventilation) in combination is 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
- 6.25 **Maintain CCTV**

Maintain the installed system of Closed Circuit Television (CCTV) that monitors / records all public areas within the site.

## Wyong DCP 2013, Chapter 6.14 – Tuggerah Precinct

Requirement	Proposed	Complies?
<b>2.0 Development Principles</b>		
<b>2.1 Private Domain Controls</b>		
<b>2.1.1 Built form</b>		
Modulated and articulated façade to street	Single storey built form that includes projecting public art façade elements provide articulation to an otherwise box form	Y
Blank walls avoided. Stepping façade with the entrance forward or back.	Varied façade and courtyard arrangement parking centrally located on the site. The building does include some blank walls, however these are back of house areas designed to minimise intrusion to neighbours.	Y
ESD principles for water and energy efficiency incorporated	The proposed building is capable of providing fixtures in accordance with ESD energy and water principles	Y
<b>2.1.2 Access and Car Parking</b>		
As per DCP 2.11	Exceeds parking requirements of 2.11	Y
Parking is unobtrusive	Parking is contained behind a landscaped buffer	Y
Large metal grills/openings not used for ventilation of car parking	N/A at grade car parking	-
Pacific Highway and rail corridor special provisions	N/A	-
<b>2.1.3 Flooding and Drainage</b>		
All development as per DCP 3.3 and Council's civil works design guide	The proposal is acceptable	Y
<b>2.1.4 Landscaping</b>		
A landscape plan is provided that incorporates: <ul style="list-style-type: none"> <li>i. Surface flow management</li> <li>ii. Sediment pollution control</li> <li>iii. Planting themes/species</li> <li>iv. Street tree planting @Wyong Rd</li> <li>v. Details of paving, street furniture, lighting etc</li> <li>vi. Protection of wetland/riparian</li> <li>vii. Protection of veg being retained</li> </ul>	A suitably detailed landscape plan and landscape document that incorporates trees has been provided. This document, in conjunction with the civil plans and environmental assessment report, address the necessary requirements.	Y
<b>2.1.5 Materials and Building Finishes</b>		
Materials complement masonry construction	The proposal incorporates materials precast concrete and rendered masonry.	Y
Reflectivity of glazing less than 20%	This can be achieved via condition of consent.	Y
Natural colour palette	A varied palette of materials and colours in natural tones	Y
<b>2.1.6 Residential Development</b>		
Mixed use with residential 0.05 FSR bonus	N/A	-
<b>2.1.7 Roofscape</b>		
Roof structures not permitted unless integrated into the design	Rooftop air conditioning plant can be screened from view of streets and surrounding properties. The rooftop structures are not excessive in height.	Y
<b>2.1.8 Servicing and storage</b>		

Loading manoeuvring should be separate from car parking/pedestrian areas.	Adequately separated	Y
Service areas not visible from the railway	N/A	-
Dock areas to be recessed	N/A	-
External storage not located in front setback and screened	Not proposed.	-
<b>2.1.9 Setbacks</b>		
a) Wyong Rd and Wyong Rd (West) <ul style="list-style-type: none"> <li>- 15m from Wyong Rd B'dy</li> <li>- Carparking and external storage not permitted in setback. 15m to be landscaped</li> </ul>	N/A	-
b) Pacific Hwy (Nth Wyong Rd/Mildon & Johns Rds) <ul style="list-style-type: none"> <li>- 5m from P/Hwy (after Rd widening)</li> <li>- 5m to be landscaped</li> <li>- Short term car parking behind 5m</li> </ul>	N/A	-
c) Pacific Hwy (South of Wyong Rd) <ul style="list-style-type: none"> <li>- 10m from P/Hwy (after Rd widening)</li> </ul>	N/A	-
d) Great North Railway <ul style="list-style-type: none"> <li>- Minimum of 10m to railway bdy</li> <li>- 5m for parking and storage subject to landscaping etc</li> </ul>	N/A	-
e) Landscaping <ul style="list-style-type: none"> <li>- Wyong Rd, P/Hwy and Rail corridor</li> </ul>	N/A	-
f) Public Rds <ul style="list-style-type: none"> <li>- Minimum of 10m to internal public roads</li> <li>- 5m landscaped area within 10m setback</li> </ul>	10m to building 5m landscaped setback with mid storey planting and small trees	Y Y
g) Power easements <ul style="list-style-type: none"> <li>- No structures within</li> <li>- Setbacks ensure sufficient separation</li> <li>- Landscaping to be appropriate height</li> </ul>	N/A	-
h) Side and rear <ul style="list-style-type: none"> <li>- As per BCA</li> <li>- Where less than 2.5m, should be on the b'dy</li> <li>- If not 2.5m or b'dy then must have maintenance available</li> </ul>	6.2m to north b'dy (minimum setback)	Y
i) Variations must address <ul style="list-style-type: none"> <li>- Visual impact</li> <li>- Integration</li> <li>- Function of manoeuvrability, car parking and service areas</li> </ul>	N/A	-
j) Wetland buffer <ul style="list-style-type: none"> <li>- 5m buffer</li> <li>- No car parking within buffer</li> <li>- Rehabilitate buffer area</li> </ul>	The proposal retains important ecological areas on the site and a VMP is required for the ongoing protection of these areas.	Y



<b>2.1.10 Signage</b>		
a) Billboard style – Not permitted Wyong Rd or rail corridor – Not permitted P/Hwy unless Pylon – 1 freestanding per lot	Maximum of 1 freestanding sign proposed	Y
b) Directory sign – Permitted at entry	Maximum of 1 freestanding “directory” sign proposed	Y
c) Sandwich board – Prohibited	N/A	-
<b>3.0 Development Principles – Area Specific</b>		
<b>3.3 Area C – Lake Road</b>		
<b>3.3.1 Area C1</b>		
a) No access to Wyong Road	The proposal does not have direct access.	Y
b) Maximum floor space ratio 0.8:1	0.2:1	Y
Maximum site coverage of building (50%)	19%	Y
Visual impact of bulk, height and scale viewed from Bryant Drive and Wyong Road	The proposal is a low scale single storey building that wraps around a central parking area.	Y
Landscaping of appropriate scale to buildings	The landscape plan provides a comprehensive landscape strategy for the site.	Y

### State Environmental Planning Policy 64 – Advertising and Signage, Schedule 1 compliance table

<b>Schedule 1 SEPP 64 Assessment Criteria</b>	
<b>Requirement</b>	<b>Assessment</b>
<b>Character of the Area</b>	
<ul style="list-style-type: none"> <li>Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</li> <li>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</li> </ul>	The proposed signage has been designed to be compatible with the existing character of the area, which is largely dominated by the adjoining Super Centre across the road to the west. The type and scale of the proposed signage is consistent with other existing premises within the general area.
<b>Special Areas</b>	
<ul style="list-style-type: none"> <li>Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</li> </ul>	The site and building are located within a business zoned area, and are visible to the street, but due to setbacks would not detract from the overall amenity. Signage is not directed towards nearby residential properties.
<b>Views and Vistas</b>	
<ul style="list-style-type: none"> <li>Does the proposal obscure or compromise important views?</li> <li>Does the proposal dominate the skyline and reduce the quality of vistas?</li> <li>Does the proposal respect the viewing rights of other advertisers</li> </ul>	There are no significant view corridors to or from the subject site, and the proposed signs have been designed to fit within the context of the area.
<b>Streetscape, setting or landscape</b>	
<ul style="list-style-type: none"> <li>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</li> <li>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</li> <li>Does the proposal reduce clutter by rationalizing and simplifying existing advertising?</li> <li>Does the proposal screen unsightliness?</li> <li>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</li> <li>Does the proposal require ongoing vegetation management?</li> </ul>	<p>The scale of the proposed signage is consistent with the existing and proposed built forms in the area and is a minor element in the context of the 181m street frontage.</p> <p>The totem sign at the front of the site reduces clutter, by ensuring that all future tenants are able to advertise their presence within the one spot.</p> <p>The signage will not require ongoing vegetation management.</p>
<b>Site and building</b>	
<ul style="list-style-type: none"> <li>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</li> <li>Does the proposal respect important features of the site or building, or both?</li> </ul>	<p>The signage has been designed as an integral component of the site, with consideration of scale, existing and proposed character, and site readability.</p> <p>The signage is designed as a seamless extension of the proposed buildings.</p>

<ul style="list-style-type: none"> <li>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</li> </ul>	
<b>Associated devices and logos with advertisements and advertising structures</b>	
<ul style="list-style-type: none"> <li>Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</li> </ul>	Not proposed. Lighting will be modest and similar to signage within the area.
<b>Illumination</b>	
<ul style="list-style-type: none"> <li>Would illumination result in unacceptable glare?</li> <li>Would illumination affect safety for pedestrians, vehicles or aircraft?</li> <li>Would illumination detract from the amenity of any residence or other form of accommodation?</li> <li>Can the intensity of the illumination be adjusted, if necessary?</li> <li>Is the illumination subject to a curfew?</li> </ul>	The signs are located within a business setting and do not flash or create glare. Illumination (if required) will be in the form of LED lighting which will be in accordance with the relevant Australian Standard regarding the control of light spillage. The location of the buildings relative to the adjoining sites ensure that any incidental light will be blocked by the proposed buildings.
<b>Safety</b>	
<ul style="list-style-type: none"> <li>Would the proposal reduce the safety for any public road?</li> <li>Would the proposal reduce the safety for pedestrians or bicyclists?</li> <li>Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?</li> </ul>	The signage will not impact safety to motorists or pedestrians, being located entirely within the site, and thereby not obstructing any associated sight lines.

**Transport  
for NSW**

CR2020/002913

SF2019/124028

24 November 2020

Chief Executive Officer  
Central Coast Council  
PO Box 21  
Gosford NSW 2250

**Attention: Janice Wheeler****WYONG ROAD (MR335): DA 530/2019, MIXED USE DEVELOPMENT – SPECIAL RETAIL PREMISES, 11 BRYANT DRIVE TUGGERAH**

Transport for NSW (TfNSW) advises that legislation to dissolve Roads and Maritime Services and transfer its assets, rights and liabilities to TfNSW came into effect on 1 December 2019. It is intended that the new structure will enable TfNSW to deliver more integrated TfNSW services across modes and better outcomes to customers and communities across NSW.

For convenience, correspondence, advice or submissions made to or by Roads and Maritime Services prior to its dissolution, are referred to in this letter as having been made to or by 'TfNSW'.

On 12 June 2020 TfNSW accepted the referral by Central Coast Council (Council) via email with additional information regarding the abovementioned application (Development Application). Council referred the Development Application to TfNSW for comment Clause 104 / Schedule 3 of the State Environmental Planning Policy (Infrastructure) 2007. This letter is a submission in response to that referral.

TfNSW understands the proposal to be for Mixed Use Development that includes three specialised retail premises, two food and drink premises, stormwater drainage work, onsite car parking signage, internal driveways and site access upgrades.

The proposal will include:

- 10,674 m2 GFA of retail floor space within three (3) separate buildings likely to be utilized by bulky goods retail uses,
- 699 m2 GFA of food and drink premises land uses within two (2) separate food pads,
- On-site car parking for 389 vehicles (including staff car park for 50 vehicles),
- Removal of existing entry access to the site,
- A central roundabout entry / exit access off Bryant Drive opposite existing access to the Tuggerah Super Centre,

- Modification of the existing exit access to the site off Bryant Drive,
- A new entry only access off Bryant Drive for rigid delivery vehicles only, north of the proposed roundabout main access to the site,
- A new combined entry / exit access off Lake Road for use by heavy vehicles accessing the site and direct access to the staff car park,
- On-site drainage,
- Relocation of the return and earn collection centre, and
- Landscaping.

#### TfNSW Response & Requirements

TfNSW's primary interests are in the road network, traffic and broader transport issues. In particular, the efficiency and safety of the classified road network, the security of property assets and the integration of land use and transport.

Wyong Road (MR335) is a classified State road and Bryant Drive is a local road. Council is the roads authority for both roads and all other public roads in the area, in accordance with Section 7 of the Roads Act 1993.

TfNSW has reviewed the referred information including the Statement of Environmental Effects by ADW Johnson dated June 2019, Development Plans prepared by Team Architects dated 15 April 2019, amended Traffic and Parking Assessment (TPA) prepared by Intersect Traffic and dated March 2020 and associated SIDRA files provided on 12 June 2020.

TfNSW provides the following comments to assist the consent authority in making a determination:

- The TIA demonstrates that the average delay and queue length (95th percentile) at the Wyong Road and Bryant Drive roundabout in 2029 weekday (PM) and 2029 (PM) weekend doubles and the level of service deteriorates from LoS D to LoS F with development traffic. TfNSW considers that the proposed development reduces serviceable life of the intersection to such an extent that within the 10 year horizon upgrades will need to be brought forward.
- As such, it is considered there is a demonstrable nexus between the development and the deterioration of this intersection to the point where additional work will be required. However, the TIA fails to acknowledge this, and to identify mitigation measures to address the potential development impacts.
- TfNSW highlights that there is currently no State funding commitments for any upgrade works at the Wyong Road/Bryant Drive roundabout. All works having nexus with the subject development shall be undertaken at full cost to the developer and at no cost to TfNSW or Council, and to TfNSW and Council requirements.
- TfNSW raises concern regarding the cumulative traffic impact of the subject development, and other proposed/approved developments accessed by Bryant Drive and Lake Road, on the operation of Wyong Road/Bryant Drive roundabout. As such, shared contributions

framework for this development and other developments to contribute to required upgrade works is a matter for Council to consider and initiate as the relevant planning authority.

#### Advice to Council

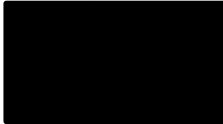
TfNSW recommends that the following matters should be considered by Council in determining this development:

- TfNSW has no proposal that requires any part of the property.
- It is noted the proposed development represents a large percentage increase in the amount of traffic entering and exiting Bryant Drive. TfNSW is also aware that a five lot industrial subdivision development application (DA/1005/2020) at 25-27 Bryant Drive proposes to use Bryant Drive to access the site.
- TfNSW recommends Council ensure the capacity, accessibility and safety of Bryant Drive is not compromised by the traffic generated by this development and other proposed/approved developments accessed from Bryant Drive and Lake Road.
- Council should ensure that the proposed internal and external road work provides an efficient and safe access for public transport, pedestrians and bicycles and ensure alignment with the overall vision outlined in the draft Tuggerah to Wyong Economic Corridor Strategy.
- TfNSW is aware Council is currently upgrading the intersection of Bryant Drive and Lake Road. TfNSW recommends Council to ensure that necessary intersection augmentation works are implemented in the future to cater for additional traffic, pedestrian and cyclist movements generated by proposed and approved developments in the area.
- TfNSW is currently undertaking preliminary investigations to identify an appropriate land for constructing a commuter car park (additional 220 spaces) in the vicinity of Tuggerah railway station.
- As part of the proposed Tuggerah Integrated Transport Plan, TfNSW will work with Council to identify network demands and infrastructure needs within the study area.
- Council should ensure that appropriate traffic measures are in place during the construction phase of the project to minimise the impacts of construction vehicles on traffic efficiency and road safety within the vicinity.
- Council should have consideration for appropriate sight line distances in accordance with Section 3 of the *Austroads Guide to Road Design Part 4A (Unsignalised and Signalised Intersections)* and the relevant Australian Standards (i.e. AS2890:1:2004) and should be satisfied that the location of the proposed driveway promotes safe vehicle movements
- While it is acknowledged that concurrence is not required to be provided by TfNSW for the new signage proposed in the subject application under Clause 18 of the *State Environmental Planning Policy 64 (SEPP 64)*, the following advice is for Council to consider:

- All signs should meet the criteria contained in the Department of Planning's *TfNSW Corridor Outdoor Advertising and Signage Guidelines (November 2017)* including, but not limited to, Section 3.3.3 Illumination and reflectance.
- Council should ensure that all signs meet the requirements of Schedule 1 Assessment Criteria of the *State Environmental Planning Policy (SEPP) No. 64 – Advertising and Signage*.
- Please advise the applicant that TfNSW may direct the screening, modification or removal of a structure if, in the opinion of TfNSW, the structure is considered a traffic hazard under Section 104 of the *Roads Act 1993*.

On Council's determination of this matter, please forward a copy of the Notice of Determination to TfNSW for record and / or action purposes. Should you require further information please contact Kumar Kuruppu, Development Assessment Officer, on 4908 7688 or by emailing [development.hunter@rms.nsw.gov.au](mailto:development.hunter@rms.nsw.gov.au).

Yours sincerely



**Peter Marler**  
Manager Land Use Assessment  
Hunter Region