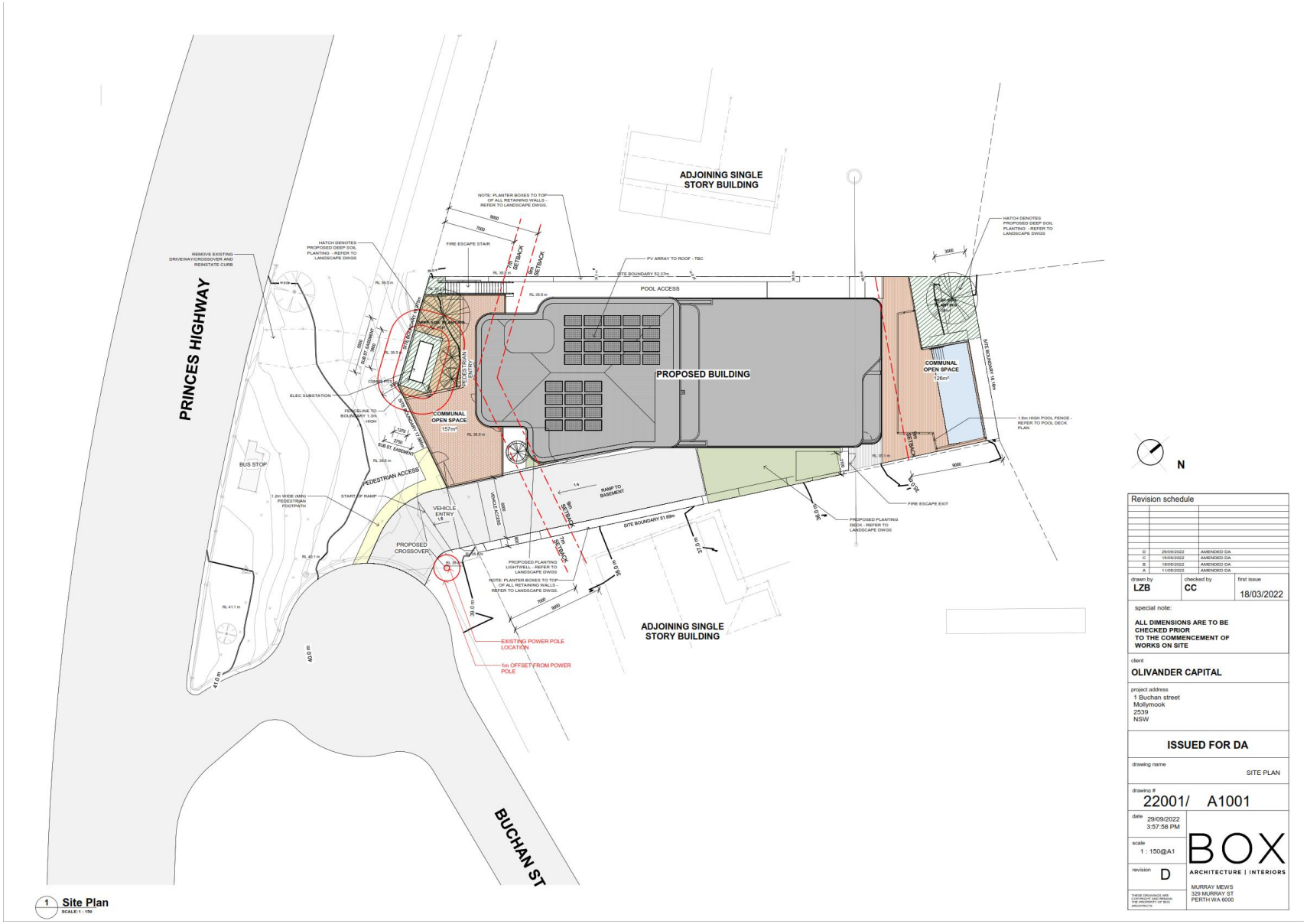
Ordinary Meeting

Meeting Date: Monday, 13 March, 2023
Location: Council Chambers, City Administrative Building, Bridge Road, Nowra

Attachments (Under Separate Cover)

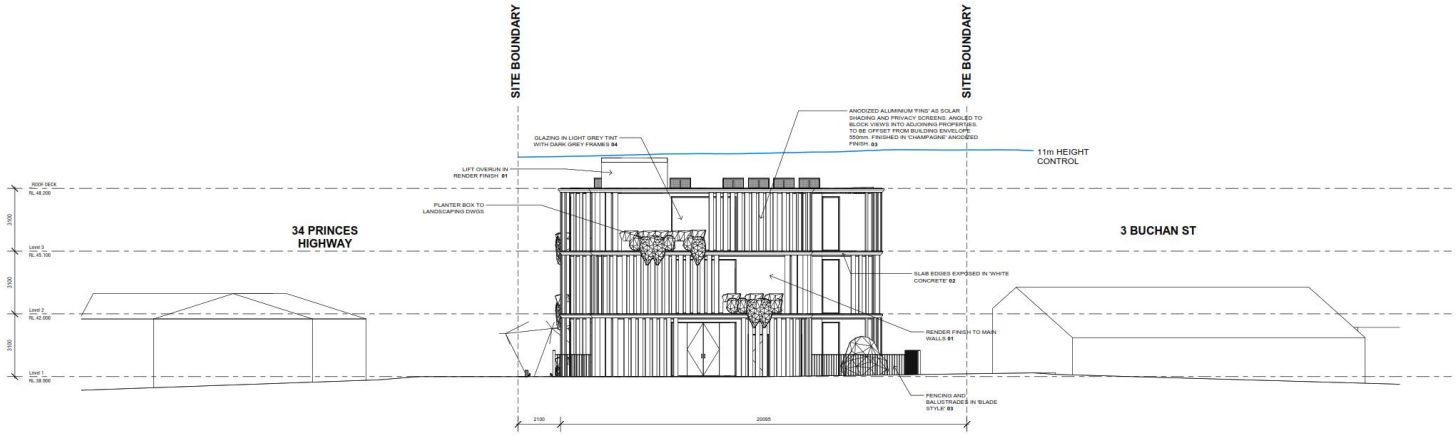
Index



CL23.76 - Attachment 1

MATERIALS PALETTE

01 TEXTURED WHITE RENDER
02 EXPOSED WHITE CONCRETE
03. ANODIZED ALUMINIUM FINS 'CHAMPAGNE' FINISH.
04. LIGHT GREY TINTED GLAZING WITH MATT DARK GREY FRAMES
05. ZINCALUME ROOFING FINISH



S A1004 STREET ELEVATION /SOUTH ELEVATION
SCALE: 1 : 100

Revision schedule		
D	29/09/2022	AMENDED DA
C	15/09/2022	AMENDED DA
B	18/08/2022	AMENDED DA
A	11/08/2022	AMENDED DA

drawn by	checked by	first issue
LZB	CC	18/03/2022

special note:
ALL DIMENSIONS ARE TO BE CHECKED PRIOR TO THE COMMENCEMENT OF WORKS ON SITE

client
OLIVANDER CAPITAL

project address
1 Buchan street
Mollymook
2539
NSW

ISSUED FOR DA

drawing name
ELEVATIONS

drawing #
22001/ A3001

date 29/09/2022 3:58:27 PM

scale As indicated@A1

revision D

BOX
ARCHITECTURE | INTERIORS
MURRAY MEWS
329 MURRAY ST
PERTH WA 6000

CL23.76 - Attachment 1

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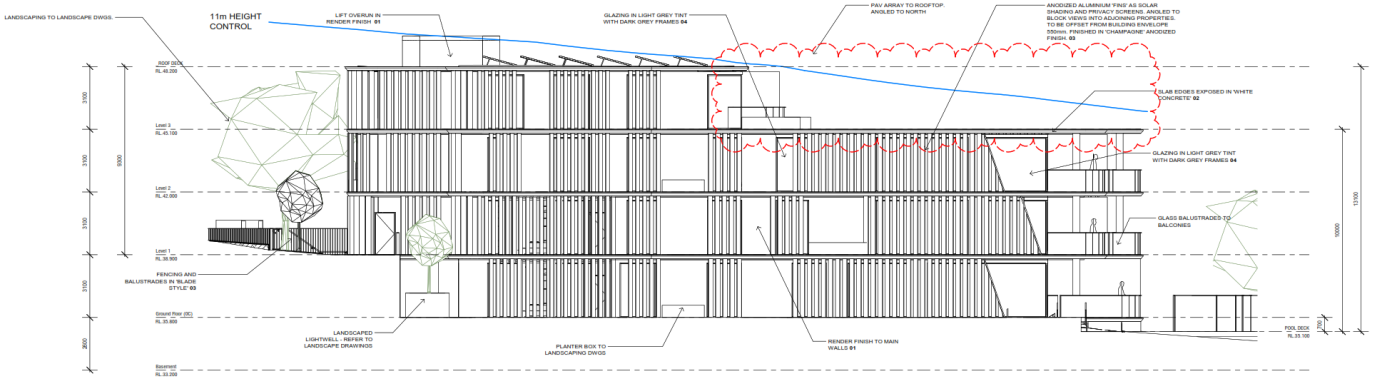
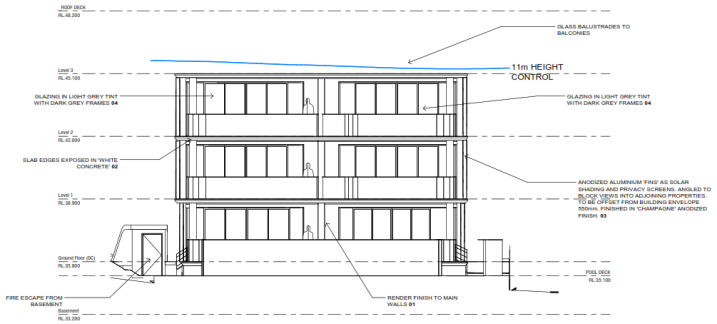


E A1002 **_EAST ELEVATION**
SCALE: 1 : 100



N A1002 **_NORTH ELEVATION**
SCALE: 1 : 100

Revision schedule

D	29/09/2022	AMENDED DA
C	15/09/2022	AMENDED DA
B	18/08/2022	AMENDED DA
A	11/08/2022	AMENDED DA

drawn by: LZB | checked by: CC | first issue: 18/03/2022

special note:
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client: **OLIVANDER CAPITAL**

project address:
1 Buchan street
Mollymook
2539
NSW

ISSUED FOR DA

drawing name: ELEVATIONS

drawing #: 22001/ A3002

date: 29/09/2022 3:58:30 PM

scale: As indicated@A1

revision: D

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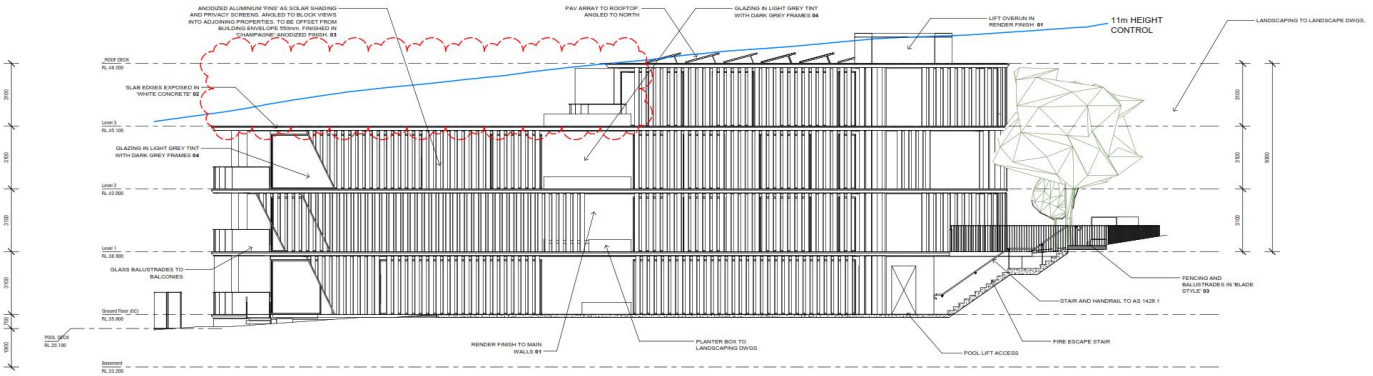

W A1002 **WEST ELEVATION**
SCALE: 1 : 100

Revision schedule		
D	29/09/2022	AMENDED DA
C	15/09/2022	AMENDED DA
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drawn by	checked by	first issue
LZB	CC	18/03/2022

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client
OLIVANDER CAPITAL

project address
1 Buchan street
Mollymook
2539
NSW

ISSUED FOR DA

drawing name
ELEVATIONS

drawing #
22001/ A3003

date 29/09/2022 3:58:35 PM

scale As indicated@A1

revision D

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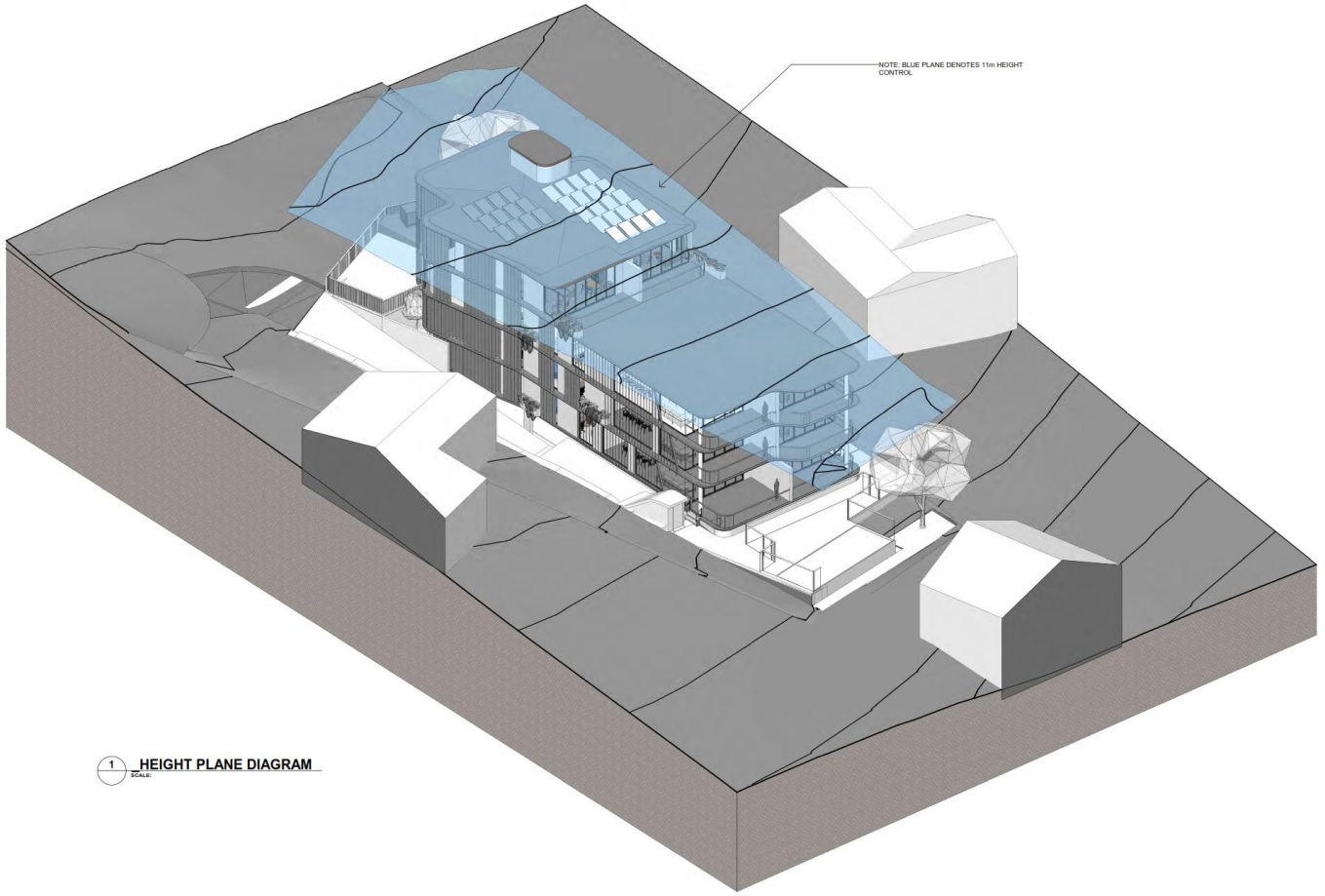

1 HEIGHT PLANE DIAGRAM
SCALE:

Revision schedule

D	29/09/2022	AMENDED DA
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client: **OLIVANDER CAPITAL**

project address:
1 Buchan street
Mollymook
2539
NSW

ISSUED FOR DA

drawing name: HEIGHT CONTROL DIAGRAM

drawing #: 22001/ A7004

date: 29/09/2022 3:59:59 PM

scale: @A1

revision: D

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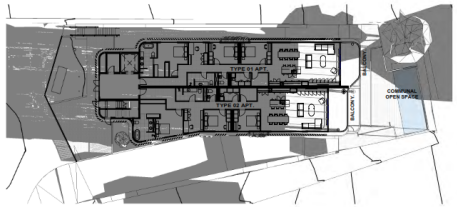
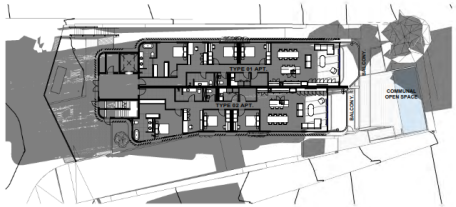
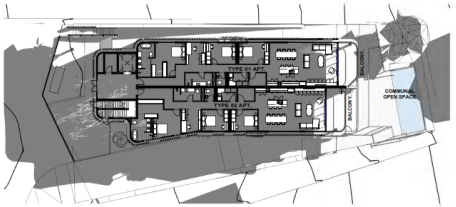


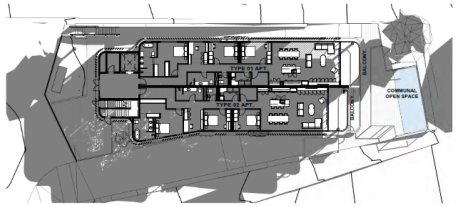
SOLAR ACCESS DIAGRAM
DIAGRAM - WINTER SOLSTICE
9AM



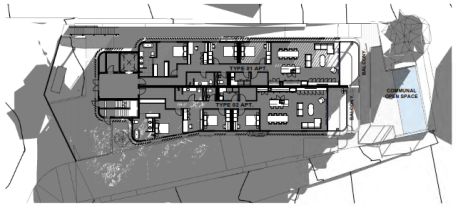
SOLAR ACCESS DIAGRAM
DIAGRAM - WINTER SOLSTICE
10AM



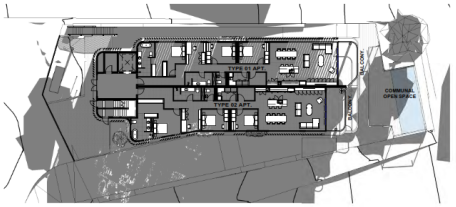
SOLAR ACCESS DIAGRAM
DIAGRAM - WINTER SOLSTICE
11AM



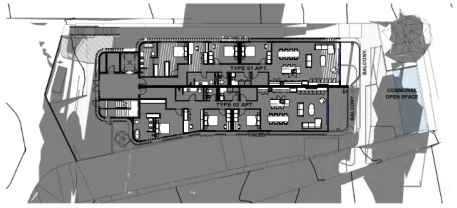
SOLAR ACCESS DIAGRAM
DIAGRAM - WINTER SOLSTICE
12PM



SOLAR ACCESS DIAGRAM
DIAGRAM - WINTER SOLSTICE
1PM



SOLAR ACCESS DIAGRAM
DIAGRAM - WINTER SOLSTICE
3PM



SOLAR ACCESS DIAGRAM
DIAGRAM - WINTER SOLSTICE
2PM

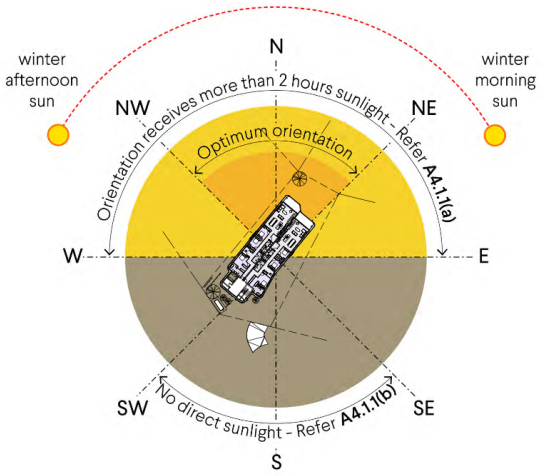
100% OF APARTMENTS ON LEVEL 1 RECEIVE ATLEAST 2 HOURS OF DIRECT SUNLIGHT TO LIVING AREAS BETWEEN 9AM & 3PM

100% OF APARTMENTS ON LEVEL 1 RECEIVE ATLEAST 2 HOURS OF DIRECT SUNLIGHT TO LIVING AREAS, PRIVATE OPEN SPACE, AND BEDROOMS BETWEEN 9AM & 3PM

THERE ARE NO TYPICAL APARTMENTS THAT RECEIVE NO DIRECT SOLAR ACCESS BETWEEN 9AM & 3PM

COMMUNAL OPEN SPACE (POOL DECK) RECEIVES MINIMUM 7 HOURS DIRECT SOLAR ACCESS BETWEEN THE HOURS OF 9AM & 3PM

NOTE: SOLAR ACCESS DIAGRAMS TAKEN FROM LEVEL 1 AND DEPICT A TYPICAL FLOOR PLATE FROM GROUND FLOOR TO LEVEL 3. THE DATE MEASURED FOR ABOVE DIAGRAMS IS 21st OF JUNE.



FLOOR PLAN ORIENTATION DIAGRAM

Revision schedule

D	29/09/2022	AMENDED DA
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drawn by: LZB | checked by: CC | first issue: 18/03/2022

special note:
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client: OLIVANDER CAPITAL

project address: 1 Buchan street, Mollymook, 2539, NSW

ISSUED FOR DA

drawing name: SOLAR ACCESS DIAGRAMS

drawing #: 22001/ A7002

date: 29/09/2022 3:59:39 PM

scale: As indicated@A1

revision: D

BOX ARCHITECTURE | INTERIORS
MURRAY MEWS
329 MURRAY ST
PERTH WA 6000

CL23.76 - Attachment 1

ONE BUCHAN STREET, MOLLYMOOK, NSW 2539

SEPP 65 DESIGN VERIFICATION

BOX ARCHITECTS 18-3-2022

SEPP 65 DESIGN VERIFICATION

The proposed development at One Buchan Street, Mollymook has been designed in conjunction with the requirements of SEPP 65 and the Apartment Design guide (ADG). The following document outlines the projects compliance with the objectives of the SEPP and the design principles. The compliance matrix provides specific compliance justification of each clause as outlined in the ADG.

Project Overview

The proposed Residential Development consists of 8 units, over 4 storeys in addition to one levels of car parking below.

Refer to drawings A0100-A902 for details. The proposal meets the development type under SEPP 65 as the building is over 3 storeys and consists of over 4 apartments. The proposals specific requirements and design solutions are outlined throughout this report in accordance with the ADG.

Principle 1: Context and Neighbourhood Character

The site is located along Princes Highway just northwest of the junction with Buchan St and Camden Street Highway in Mollymook. Drawings A0100 and A0101 outline the site location well as the surrounding context. The site is located within the future Ulladulla-Mollymook Gateway Precinct. The existing surrounding development is made up mainly of single and double storey dwellings, however this development proposal is considered within the context of future development in this area rather than existing conditions. The site is located on a slope with a narrow depth with views to the northeast towards the ocean. The site presents to the main street of Princes Highway although this proposal creates a new entrance off Buchan Street. The northern setback of the proposal has been increased to at least 9m – up to 13m - to lessen the impact to the lower density planning zone along Seaview street.

Principle 2: Built Form and Scale

The building form presents to Princes Highway as a 3-storey building and due to the slope of the site steps down toward the northeast.
The entrance lobby is a narrower volume than the main building which serves to break up the mass of the building towards the road. The curvaceous nature of the form also minimises the impact, softening the normally sharp edges.
Sweeping curvaceous balconies articulate the northern façade further breaking up the scale. The horizontal expression of the floor plates gives the building a horizontal layered nature which allows the building to address the site horizontally rather than a vertical expression. The internal usage as a series of individual apartment floors is clearly expressed in the architectural treatment. The floor plates are long and thin relating to the similar proportion of the site.

Principle 3: Density

The densities are consistent with the area's projected population within the Ulladulla-Mollymook Gateway Precinct.
The eight apartments have a high level of amenity in the form of public open space, private open space, swimming pool and landscaped areas appropriate to the density of the development.
The new site density can be sustained with in the future planning policy of the area.

Principle 4: Sustainability

The proposed development complies with the requirements Basix principles.
Stormwater will be reused for irrigation of the landscape areas and the roof forms allow for future installation of photovoltaic system.
The building complies with the solar access and ventilation requirements set out in the ADG,
The site is afforded ample sunlight controlled by carefully placed vertical louvers to emit diffused light but cut out western sun.
Large north facing balconies cut out northern sun while maintaining views.
Deep soil zones surpass the required 7% of site area.
Recycling principles are adopted in the waste management plan.

Principle 6: Landscape

Refer to Landscape Report

Principle 7: Amenity

The internal spaces of the units have been generously designed with appropriate room dimensions exceeding the minimum ADG requirements in all cases, with quality finishes to be provided. The quality of space, including height of ceilings, proportions and dimensions of rooms, and the ability of habitable spaces to receive natural light and ventilation, have been carefully considered. A focus on indoor/outdoor living has resulted in large desirable POS areas with landscaping and spectacular views toward the ocean to the northeast.
Compliance with the ADG for solar access and ventilation ensures good amenity to the development
Acoustic privacy has been enhanced between units and the neighbours with BCA compliant construction and orientation of the habitable spaces.

Principle a: Safety and Security

The building is designed to provide good overlooking to the street and security to the occupants within. Security control (through fences and gates will be provided to prevent public access to common and landscaped areas. Separation of parking and pedestrian areas has been considered due to the narrow site depth. Pedestrian and vehicular access has been relocated to Buchan St from Princes Hwy to allow for safer pedestrian movement with natural traffic calming in place due to the cul-de-sac turning head.

Principle 9: Housing Diversity and Social Interaction

The proposed development includes a mix of 2-bedroom and 3-bedroom apartments,
The building has also closely considered accessibility for persons with a disability, with access from the street to all levels via a lift.
50% of apartments are LHA Silver standard compliant. Refer to sheets A5001-A5003 and Accessibility consultant's report.
With accessibility to all apartment doors there is good availability for all apartments to consider a level of accessibility in accordance with the Liveable Housing Design Guide.

Principle 10: Aesthetics

The design has strongly considered the presentation to the street and extended context. The form of the building reflects the slope of the site as it steps down toward the northeast.
By reducing the mass and bulk to the highway the building serves as a future example to the inevitable future development of the area.

The curvaceous form softens the edges to the views beyond to the northeast.
The horizontal banding maintains its horizontality and reflects the internal layout and structure.
The Façades are articulated along the street front to break up the mass of the building and provide a sensitive selection of high-quality contemporary materials to reflect the local beachfront vernacular of lightly coloured beach homes. Articulated 'fins' provide an abstraction of weatherboards used in adjoining properties.
Façades to the east and west express solar screening functions both horizontally and vertically, as well as a response to overlooking neighbouring properties whilst maintaining views and natural light. A paired back simple palette of natural materials will ensure this respectful development weathers gracefully over time setting the tone for the future aesthetic of this area.

The following table is a summary of the compliance of the above development in accordance with SEPP 65 and the Apartment Design Guide.

OBJECTIVE NUMBER	OBJECTIVE	DESIGN CRITERIA	COMMENTS	COMPLIANCE
3A-1	Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context		Refer to drawings A0100, A101 and A102. Context diagram and Site Analysis has led to decisions regarding unit position and orientation.	Y
3B-1	Building types and layouts respond to the streetscape and site while optimizing solar access within the development		Refer to drawing A6001 which shows benefit of articulation to facade walls to improve solar access within the development.	Y
3B-2	Overshadowing of neighbouring properties is minimised during mid-winter.		Neighbouring property (3 Buchan Street) is only impacted After 1pm in Winter. All other adjoining properties are unaffected. Refer to Sheet A7001.	Y
3C-1	Transition between private and public domain is achieved without compromising safety and security.		The proposal shows building entry points and has ensured accessibility, safety and security is provided. This has been followed through in the landscape concept also.	Y
3C-2	Amenity of the public domain is retained and enhanced.		No impact to existing amenities in the public domain. No footpaths are currently existing on either Buchan Street or Princes Highway. New vehicle entry proposed on Buchan Street removes entry/exit to busier Princes Highway	Y

3D COMMUNAL AND PUBLIC OPEN SPACE

3D-1	An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.	1. Communal open space has a minimum area equal to 25% of the site (see figure 3D.3). 2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	The Landscaped area to the Street frontage and the pool Deck to the north of the site are intended to work as Common Open Space (COS) to provide amenity to residents. Although the area of these spaces is 21% of site area, it is considered sufficient for the amount of residents, which can potentially be 32 people. Also, the size of the private Balconies and open living areas allows for social events to occur within the units, rather than using the COS. Larger POS areas is typically an acceptable alternate to cos in the ADG. Proximity to the CBD and other facilities is also a consideration so additional common area is not desirable in this instance.	Y
3D-2	Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.		All COS are to be landscaped in an attractive manner (refer to landscape drawings). Furthermore the Pool area provides a fully accessible amenity (to AS1428.1) to all potential visitors to the development.	Y
3D-3	Communal open space is designed to maximise safety.		COS has been designed to comply with all safety regulations	Y
3D-4	Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood.			N/A

3E DEEP SOIL ZONES

3E-1	Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.	Deep soil zones are to meet the following minimum requirements: (for site area of 1189 m2) is 7%	83m² Deep soil planting has been provided in 2 separate areas of the development improving resident amenity in both COS areas. Refer to drawings A0001 and A1002-A1005	Y

3F VISUAL PRIVACY

3F-1	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: Up to 12m (4 storeys): Habitable Rooms - 8m Non-Habitable Rooms - 3m Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2).	The narrow width of the site doesn't allow to keep required distances from adjoining properties/buildings. However, setbacks from lot boundaries are consistent with the Shoalhaven DCP setbacks and ensure adequate view corridors for primary views from lots behind. Rear setback is a minimum of 9m – up to 13m Furthermore, the development proposes angled 'fins' to these lot boundaries (east and west) to reduce overlooking from the apartments whilst maintaining natural lighting to residents. These 'fins' provide an articulated built form with an interesting and multifaceted architectural expression. Refer to drawings A6001 & A8001- A8004. The site has considered the ADG controls relating to the mixed use developments and narrow sites which allows zero setbacks to property boundaries.	Y
3F-2	Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.		The development proposes angled 'fins' to these lot boundaries (east and west) to reduce overlooking from the apartments whilst maintaining natural lighting to residents. Refer to drawings A6001 & A8001- A8004.	

3G PEDESTRIAN ACCESS AND ENTRIES

3G-1	Building entries and pedestrian access connects to and addresses the public domain.		No Footpaths currently exist as a street amenity – but the proposed development provides a new footpath from the street to the main building entry. Refer to drawing A1001	Y
3G-2	Access, entries and pathways are accessible and easy to identify.		All footpaths and building access designed to be compliant with AS1428.1	Y
3G-3	Large sites provide pedestrian links for access to streets and connection to destinations.			N/A

3H VEHICLE ACCESS

3H-1	Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.		Vehicle access to basement carpark is achieved through a new crossover/driveway from Buchan Street and in access by a compliant vehicle ramp to the basement carpark. Refer to drawing A1001 and Traffic engineers report.	Y

3J BICYCLE AND CAR PARKING

3J-1	Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.			N/A
3J-2	Parking and facilities are provided for other modes of transport.			N/A
3J-3	Car park design and access is safe and secure.		Vehicle Access to carpark from driveway off Buchan Street to a secure basement carpark.	Y
3J-4	Visual and environmental impacts of underground car parking are minimized.		Visual impact of carpark is reduced through basement carpark and minimum entry required for 2-way traffic	Y
3J-5	Visual and environmental impacts of on-grade car parking are minimised.			N/A
3J-6	Visual and environmental impacts of above ground enclosed car parking are minimised.			N/A

4. DESIGNING THE BUILDING

4A SOLAR AND DAYLIGHT ACCESS

4A-1	To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space	1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter in a regional area. 2. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	8 of 8 units (100%) receive 3 hours direct sunlight between 9am and 3pm at mid-winter. None of the dwellings receive no direct sunlight between 9 am and 3 pm at mid-winter. Refer to drawing A7002	Y
4A-2	Daylight access is maximised where sunlight is limited		Direct solar access is received by all apartments, and all habitable rooms have maximised glazing to greatly improve indirect solar access	Y
4A-3	Design incorporates shading and glare control, particularly for warmer months.		Balconies act as appropriate awnings during Summer. All facades are articulated with both 550mm awnings and angled 'fins' for shading control	Y

4B NATURAL VENTILATION

4B-1	All habitable rooms are naturally ventilated.		The proposal ensures all habitable rooms have access to an operable window on an external wall ensuring ventilation to the spaces.	Y
4B-2	The layout and design of single aspect apartments maximises natural ventilation.		Only wet and service areas have no access to external walls.	Y
4B-3	The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.	1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.	8 of 8 units (100%) are cross ventilated. None of the dwellings have an overall depth exceeding 18m. Refer to drawing A7003.	Y

		2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.		

4C CEILING HEIGHTS

4C-1	Ceiling height achieves sufficient natural ventilation and daylight access.	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable Room – 2.7m Non-Habitable Rooms – 2.4m	The proposal achieves the required ceiling heights with minimum 2.7m to habitable spaces and 2.4m to non-habitable which will be used for services and air-conditioning units. The floor-to-floor levels between residential units are minimum 3.1m which ensures the required ceiling heights will be achieved. Refer to drawing A4001	Y
4C-2	Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.		As per 4C-1	Y
4C-3	Ceiling heights contribute to the flexibility of building use over the life of the building.		As per 4C-1	Y

4D APARTMENT SIZE AND LAYOUT

4D-1	The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.	Apartments are required to have the following minimum internal areas: Studio – 35m2 1 Bedroom – 50m2 2 Bedroom – 70m2 3 Bedroom – 90m2	All 2-bedroom apartments are minimum 79m ² internal. All 3-bedroom apartments are minimum 185m ² internal. Complying with minimum requirement of 100m ² Refer to drawings A5001 - A5003.	Y

		The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m2 each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m2 each. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.		
4D-2	Environmental performance of the apartment is maximised.	Habitable room depths are limited to a maximum of 2.5 x the ceiling height. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window.	Maximum depth of all apartments is 6.3m. Refer to drawings A5001 - A5003.	Y
4D-3	Apartment layouts are designed to accommodate a variety of household activities and needs.	1. Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space). 2. Two bedrooms have a minimum dimension of 3m (excluding wardrobe space). 3. Living rooms or combined living/dining rooms have a minimum width of: a. 3.6m for studio and 1-bedroom apartments. b. 4m for 2- and 3-bedroom apartments 4.The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.	Master bedrooms are a minimum of 13m ² All other bedrooms are 11m ² with a minimum of 3m dimensions. Open plan living rooms and dining have a minimum dimension of 4.5m. Refer to drawings A5001 - A5003.	Y

4E PRIVATE OPEN SPACE AND BALCONIES

4E-1	Apartments provide appropriately sized private open space and balconies to enhance residential amenity.	1.Apartments provide appropriately sized private open space and balconies to enhance residential amenity. 3+ Bedroom Apartments: Min Area – 12m2 Min Dimension 2.4m The minimum balcony depth to be counted as contributing to the balcony area is 1m. 2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum of 15m2 and a minimum depth of 3m.	All balconies are a minimum of 18m ² with a min dimension of 2.8m. Refer to drawings A5001 - A5003.	Y
4E-2	Primary private open space and balconies are appropriately located to enhance liveability for residents.		All Balcony private open spaces adjoin main open plan living areas and have large sliding doors allowing overlap and combination of indoor and outdoor space for resident amenity.	Y
4E-3	Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.		Balconies integrate with building awnings to complete horizontal articulation. Refer to drawings A8001-A8002	Y
4E-3	Private open space and balcony design maximises safety.		Private open space/balconies to comply with all safety regulations with adequate design of balustrades. To be confirmed at DD stage.	Y

4F COMMON CIRCULATION AND SPACES

4F-1	Common circulation spaces achieve good amenity and properly service the number of apartments.	1. The maximum number of apartments off a circulation core on a single level is eight.	There is a central lift core to each building servicing a maximum of eight (8) units. The maximum number of units serviced at one level is two (2) apartments.	Y
4F-2	Common circulation spaces promote safety and provide for social interaction between residents.		Each circulation space opens to a foyer area and is secure at each exit level allowing for safety and social interaction between residents.	Y

4G STORAGE

4G-1	Adequate, well-designed storage is provided in each apartment.	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: 3+ Bedroom Apartments – 10m3 At least 50% of the required storage is to be located within the apartment.	Each unit complies with storage requirements with internal storage alone. Refer to drawings A5001 & A5002. Furthermore, additional external storage rooms are available at each foyer level, available to residents if the need for additional storage is required	Y
4G-2	Additional storage is conveniently located, accessible and nominated for individual apartments.		Either an internal storage room, or a storage room at each lift lobby is provided in each apartment. Refer to drawings A1004 – A1007 & A5001 – A5003.	Y

4H ACOUSTIC PRIVACY

4H-1	Noise transfer is minimised through the siting of buildings and building layout.		Acoustic privacy between units has been managed through suitable insulation and air space in the enclosing wall of the units and suitable building separation. The main source of noise from apartments is expected to come from the terraces which is managed by providing suitable acoustically rated walls between. To be confirmed in DD phase. Refer to drawings A1003 & A1005.	Y
4H-2	Noise impacts are mitigated within apartments through layout and acoustic treatments.		The separation of living areas and bedrooms has been considered to provide acoustic separation. Refer to drawings A5001 – A5003.	y

4J NOISE AND POLLUTION

4J-1	In noisy or hostile environments, the impacts of external noise and pollution are minimised through the careful siting and layout of buildings.		Building has been sited to place the circulation spaces facing the Princes Highway to reduce impact of noise pollution on liveable areas. Refer to drawings A1003 & A1005.	Y
4J-2	Appropriate noise shielding or attenuation techniques for the building		As per 4J-1	Y

	design, construction and choice of materials are used to mitigate noise transmission.			

4K APARTMENT MIX

4K-1	A range of apartment types and sizes is provided to cater for different household types now and into the future.		A mix of 2 and 3 Bedroom apartments are provided	Y
4K-2	The apartment mix is distributed to suitable locations within the building.			Y

4L GROUND FLOOR APARTMENTS

4L-1	Street frontage activity is maximised where ground floor apartments are located.			N/A
4L-2	Design of ground floor apartments delivery amenity and safety for residents.		Ground floor apartments have offset floor level from COS and comply with safety regulation around pool fencing separation. Ground floor apartments balconies to be planted to provide screening from COS.	Y

4M FACADES

4M-1	Building facades provide visual interest along the street while respecting the character of the local area.		The design has strongly considered the presentation to the street and extended contex.t The Façades are articulated along the street front to break up the mass of the buildings and provide a sensitive selection of high-quality contemporary materials to reflect the local Beachfront vernacular of lightly coloured beach homes. Articulated 'fins' provide an abstraction of weatherboards used in adjoining properties.	Y
4M-2	Building functions are expressed by the facade		Façade expresses solar screening functions with horizontally and vertically. As well as a response to overlooking	Y

			neighbouring properties whilst maintaining views and natural light	

4N ROOF DESIGN

4N-1	Roof treatments are integrated into the building design and positively respond to the street		Roof treatment is integrated into the horizontal articulation awnings. Refer to sheets A8001-A8004. This slim profile roof is to help reduce the building overall mass on the Street frontage	Y
4N-2	Opportunities to use roof space for residential accommodation and open space are maximised.		Roof is to be utilized for Photovoltaic (PV) panels for resident amenity	Y
4N-3	Roof design incorporates sustainability features.		Sustainable features will include: 1. PV array to roof 2. Zincalume roof finish to reduce solar heat loads 3. Adequately insulated rood structure to increase energy efficiencies.	Y

4O LANDSCAPE DESIGN

4O-1	Landscape design is viable and sustainable.		Refer to Landscape drawings. The following landscape design decisions have ensured that a viable and sustainable outcome is achieved: 1. The selection of a native planting palette that requires low maintenance and water requirements. 2. The maximization of soft landscape areas such as deep soil. planting, gravel and turf to reduce hard surface area runoff and maximizing water intake into the ground.	Y
4O-2	Landscape design contributes to the streetscape and amenity.		Refer to Landscape drawings. The following landscape design decisions have ensured that the overall landscape approach contributes to the streetscape and amenity: 1. The use of tall trees provide shade and visual relief from the building facade. The street tree scheme	Y

			also integrates the development into its coastal context through a considered species selection.	

4P PLANTING ON STRUCTURES

4P-1	Appropriate soil profiles are provided.		Refer to Landscape drawings. Soil profiles for planting on structures have been allowed for in the landscape design, including dense planting and planter boxes.	Y
4P-2	Plant growth is optimised with appropriate selection and maintenance.		Refer to Landscape drawings. The use of a native planting palette with the following characteristics has been employed to ensure it is optimized for plant growth and maintenance: 1. Drought and wind tolerant plant species. 2. Low maintenance plant species. 3. Locally indigenous plant species.	Y
4P-3	Planting on structures contributes to the quality and amenity of communal and public open spaces.		Refer to Landscape drawings. Planting on structures will have a direct contribution to enhance the landscape podium, and private open spaces through the following design attributes: 1. Large and medium sized shrubs to provide a buffer from prevailing winds. 2. A colourful and vibrant planting palette that creates a sense of interest	Y

4Q UNIVERSAL DESIGN

4Q-1	Universal design features are included in apartment design to promote flexible housing for all community members.		50% of apartments are LHA Silver standard compliant. Refer to sheets A5001-A5002 and Accessibility consultant's report	Y
4Q-2	A variety of apartments with adaptable designs are provided.		50% of apartments are LHA Silver standard compliant. Refer to sheets A5001-A5002 and Accessibility consultant's report	Y
4Q-3	Apartment layouts are flexible and accommodate a range of lifestyle needs.		50% of apartments are LHA Silver standard compliant. Refer to sheets A5001-A5002 and Accessibility consultant's report	Y

4R ADAPTIVE REUSE

4R-1	New additions to existing buildings are contemporary and complementary and			N/A

	enhance an area's identity and sense of place.			
4R-2	Adapted buildings provide residential amenity while not precluding future adaptive reuse.			N/A

4S MIXED USE

4S-1	Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement			N/A
4S-2	Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents.			N/A

4T AWNINGS AND SIGNAGE

4T-1	Awnings are well located and complement and integrate with the building design			N/A
4T-2	Signage responds to the context and desired streetscape character.			N/A

4U ENERGY EFFICIENCY

4U-1	Development incorporates passive environmental design		The proposal has considered passive environmental design from the beginning to ensure well designed and efficient spaces.	Y
4U-2	Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer.		The roof awnings have been dimensioned to allow sunlight to heat the living areas and shade them in summer. Western and eastern facades also have integrated 'fin' vertical shading devices. Refer to drawing A6001	Y

4U-3	Adequate natural ventilation minimises the need for mechanical ventilation.		All habitable rooms benefit from natural ventilation and 8 of 8 units are cross ventilated to minimise the need for mechanical ventilation. Refer to drawing A7003	Y

4V WATER MANAGEMENT AND CONSERVATION

4V-1	Potable water use is minimised.		Water consumption will be minimised through star rated taps and appliances.	Y
4V-2	Urban stormwater is treated on site before being discharged to receiving waters.		Urban stormwater is to be managed in accordance with the Stormwater Management Plan.	Y
4V-3	Flood management systems are integrated into site design.			N/A

4W WASTE MANAGEMENT

4W-1	Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.		All apartments to be provided with standard residential Waste and Recycling bins. Bin store located in basement. Collection to be managed by building manager. Refer to waste management plant for details	Y
4W-2	Domestic waste is minimised by providing safe and convenient source separation and recycling.		All apartments to be provided with standard residential Waste and Recycling bins. Bin store located in basement. Collection to be managed by building manager. Refer to waste management plant for details	Y

4X BUILDING MAINTENANCE

4X-1	Building design detail provides protection from weathering.		Building design and articulation of surfaces have been provided for protection from weathering.	Y
4X-2	Systems and access enable ease of maintenance.		All plant areas and services are suitably protected from weather and located accordingly. Access from the property boundaries to all areas within the development is achievable through covered circulation. The units are easily accessible from the street or car park directly through a lift core.	Y

4X-3	Material selection reduces ongoing maintenance costs.		Materials have been selected for durability and lack of maintenance in the marine environment	Y

PROPOSED RESIDENTIAL APARTMENTS AT
1 BUCHAN STREET, MOLLYMOOK (LOT 14 DP 20231)

VISUAL IMPACT REPORT

PREPARED FOR: OLIVANDER CAPITAL PTY LIMITED

RYGATE REF: U20576 REV 2

23/08/2022

RYGATE & WEST
INCORPORATING BULLOCK & WALTERS
SINCE 1893

INTRODUCTION

This report looks at the visual impact of the apartment building proposed for 1 Buchan Street, Mollymook.

The proposal is for an apartment building containing eight residential apartments over four floors, with basement parking.

This is Revision 2 which relates to the amended plans submitted to Council in August 2022, which differ from the original scheme due to the reduced maximum building height, increased setback to the rear boundary, and the top floor apartments changing from 3 bedrooms to 2 bedrooms.

This report is concerned with how the proposed apartment building fits into the existing visual environment and, importantly, what contribution it might make to the emerging visual environment and future desired character of the Ulladulla/Milton Gateway Precinct.

This report does not address the impact of the proposed building on any views from the public domain or from other private properties. These matters are addressed in the Statement of Environmental Effects, Clause 4.6 Variation Request and SEPP 65 Design Verification documents that were also submitted with the application.

CONTEXT

PHYSICAL CONTEXT AND VISUAL CHARACTER

The site is located on the Princes Highway on the northern approach to the town of Ulladulla. While the site has frontage also to Buchan Street, from where vehicular access will be obtained, the site addresses the Highway frontage in an urban design sense.

In landscape terms, the site is located on the eastern (seaward) side of a low ridge that contains the Princes Highway corridor on its southbound entry into the Ulladulla/Mollymook area.

Figure 1 below shows the site (outlined in red) in its landscape context. The elements of the landscape context that can be discerned from this aerial image are:

- The site is very close to the "Buchan Street Triangle" that is identified as a key site in the Ulladulla/Milton Gateway Precinct;
- The very wide verge in front of the site (ranging from 10 to 17 metres) and the location of the site on the seaward side of a below the slight ridge on which the Princes Highway is located reduces the potential visual impact of any development on the site.

Figure 1: Aerial photo of the site and surrounds showing the landscape context of the site

The Princes Highway at this point is a two lane classified road with wide parking lanes and a speed limit of 6o kmh. Initially developed with single dwelling houses in the 1950s and 1960s, the area has been undergoing transition for some decades, due to its favourable and convenient location and the growing role of Mollymook and Ulladulla as a tourist destination. Evidence of this transition are the four motels located within 300 metres of the No. 1 Buchan Street site.

The current character of the area is shown at Figures 2-10 below.

Figure 2: Ulladulla entry sign, just north of the Ulladulla/Milton Gateway Precinct and 700m north of the site

Figure 3: Southbound view of the Gateway Precinct, showing current mix of older residential and motel development.

Figure 4: Approaching the Princes Highway/Golf Avenue roundabout from the north.

Looking at Figure 4 above, the site lies just beyond the distant power pole – the rear of a grey car parked on the verge in front of the subject property can just be seen.

Dominant visual elements here include the very wide verge, the established street trees in front of the site and the tall canopy trees beyond the site. The established street trees and wide verge are also shown at Figure 5 below.

Figure 5: View northbound from the wide verge in front of the site showing the existing street trees.

Figure 6: Example of newer motel development nearby

Figure 7: Example of older residential development in the area (Princes Highway)

Figure 8: Example of older residential development in the area (western end of Buchan Street)

Figure 9: The existing Mollymook Motel on the "Buchan Street Triangle" site

Figure 9 above shows the existing Mollymook Hotel at the "Buchan Street Triangle" site. Note the distant, screened views of the Pacific Ocean available from the Princes Highway across this site. Similar views of the Ocean are not available from the Princes Highway in the vicinity of the development site at 1 Buchan Street due to differences in ground levels between the Princes Highway corridor and the adjoining land to the east.

Figure 10: View of the site and existing dwelling (right of picture) from across the Princes Highway.

Many of the older dwellings are nearing the end of their economic lives, and Shoalhaven City Council has recognised the transitional nature of the area and its opportunities for appropriate development by designating the area as the 'Ulladulla/Mollymook Gateway Precinct' and has adopted a site-specific development control plan to guide future development.

PLANNING CONTEXT

STATE ENVIRONMENTAL PLANNING POLICY NO 65 – DESIGN QUALITY OF RESIDENTIAL APARTMENT BUILDINGS

This State Environmental Planning Policy ("SEPP 65") establishes a number of design principles. Two if these are relevant to the visual impact of the proposal:

Principle 1: Context and neighbourhood character

Principle 2: Built form and scale

Many of the older dwellings are nearing the end of their economic lives, and Shoalhaven City Council has recognised the transitional nature of the area and its opportunities for appropriate development by designating the area as the 'Ulladulla/Mollymook Gateway Precinct' and has adopted a site-specific development control plan to guide future development.

The following context for the Gateway Precinct is provided in Section 5.2 of Chapter V3 of Shoalhaven DCP 2014 ("the DCP"):

> The Ulladulla/Mollymook Gateway Precinct is located on both sides of the Princes Highway at the northern approach to the Ulladulla Town Centre. The Princes Highway runs along a ridgeline that transects the Gateway Precinct. The land generally falls away from the road on both sides and there are significant views to the ocean to the east and some views of the escarpment to the west. The current development of the subject land is characterised by predominantly low density residential and tourist and visitor accommodation uses.
>
> The opportunity exists for development fronting the Princes Highway in this location to create a 'sense of arrival' and positively respond to the natural environment elements that define the coastal location. It is anticipated that the precinct will continue to be predominantly residential in nature into the future with the opportunity for other compatible uses, including the continuation of appropriate tourist and visitor accommodation uses, and increased density.
>
> Future development should have a strong street presence whilst sympathetically blending with the surrounding area and protecting the amenity of adjacent dwellings.
>
> The Buchan Street triangle (Lots 1-3 DP 33065) is considered to be the key site within the Gateway Precinct due to its visual prominence and unique characteristics.

The objectives for the Ulladulla/Milton Gateway Precinct established in the DCP are to:

i. Ensure that development enhances and makes a positive contribution to the character of the Gateway Precinct as the northern gateway to the Ulladulla Town Centre.

ii. Encourage consolidation of the lots within the Buchan Street Triangle.

iii. Ensure that development is sensitive to the landscape, built form and environmental conditions of the locality, including distinctive views of the Ocean.

iv. Encourage the sharing of views, while not restricting the reasonable development potential of a site.

v. Minimise the amenity impact on adjoining or adjacent properties, especially Seaview Street, Mollymook.

vi. Set appropriate criteria for vehicular access and parking.

The proposal responds positively to Council's intent for the Gateway Precinct by:

- Providing a strong street presence which contributes to the 'sense of arrival';
- Providing an appropriate increase in density while reinforcing the residential character of the area;
- Providing an exemplar for subsequent development and the desired future character of the area with its high quality design and materials.

THE PROPOSAL

The proposal is an apartment building containing eight apartments over four floors with basement parking.

Perspective views of the building are shown in the figures below. These are 'renders' prepared by the Project Architect and highlight the design features of the building.

These design features are summarised in the Architect's notes in the Design Quality Statement submitted with the Development Application, and reproduced below:

> *The building form presents to Princes Highway as a 3-storey building and due to the slope of the site steps down toward the northeast.*
>
> *The entrance lobby is a narrower volume than the main building which serves to break up the mass of the building towards the road. The curvaceous nature of the form also minimises the impact, softening the normally sharp edges.*
>
> *Sweeping curvaceous balconies articulate the northern façade further breaking up the scale. The horizontal expression of the floor plates gives the building a horizontal layered nature which allows the building to address the site horizontally rather than a vertical expression. The internal usage as a series of individual apartment floors is clearly expressed in the architectural treatment. The floor plates are long and thin relating to the similar proportion of the site.*

Figure 11: Render view from Princes Highway to the south west of the site

Figure 12: Render view from Buchan Street, with the entry to the basement garage visible at right of building

Figure 13: Render view from the north

Figure 14: Render view from the north east

THE SITE IN CONTEXT

The site is located at the end of a cul de sac and at its junction with a busy Princes Highway, and is somewhat obscured by a bus stop on the nature strip directly in front of the site. When the site is viewed from the north west and directly south at Seaview Street, and from the north along Clissold Street (see the MAP) the site is obscured by a combination of a tall strata building on Seaview Street ('Mollymundra'), tall and mature vegetation located the length of both Princes Highway and Seaview neighbouring sites, and the sites' unique positioning just under the ridgeline along Princes Highway and the crest of the east ridge of Seaview Street adjacent Golf Avenue.

LANDSCAPING AND EXISTING VEGETATION

It is proposed to retain the established vegetation along both side boundaries of the site and introduce tall screening vegetation (such as clumping bamboos) along the northern boundary with 76 Seaview Street which will provide additional screening for the building from properties in Seaview Street.

The proposed landscaping will complement the existing tall canopy vegetation in the area and the established street trees to further screen any new development on the site.

VISUAL IMPACT

The major visual receptors for this site are the Princes Highway corridor and the residential area to the north and east of the site in the Seaview Street area.

A series of photographs were taken to document the existing visual environment and to provide the base for renders (also known as photomontages, or artist's impressions) that show the proposed apartment building integrated into the existing visual environment.

The location of the base photos and renders are shown on the map at **Annexure 1** to this report.

Figure 15: Photomontage of the proposed apartment building as viewed from the Princes Highway

Figure 15 above shows the proposed apartment building presenting to the street as a slim three storey building. The bulk of the building is consistent with the existing character of the area, while its height will be consistent with the future desired character of the Ulladulla/Mollymook Gateway Precinct area.

Figure 16: "Before" view of the site from Seaview Street (Nos. 76 and 74 Seaview Street to the left and right).

Figure 17: "After" view from Seaview Street. The upper northern edge of the roof is just visible behind the rear gable roof of No. 76 and above the left end of the roof of No. 74.

Figure 17 above shows the top floor of the proposed apartment building just visible above the roofs of “Mollumundra” units at 76 Seaview Street and the adjoining residence at 74 Seaview Street. The narrow footprint of the building reduces its apparent bulk. This demonstrates that the proposed apartment building is not intrusive and that it will be compatible with the existing character of the Seaview Street area.

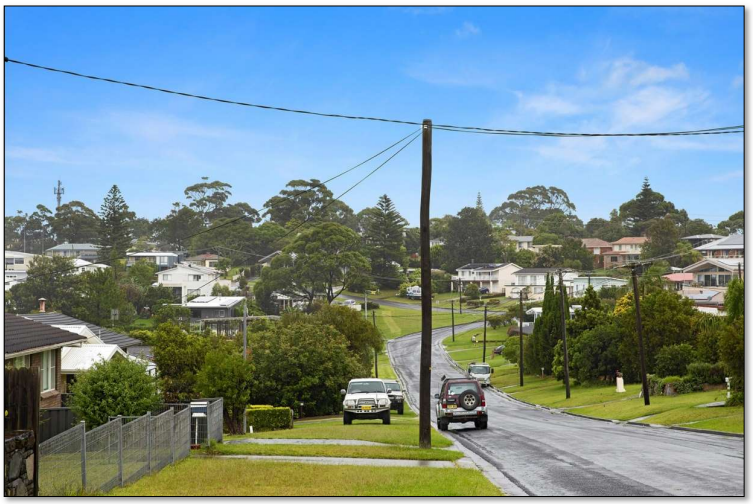


Figure 18: "Before" view from Clissold Street (near No. 38) looking towards the site.

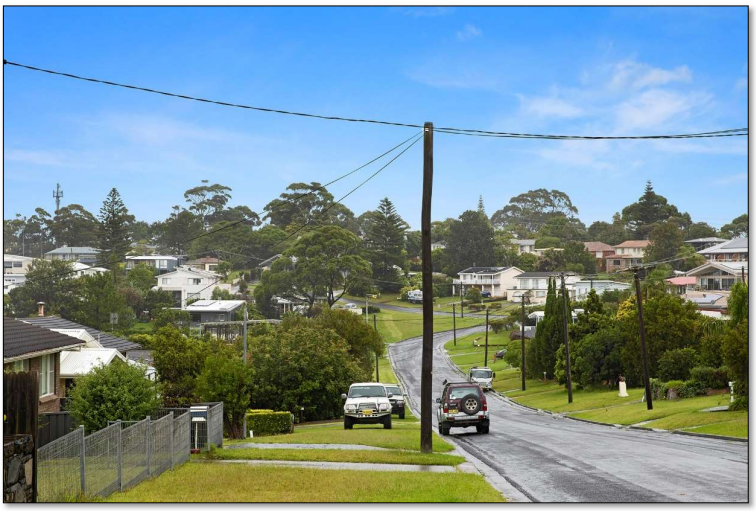


Figure 19: "After" view from Clissold Street (near No. 38) looking towards the site. The building is mostly screened from view by the large Norfolk Pine to the left of the power pole.

Figure 20: "Before" view from Seaview Street (near No. 45) looking towards the site

Figure 21: "After" view from Seaview Street (near No. 45) looking towards the site. The northern edge of the building is just visible to the right of the Telstra phone tower and behind the roof of 76 Seaview Street.

Figure 22: "After" view from Seaview Street (near No. 37) looking towards the site. The northern edge of the building is just visible to the left of the crossbar on the more distant power pole.

Figure 23: After" view from Clissold Street (near No. 56) looking towards the site. The northern edge of the building is just visible between the roof gable of No. 76 Seaview Street and the large Norfolk Pine.

For all of the above views, the proposed apartment building, if visible, will be in the distance and will be at a considerably lower height than the existing tree canopy, so it will not be visually intrusive.

The existing views and photomontages at Figures 24 to 27 show how the proposed apartment building will relate to the existing dwellings at 34 Princes Highway and 3 Buchan Street.

Figure 24: Existing view from the rear deck of 34 Princes Highway adjoining the property

Figure 25: Photomontage from the rear deck of 34 Princes Highway with the proposed apartment building.

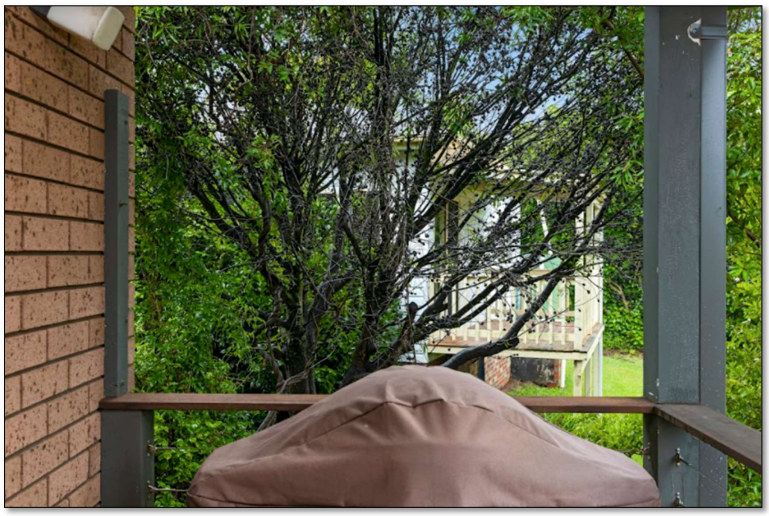


Figure 26: Existing view from the rear deck of 3 Buchan Street adjoining the property

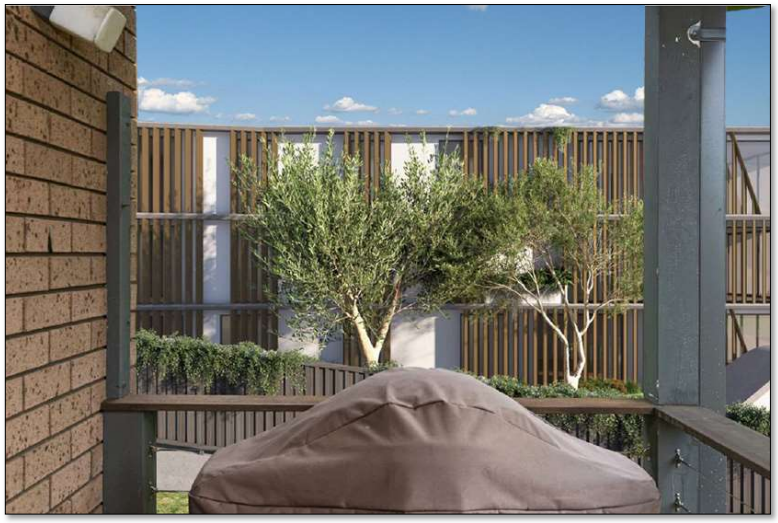


Figure 27: Photomontage from the rear deck of 3 Buchan Street with the proposed apartment building.

CONCLUSION

This report has documented the existing visual character of the area identified by Shoalhaven City Council as the Ulladulla/Mollymook Gateway Precinct which contains the No. 1 Buchan Street site which is the site of the proposed residential apartment building.

This report has documented the existing visual character of the area which is undergoing transition. This report has sought to show how the proposed apartment building will have a harmonious relationship with existing development while setting the scene for the future desired character as identified by the Development Control Plan for the Ulladulla/Mollymook Gateway Precinct.

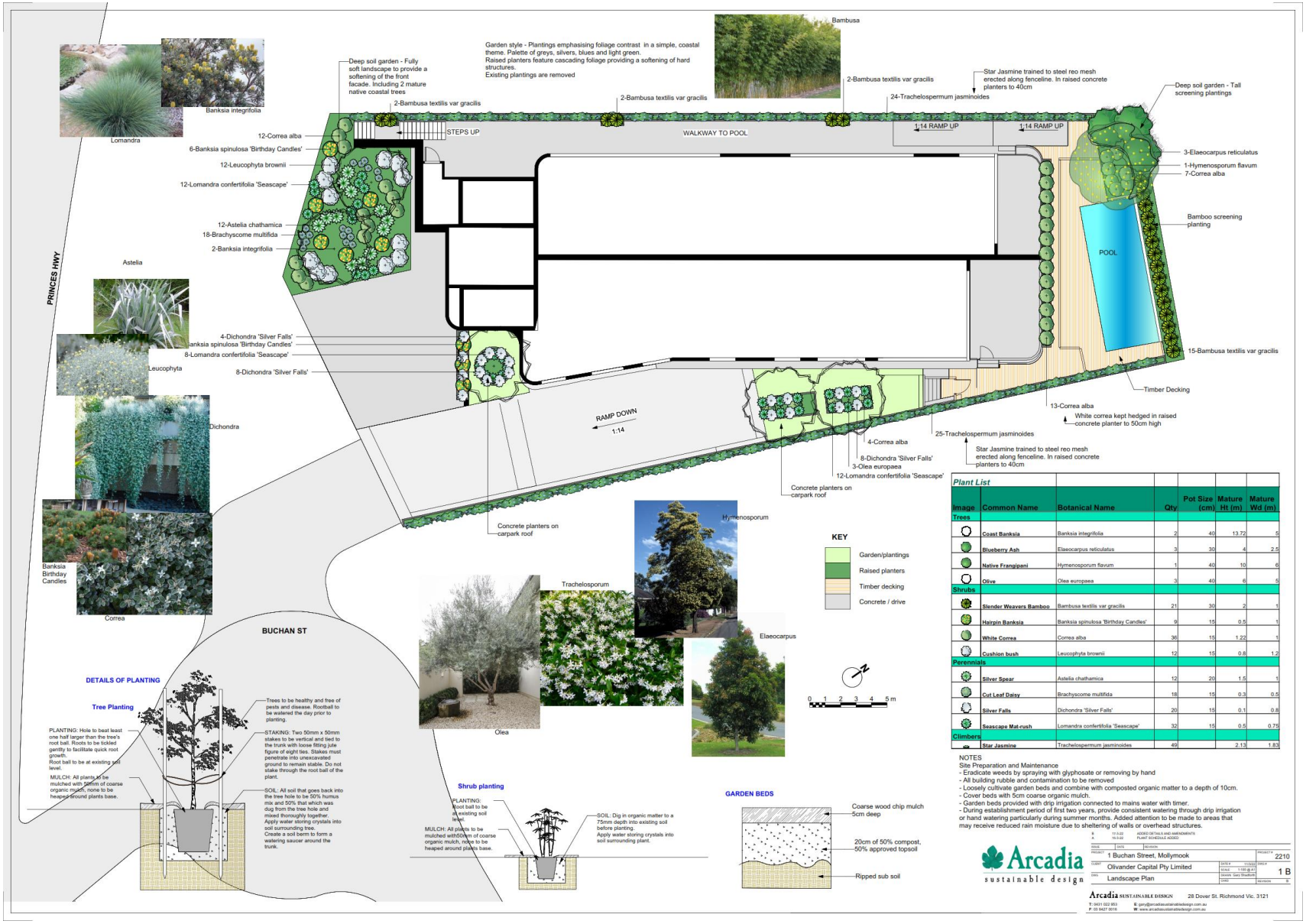
ANNEXURE 1 – MAP OF PHOTO AND RENDERS

MAP KEY

RENDERS NUMBERS: 1 - 17

PHOTO NUMBERS: 1 - 17

1. Render 1 is from the Princes Highway frontage
2. Render 4 is from Seaview Street
3. Renders 8, 9, 10 and 11 are from the adjoining residential properties.


Bambusa
Garden style - Plantings emphasising foliage contrast in a simple, coastal theme. Palette of greys, silvers, blues and light green.
Raised planters feature cascading foliage providing a softening of hard structures.
Existing plantings are removed
Deep soil garden - Fully soft landscape to provide a softening of the front facade. Including 2 mature native coastal trees
2-Bambusa textilis var gracilis
2-Bambusa textilis var gracilis
2-Bambusa textilis var gracilis
Star Jasmine trained to steel reo mesh erected along fenceline. In raised concrete planters to 40cm
24-Trachelospermum jasminoides
Deep soil garden - Tall screening plantings
Lomandra
Banksia integrifolia
12-Correa alba
6-Banksia spinulosa 'Birthday Candles'
12-Leucophyta brownii
12-Lomandra confertifolia 'Seascape'
STEPS UP
WALKWAY TO POOL
1:14 RAMP UP
1:14 RAMP UP
3-Elaeocarpus reticulatus
1-Hymenosporum flavum
7-Correa alba
12-Astelia chathamica
18-Brachyscome multifida
2-Banksia integrifolia
Bamboo screening planting
POOL
PRINCES HWY
Astelia
4-Dichondra 'Silver Falls'
Banksia spinulosa 'Birthday Candles'
8-Lomandra confertifolia 'Seascape'
8-Dichondra 'Silver Falls'
Leucophyta
Dichondra
15-Bambusa textilis var gracilis
Timber Decking
RAMP DOWN
1:14
13-Correa alba
White correa kept hedged in raised concrete planter to 50cm high
25-Trachelospermum jasminoides
4-Correa alba
8-Dichondra 'Silver Falls'
3-Olea europaea
12-Lomandra confertifolia 'Seascape'
Star Jasmine trained to steel reo mesh erected along fenceline. In raised concrete planters to 40cm
Concrete planters on carpark roof
Concrete planters on carpark roof
Hymenosporum
Banksia Birthday Candles
Correa
BUCHAN ST
KEY
Garden/plantings
Raised planters
Timber decking
Concrete / drive
Trachelosporum
Elaeocarpus
Olea
0 1 2 3 4 5 m
DETAILS OF PLANTING
Tree Planting
PLANTING: Hole to beat least one half larger than the tree's root ball. Roots to be tickled gentlly to facilitate quick root growth.
Root ball to be at existing soil level.
MULCH: All plants to be mulched with 50mm of coarse organic mulch, none to be heaped around plants base.
Trees to be healthy and free of pests and disease. Rootball to be watered the day prior to planting.
STAKING: Two 50mm x 50mm stakes to be vertical and tied to the trunk with loose fitting jute figure of eight ties. Stakes must penetrate into unexcavated ground to remain stable. Do not stake through the root ball of the plant.
SOIL: All soil that goes back into the tree hole to be 50% humus mix and 50% that which was dug from the tree hole and mixed thoroughly together. Apply water storing crystals into soil surrounding tree. Create a soil berm to form a watering saucer around the trunk.
Shrub planting
PLANTING: Root ball to be at existing soil level.
MULCH: All plants to be mulched with50mm of coarse organic mulch, none to be heaped around plants base.
SOIL: Dig in organic matter to a 75mm depth into existing soil before planting. Apply water storing crystals into soil surrounding plant.
GARDEN BEDS
Coarse wood chip mulch 5cm deep
20cm of 50% compost, 50% approved topsoil
Ripped sub soil
Plant List
Image | Common Name | Botanical Name | Qty | Pot Size (cm) | Mature Ht (m) | Mature Wd (m)
Trees
Coast Banksia | Banksia integrifolia | 2 | 40 | 13.72 | 5
Blueberry Ash | Elaeocarpus reticulatus | 3 | 30 | 4 | 2.5
Native Frangipani | Hymenosporum flavum | 1 | 40 | 10 | 6
Olive | Olea europaea | 3 | 40 | 6 | 5
Shrubs
Slender Weavers Bamboo | Bambusa textilis var gracilis | 21 | 30 | 2 | 1
Hairpin Banksia | Banksia spinulosa 'Birthday Candles' | 9 | 15 | 0.5 | 1
White Correa | Correa alba | 36 | 15 | 1.22 | 1
Cushion bush | Leucophyta brownii | 12 | 15 | 0.8 | 1.2
Perennials
Silver Spear | Astelia chathamica | 12 | 20 | 1.5 | 1
Cut Leaf Daisy | Brachyscome multifida | 18 | 15 | 0.3 | 0.5
Silver Falls | Dichondra 'Silver Falls' | 20 | 15 | 0.1 | 0.8
Seascape Mat-rush | Lomandra confertifolia 'Seascape' | 32 | 15 | 0.5 | 0.75
Climbers
Star Jasmine | Trachelospermum jasminoides | 49 | | 2.13 | 1.83
NOTES
Site Preparation and Maintenance
- Eradicate weeds by spraying with glyphosate or removing by hand
- All building rubble and contamination to be removed
- Loosely cultivate garden beds and combine with composted organic matter to a depth of 10cm.
- Cover beds with 5cm coarse organic mulch.
- Garden beds provided with drip irrigation connected to mains water with timer.
- During establishment period of first two years, provide consistent watering through drip irrigation or hand watering particularly during summer months. Added attention to be made to areas that may receive reduced rain moisture due to sheltering of walls or overhead structures.
Arcadia sustainable design
1 Buchan Street, Mollymook
2210
Olivander Capital Pty Limited
1 B
Landscape Plan
Arcadia SUSTAINABLE DESIGN 28 Dover St. Richmond Vic. 3121

PROPOSED RESIDENTIAL APARTMENTS AT
1 BUCHAN STREET, MOLLYMOOK (LOT 14 DP 20231)

CLAUSE 4.6 VARIATION REQUEST

PREPARED FOR: OLIVANDER CAPITAL PTY LIMITED

RYGATE REF: U20576_CL.4.6_REV_2

22/08/2022

RYGATE & WEST
INCORPORATING BULLOCK & WALTERS
SINCE 1893

INTRODUCTION

This Variation Request is made under Clause 4.6 of Shoalhaven LEP 2014 in support of a development application for the erection of a residential apartment building at No. 1 Buchan Street, Mollymook.

The variation is in respect of the maximum building height as specified in Clause 4.3 of Shoalhaven LEP 2014.

The Variation Request is set out in two parts. Part A follows the format set out in the NSW Department of Planning and Infrastructure's document *Varying development standards: A Guide (August 2011)* while Part B addresses the specific requirements of Clause 4.6 of Shoalhaven LEP 2014.

Note regarding the August 2022 Revision 2 version of this report: This version of the Clause 4.6 Variation Request is based on the Revised Plans by Box Architects (220819_22001_DA_RevC). The changes to the building incorporated in these plans include:

- A reduction in the maximum height of the building, with the rear half of the building now three storeys rather than two;
- The apartments on the top floor are now 2 bedroom rather than 3 bedroom and are significantly reduced in floor area;
- The setback to the rear boundary has been increased to 9 metres.

PART A: QUESTIONS AND ANSWERS BASED ON THE FORMAT SPECIFIED IN *Varying development standards: A Guide (August 2011)*

What is the name of the environmental planning instrument that applies to the land?

Shoalhaven Local Environmental Plan 2014 (SLEP 2014)

What is the zoning of the land?

The land is zoned R1 General Residential under Shoalhaven Local Environmental Plan 2014.

What are the objectives of the zone?

The objectives of the R1 General Residential zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*

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

• *To identify land suitable for future urban expansion.*

What is the development standard being varied?

The development standard being varied is the Height of Buildings.

Under what clause is the development standard listed in the environmental planning instrument?

The development standard is listed under Clause 4.3 of SLEP 2014.

What are the objectives of the development standard?

The objectives of the Height of Buildings development standard are:

(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,
(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
(c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.

What is the numeric value of the development standard in your development application?

The numeric value of the development standard is 11 metres.

What is the proposed numeric value of the development standard in your development application?

The proposed maximum building height exceeds the 11 metre height development standard by up to 0.3 metres.

The elements of the building that exceed the 11 metre height plane are shown below at Figure 1. The top of the lift overrun exceeds the height limit by 0.3 metres. The only other building component exceeding the height limit is the uppermost part of the northern-most bank of solar PV collectors, although this exceedance is only about 0.1 metre.

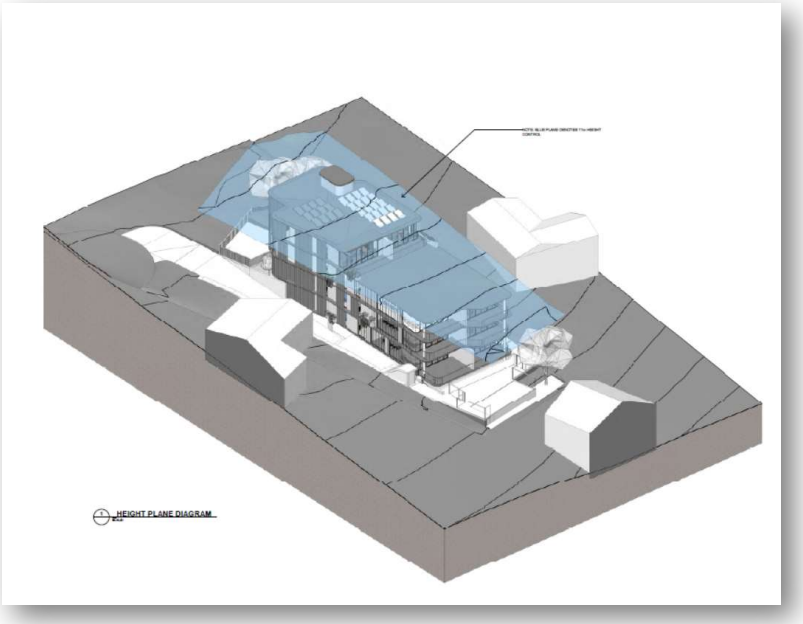


Figure 1: Perspective view of the building with the 11 metre height plane shown coloured light blue (Source: Box Architects 2022)

The building elements involved are the top of the lift overrun (0.3 metres above the 11 metre height plane) and the top of the solar PV collectors (nominal - 0.1 metres).

The variation to the 11 metre building height limit is detailed in the table below.

Point	Lift overrun

Natural Ground RL (m)	38.4
Height limit	11
11m Height RL (m)	49.4
Proposed RL (m)	49.7
Proposed building height above NGL	11.3
Height Exceedance (m)	0.3
Percentage Exceedance	2.7%

What is the percentage variation (between your proposal and the environmental planning instrument)?

The percentage variation is 0.3%.

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The judgment in *Wehbe v Pittwater Council* [2007] NSWLEC 827 identified a 'five part test' that could be applied to establish whether compliance is unreasonable or unnecessary. The elements of the "five part test" are discussed below:

1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

As set out below, the proposal will achieve the objectives of the development standard despite numerical non-compliance with the development standard.

Objective (a): to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,

In addressing this objective, it is submitted that compatibility with the ***desired future character*** of the area should be preferred and be given more weight in this assessment. The reasons for this are set out below:

1. The area in which the site is located is known as the Ulladulla/Milton Gateway Precinct. The context, objectives and DCP-level development controls for the Gateway Precinct are established in Shoalhaven DCP 2014's Chapter V3.
2. Among the suite of development controls for the Gateway Precinct are the 11 metre building height limit established by Clause 4.3 of Shoalhaven LEP 2014.
3. Existing development character within the Gateway Precinct is of single and some two storey development that is largely single dwelling residential, with a significant sprinkling of tourist and visitor accommodation such as motels. Much of the existing development, particularly the residential component, is more than 50 years old and is nearing the end of its economic life.
4. It is clear that Council's intention is for an orderly but decisive transformation of the area from the existing low density residential development to a much higher density style of development, though still primarily residential in character.

Aspects of the *Planning Principle: Compatibility in the Urban Environment* as set out in *Project Venture Developments v Pittwater Council* [2005] NSWLEC 191 have relevance to the weight that should be given to the desired future character of the Ulladulla/Mollymook Gateway Precinct. At paragraph 23 in that judgement, the Planning Principle states:

It should be noted that compatibility between proposed and existing is not always desirable. There are situations where extreme differences in scale and appearance produce great urban design involving landmark buildings. There are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing. Finally, there are urban environments that are so unattractive that it is best not to reproduce them.

In the contextual statement and objectives for the Gateway Precinct, we can observe the desire for new development to bring the following attributes, which require a change of the area's character:

- to create a 'sense of arrival'
- to enhance and make a positive contribution to the character of the Gateway Precinct as the northern gateway to the Ulladulla Town Centre

Shoalhaven DCP Chapter V3 provides the following context for the Ulladulla/Mollymook Gateway Precinct:

The Ulladulla/Mollymook Gateway Precinct is located on both sides of the Princes Highway at the northern approach to the Ulladulla Town Centre. The Princes Highway runs along a ridgeline that transects the Gateway Precinct. The land generally falls away from the road on both sides and there are significant views to the ocean to the east and some views of the escarpment to the west. The current development of the subject land is characterised by predominantly low density residential and tourist and visitor accommodation uses.

The opportunity exists for development fronting the Princes Highway in this location to create a 'sense of arrival' and positively respond to the natural environment elements that define the coastal location. It is anticipated that the precinct will continue to be predominantly residential in nature into the future with the opportunity for other compatible uses, including the continuation of appropriate tourist and visitor accommodation uses, and increased density.

Future development should have a strong street presence whilst sympathetically blending with the surrounding area and protecting the amenity of adjacent dwellings.

The Buchan Street triangle (Lots 1-3 DP 33065) is considered to be the key site within the Gateway Precinct due to its visual prominence and unique characteristics.

Chapter V3 also contains the following objectives for the Gateway Precinct:

i. Ensure that development enhances and makes a positive contribution to the character of the Gateway Precinct as the northern gateway to the Ulladulla Town Centre.

ii. Encourage consolidation of the lots within the Buchan Street Triangle.

iii. Ensure that development is sensitive to the landscape, built form and environmental conditions of the locality, including distinctive views of the Ocean.

iv. Encourage the sharing of views, while not restricting the reasonable development potential of a site.

v. Minimise the amenity impact on adjoining or adjacent properties, especially Seaview Street, Mollymook.

vi. Set appropriate criteria for vehicular access and parking.

In choosing to apply a building height limit of 11 metres, Council is encouraging new development to take advantage of the development potential provided by the height limit. Thus a central element of the desired future character of the Gateway Precinct is for new development to achieve building heights of around 11 metres, which is significantly higher than what exists at present.

Given that new development in the Gateway Precinct would be expected to take advantage of the 11 metre building height limit, the height of the proposed apartment building will be compatible with that height limit. It will not conflict with the element of character that relates to height.

The compatibility of a building with the streetscape is an important element of its harmony with the character of the locality. The photomontage below at Figure 2 shows a view of the streetscape with the proposed apartment building superimposed.

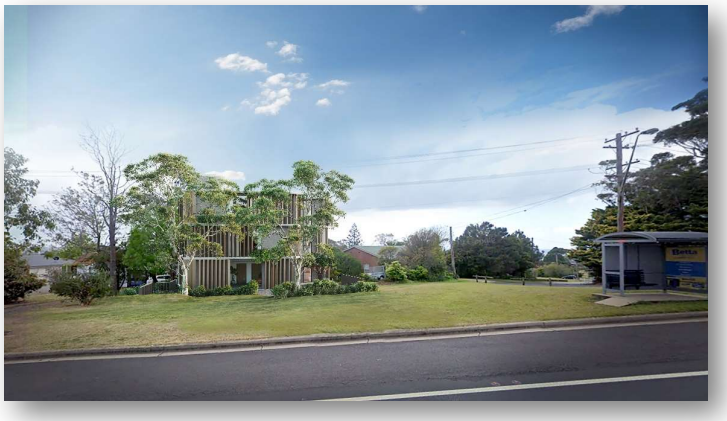


Figure 2: Photomontage of the street view of the site showing the proposed apartment building

The building is within the 11 metre height limit when viewed from the street, as shown on the extract from the street elevation plan at Figure 3 below.

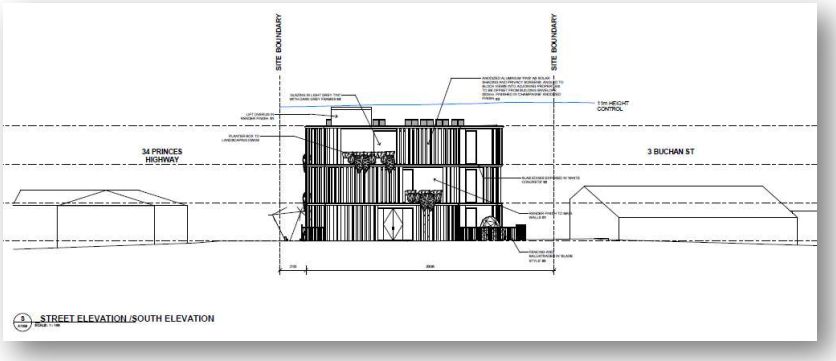


Figure 3: Street elevation, showing the building within the 11 metre height limit (blue line)

The entrance lobby at the front of the building observes a typical front setback for the locality. Combined with the slimness of the overall building, the reduced bulk of the entrance lobby and the typical side setbacks, the building is not incompatible with the existing bulk and scale of development, and will be entirely harmonious with the desired future character of the Ulladulla/Mollymook Gateway Precinct.

Objective (b): to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

Visual impact: The site is located in a 'dip' along the Princes Highway corridor. This characteristic of the local topography combined with the very wide verge (ranging from 10 to 17 metres) in front of the site and the slim aspect of the front of the building will combine to ensure that the building has a restrained impact on the visual environment of the Princes Highway corridor.

The photograph at Figure 4 below shows the area of the site as one approaches Ulladulla from the north. For reference, the site lies just beyond the more distant power pole, and there is a grey car parked on the verge in front of the subject property, with only its rear half visible. The street trees and other plantings on the verge will not be affected by the proposal and will assist in screening the building once erected.

Figure 4: View from the Princes Highway looking south. The site lies just beyond the distant power pole – the rear of a grey car parked on the verge in front of the subject property can just be seen. Note the wide verge and the established street trees in front of the site.

Viewed from the north, in Seaview Street, the proposal will not be intrusive, as shown in the photomontage at Figure 5 below.

The proposed height variation will not have any additional adverse impact in terms of the visual quality of the locality.

Figure 5: View from Seaview Street. Nos. 76 and 74 Seaview Street in the foreground, with the proposed building just visible behind.

Disruption of views: The site is set somewhat below the level of the Princes Highway and between two significant viewpoints from the Highway corridor to the ocean. The topography means that any development on this site will not reduce views from the Highway corridor to the ocean.

The proposal will not restrict views of the ocean from the Princes Highway but will help to frame them, adding to the sense of arrival as people enter the Gateway Precinct.

In terms of any impact on views from private properties, the properties most likely to be affected are those immediately adjoining the site, 3 Buchan Street and 34 Princes Highway.

In both cases, these properties have views to the north-east which will be largely unaffected by the proposal. Mitigating any likely view loss is the existence of extensive screening vegetation along the side property boundaries and the fact that any view loss would occur across these side boundaries.

The photomontage at Figure 5 and the photograph at Figure 6 below show the minimal impact that the proposal will have on the views available from those properties. The part of the building exceeding the 11 metre height limit will have **no** impact on those views.

Overall, the proposed variation to building height will not have any significant impact on the views available from either public places or private properties.

Figure 6: Photomontage of view from the rear deck of 34 Princes Highway.

Figure 7: View from the rear deck of No. 3 Buchan Avenue to the north, across the rear of the subject land, showing that any views are constrained by the existing vegetation in the rear yard.

Loss of privacy: The proposed variation to building height will not have any adverse impact on the privacy of adjoining residential properties. The 0.3 metre encroachment of the lift overrun above the 11 metre height plane will not have any effect on privacy.

Loss of solar access: Due to the orientation of the site, the residential property most prone to loss of solar access is No. 3 Buchan Street. The shadow diagrams demonstrate that this property will retain at least 3 hours of solar access between 9am and 3pm at the winter solstice. That property is not affected by shading from the proposal until after 11am and still retains solar access to the north-facing outdoor living area at 2pm.

The proposed variation to building height will have an imperceptible impact in terms of solar access on the adjoining property and the level of solar access will still meet the accepted standard for solar access of 3 hours between 9am and 3pm at the winter solstice.

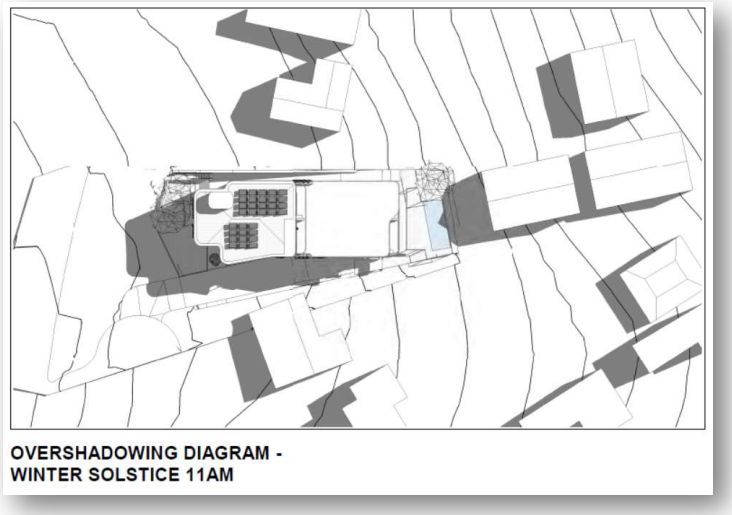


Figure 8: Shadow diagram – Winter solstice, 11am

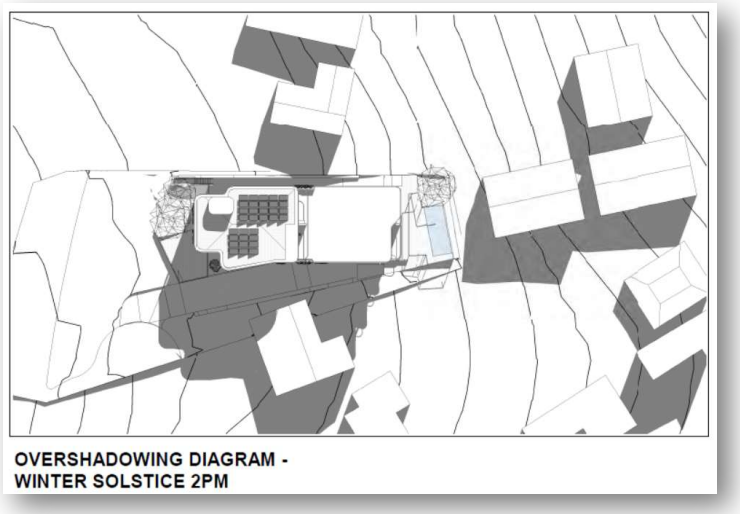


Figure 9: Shadow diagram – Winter solstice, 2pm

Objective (c): to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.

This objective is not relevant as the site is not listed as a heritage item and nor is it within the vicinity of a heritage item or within a heritage conservation area.

Consequently it is submitted that the objectives of the Height of Buildings development standard are achieved notwithstanding the non-compliance with the development standard.

2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.

This aspect does not apply to the proposal.

3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

This aspect does not apply to the proposal.

4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

This aspect does not apply to the proposal.

5. Compliance with the development standard is unreasonable or inappropriate due to the existing use of land and the current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.

This aspect does not apply to the proposal.

Summing up, compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

How would strict compliance hinder the attainments of the objects specified in section 5(a)(i) and (ii) (now section 1.3) of the Act?

The objects set out in sections 5(a) (i) and (ii) of the Act (prior to the 2017 amendments) are:

(a) to encourage:

(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,

(ii) the promotion and co-ordination of the orderly and economic use and development of land.

Following the 2017 amendments, the corresponding objects in section 1.3 of the Act are:

(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(c) to promote the orderly and economic use and development of land,

It is submitted that strict compliance with the 11 metre height of buildings development standard would hinder the attainment of the above objects of the Act by preventing a proposed development that:

- involves a very minor variation to the development standard and is otherwise unobjectionable;
- will not have any significant adverse impact on the amenity of adjoining residential properties;
- will add to the very limited supply of housing in the Mollymook/Ulladulla area;
- will add to the range of housing options available in the area, particularly in terms of accessible and adaptable medium density housing options;
- responds to Council's objectives for the Milton/Ulladulla Gateway Precinct.

Are there sufficient environmental planning grounds to justify contravening the development standard? Give details.

There are a range of environmental planning grounds that justify contravening the development standard, as set out below:

1. *Additional housing opportunities*: if the development standard was not varied, the opportunity to provide additional housing units would not arise. There is a significant undersupply of housing in the Mollymook and wider Milton/Ulladulla areas and the proposal will assist in satisfying this demand and addressing housing availability.
2. *Provision of lift access to all floors of the development*: a lift overrun is a practical requirement for the provision of lift access in a multi-storey residential building.
3. *Provision of accessible/adaptable housing*: four of the eight apartments in the proposal will meet Liveable Housing Australia's (LHA's) Silver Standard for flexibility and adaptability, considerably in excess of the number required by either the Shoalhaven DCP or SEPP 65 / Apartment Design Guide. The proposed variation will assist in enabling the provision of this standard of adaptable accommodation.
4. *Fulfilling Council's strategy for the Ulladulla/Mollymook Gateway Precinct*: the proposal responds appropriately to Council's plans for the Gateway Precinct, will contribute to the 'sense of arrival' and has a strong street presence, with an appropriate increase in density.

It is submitted that the above environmental planning grounds are sufficient to justify the variation to the development standard.

How will the proposal be in the public interest?

The proposal will be in the public interest because:

- it is consistent with the objectives of both the R1 General Residential zone and of the Height of Buildings development standard;
- there are ample environmental planning grounds to justify the contravention of the development standard;
- the proposed variation is very minor and will have no adverse effects;
- the proposal will add to the very limited supply of housing in the Mollymook/Ulladulla area;
- the proposal will add to the housing options available in the area, particularly in terms of accessible and adaptable medium density housing options;
- the proposal responds to Council's objectives for the Milton/Ulladulla Gateway Precinct.
- public infrastructure in the vicinity is capable of adequately servicing the proposal and will be better utilised if the proposal proceeds; and
- the proposal is otherwise unobjectionable.

PART B: SPECIFIC REQUIREMENTS OF CLAUSE 4.6 OF SHOALHAVEN LEP 2014

Clause 4.6 Exceptions to development standards	
Clause provisions	**Comments on this proposal**
(1) The objectives of this clause are as follows— (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development, (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.	The proposal is consistent with the objectives of the clause in that: • the environmental planning grounds and public interest issues outlined in PART A above support the application of the flexibility required to approve this proposal; • approval of the proposal will result in a better outcome than if the development did not proceed (again, as set out in PART A above).
(2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	The Height of Buildings development standard is not expressly excluded from the operation of this clause and so the development standard may be varied as proposed.
(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating— (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and (b) that there are sufficient environmental planning grounds to justify contravening the development standard.	These matters are set out above in PART A of this Variation Request.
(4) Development consent must not be granted for development that contravenes a development standard unless— (a) the consent authority is satisfied that—	It is submitted that the applicant's request adequately addresses the matters required to be demonstrated by subclause (3). It is further submitted that the proposed development will be in the public interest

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and (b) the concurrence of the Planning Secretary has been obtained.	because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out. Council is able to assume the concurrence of the Planning Secretary as set out in the response to subclause (5) below.
(5) In deciding whether to grant concurrence, the Planning Secretary must consider— (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and (b) the public benefit of maintaining the development standard, and (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.	NSW DPIE's Planning Circular PS 20-002 details when Councils can assume the Secretary's concurrence in varying a development standard. There are no matters of significance for State or regional environmental planning that are raised by the proposed variation to the Height of Buildings development standard.
(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if— (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.	The land is not within any of the zones described in this subclause and so the development standard may be varied as proposed.
(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be	Noted.

addressed in the applicant's written request referred to in subclause (3).	
(8) This clause does not allow development consent to be granted for development that would contravene any of the following— (a) a development standard for complying development, (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated, (ba) clause 4.1E, to the extent that it applies to land in a rural or environment protection zone, (bb) clause 4.2B, (c) clause 5.4, (ca) clause 6.1 or 6.2, (cb) clause 7.25, (cc) clause 4.1H.	The development standard is not within any of the categories set out in this subclause and may therefore be varied as proposed.

Shoalhaven City Council	**Section 4.15 Assessment Report** *Environmental Planning & Assessment Act 1979*

Conflict of interest declaration

I have considered the potential for a conflict of interest under the Code of Conduct and to the best of my knowledge no pecuniary and/or significant non-pecuniary conflict of interest exists.

Note: If you determine that a non-pecuniary conflict of interest is less than significant and does not require further action, you must provide a written explanation of why you consider that the conflict does not require further action in the circumstances. This statement should then be countersigned by the Manager.

Assessing Officer	**Choose an item.**	**29/06/2022**
Peer Review Officer	**Choose an item.**	**16/02/2023**
Delegation Level Required	**To be determined by the Council** **Notice of Motion to call in Application CL22.569 Ord Mtg 31/10/2022**	
Variations Proposed	☒ Clause 4.6 exception ☒ DCP departure	

Councillor Representations	*Councilor*	*Date*	*TRIM Reference*

Report Recommendation	**Approval**

DA Number	DA22/1542
PAN	215447
Property Address	1 Buchan St, MOLLYMOOK - Lot 14 DP 20321
Proposal	Units/Flats - Demolition of Existing Dwelling. Erection of a Residential Apartment Building Containing 8 Apartments Over 4 Floors & Basement Parking & Swimming Pool
Applicant(s)	Chris Beasley
Owner(s)	One Buchan Street Pty Ltd
Owner's consent provided?	Yes
Date Lodged	13-May-2022
Date of site inspection	30/06/2022

Section 4.15 Assessment Report - DA22/1542 – 1 Buchan St Mollymook

Date clock stopped	4/07/2022
Date clock started	19/08/2022
Related Application in NSW Planning Portal?	☒ Concurrence and/or external agency referral ☐ Section 68 ☐ Section 138 ☐ Construction Certificate *Note: s138 and CC applications will not be incorporated into the Development Consent and will be determined separately.*
Number of submissions	25 in first notification period from 24.5.2022 until 17.6.2022 54 in the second notification period from 25.8.2022 to 16.9.2022 *Note: where submissions are received Council must give notice of the determination decision to all submitters.*

1. Detailed Proposal

The proposal includes:

- Demolition of existing aged dwelling and erection of new apartment building consisting of 6 by 3-bedroom apartments over the first three storeys and two by two bedroom apartments on the top fourth storey.
- Basement parking for 17 vehicles.
- The building is set back a minimum 9m at the rear and 5.6m at the front and steps down from three storeys at street level to three storeys at the rear. It is setback a minimum 2.1m from the western boundary and 7m tapering to 2.4m from the eastern side boundary.
- The building is 3 storeys at the front elevation and following the slope of the land steps down to three storeys at the rear with a portion in the centre comprising 4 storeys above ground.
- The building proposes fixed aluminium screening blades/fins on the side elevations.
- Four of the apartments are LHA (Liveable Housing Australia) Silver Standard compliant.
- Communal open space at the front and rear of the properties including a swimming pool at the rear.
- A clause 4.6 variation request for the proposed 11.3m height. The majority of the building is compliant with the 11.0m HOB limit for the site with an overall height of 11.3m for the lift overrun and 11.1m for northern most row of solar collectors. The applicant has provided a written request to vary the development standard in accordance with clause 4.6 of SLEP 2014.

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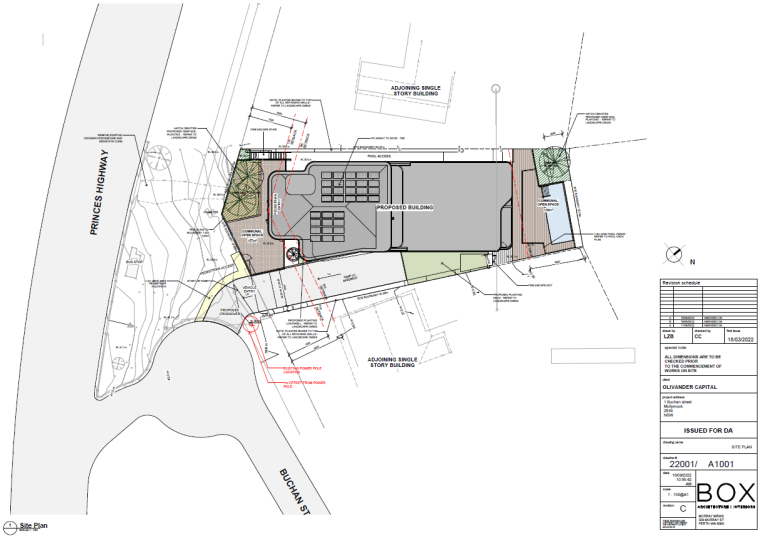
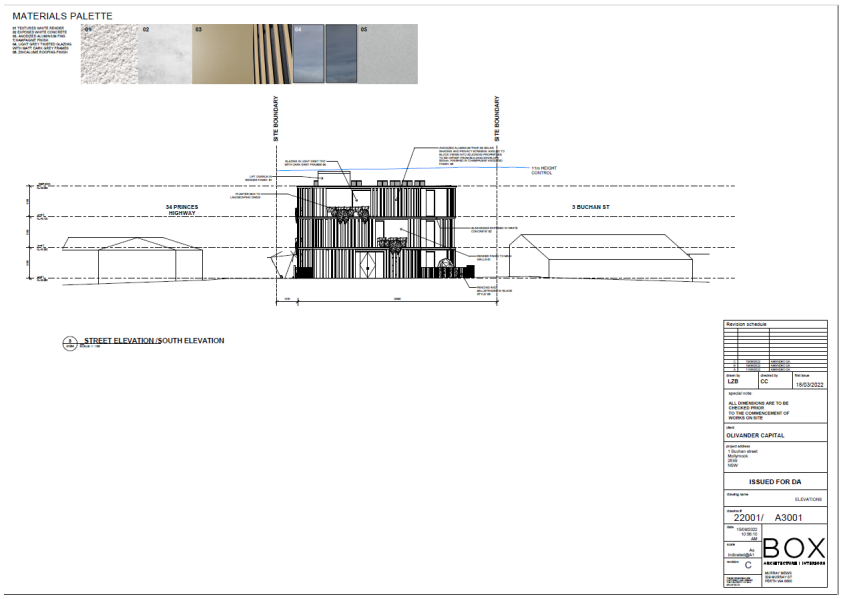
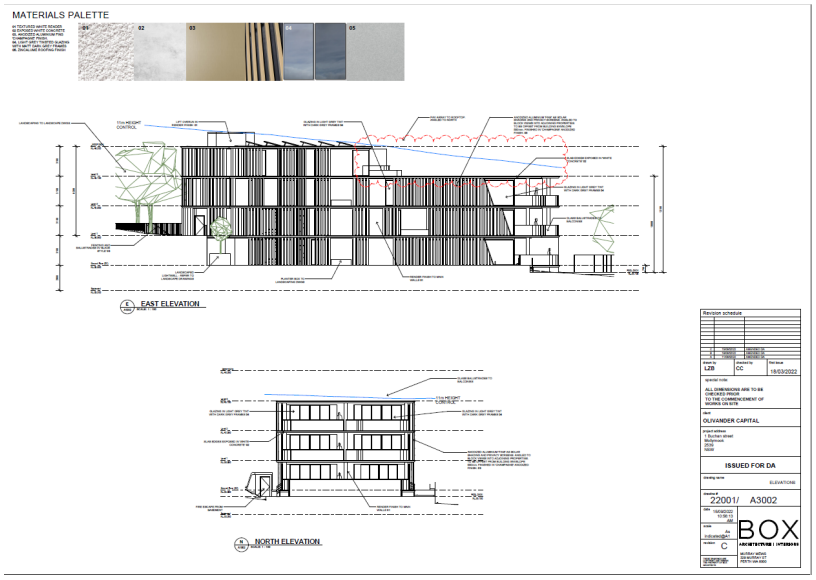


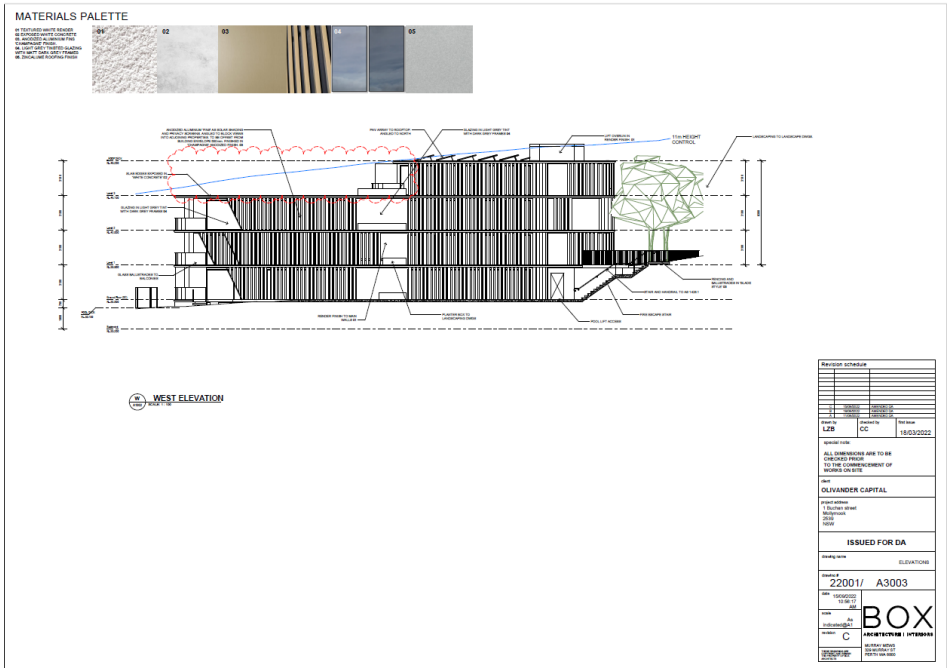
Site Plan



South Elevation



East Elevation



West Elevation

Three-dimensional view of the north western elevation of the proposed building

2. Subject Site and Surrounds

Site Description

Figure 1: Aerial imagery of subject site

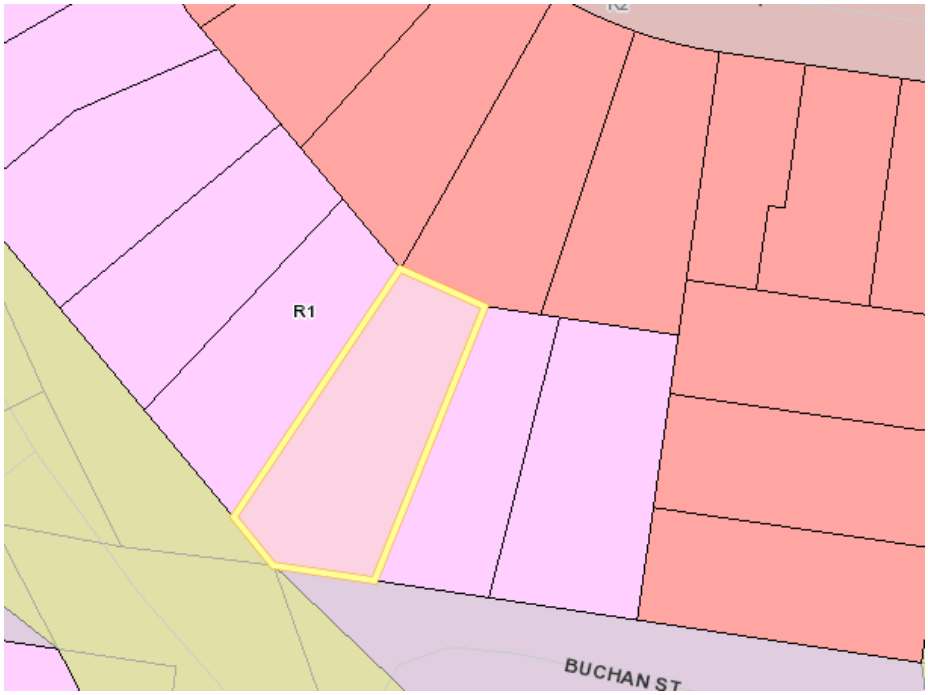


Figure 2: Zoning Map

The subject site is legally described as Lot 14 DP 20231. It has an angular 29m frontage to the Princes Highway, a depth of approximately 53m with a total area of 1,189m2. The site contains an older style fibro dating from the 1960s. Th existing dwelling has access from the Princes Highway.

The lot fronts the Princes Highway and Buchan St and has an area has a mixed-use character, with four motels, a retirement village and a funeral director's premises within 300m of the site.

The surrounding area is mostly residential in character with a mix of ageing motels and a manufactured home village on the opposite side of the road. The site is adjoined by a residential dwelling to the west and east, and a dual occupancy development to the north.

The site slopes from south to north away from the Highway with a cross fall of approximately 5.6m.

The site was rezoned from SP3 Tourist to R1 General Residential in September 2019 and a DCP *Chapter V3 5 Ulladulla/Mollymook Gateway Precinct* was adopted by Council in 2019 to support the rezoning.

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Site Inspection Observations

Photo 1: Neighbouring dwelling to east – 3 Buchan St Mollymook

Photo 2: Side elevation of neighbour

Photo 3: Buchan St view to east

Photo 4: View from front of lot to the highway

Photo 5: View to highway

Photo 6: Front of existing house

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 Photo 7: Rear of existing dwelling	 Photo 8: Western side of existing house
 Photo 9: Eastern rear side boundary	 Photo 10: view from lot to neighbour to north
 Photo 11: Western side boundary	 Photo 12: Western boundary

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Photo 13: Rear adjoining house

Photo 14: Eastern rear corner boundary

Photo 15: Rear yard view of existing rear elevation

Photo 16: View top site looking east across Princes Highway

Photo 17: View from Princes Highway to lot

Photo 18: View to west of highway from front boundary

Photo 19: Front streetscape view of existing dwelling

Photo 20: Neighbour to the west

Photo 21: View to site from opposite footpath on Princes Highway looking north east

Photo 22: View to east of the highway from the front boundary

Deposited Plan and 88B Instrument

There are no identified restrictions on the use of the land that would limit or prohibit the proposed development.

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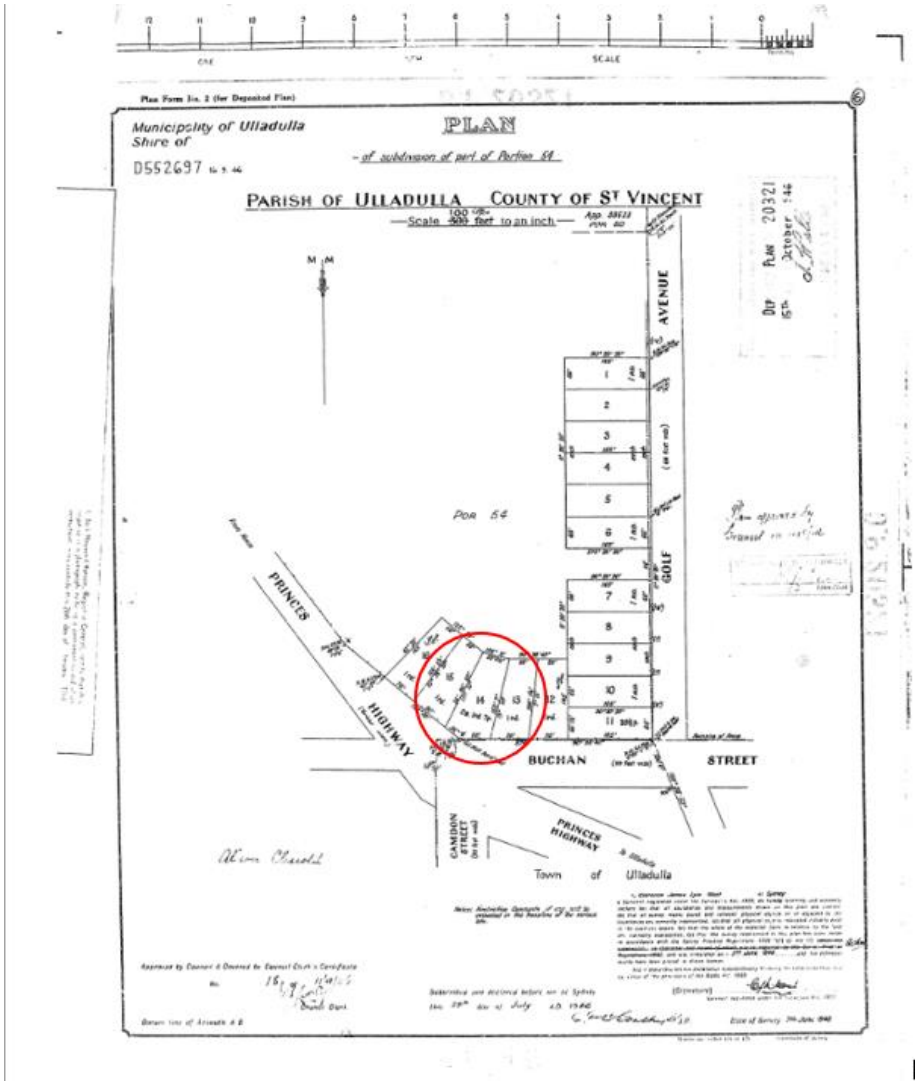

3. Background

Pre-Lodgement Information

Refer to pre-lodgement notes D22/199660 dated February 2022.

Post-Lodgement Information

- The application was lodged on 13 May 2022.
- As a result of detailed assessment of the submitted application and based on concerns regarding the massing, privacy, bulk, and transition with the lower density residential zone, the following additional information and design changes were requested from the applicant on 4 July 2022:

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- Relocation of the proposed building to be minimum 9m from the rear boundary.
- Step down the building at the rear so that it transitions into the R2 Low Density zone.
- Reduce the height so that the main building is compliant with the 11m height limit.
- Provide a mix of apartment housing types.
- Provide privacy screens to balconies on the side elevations.
- Council had sought and received advice from Council's Development Engineering Unit, Traffic, Waste, Shoalhaven Water, Endeavour Electricity and Transport for NSW (TfNSW). (To be reviewed by the applicant.)

The internal referral comments were completed on 21 July 2022 requesting the following matters to be addressed:

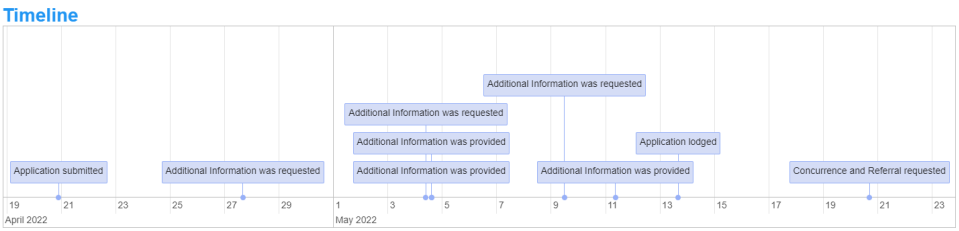
- Explore opportunities for an easement to be created downstream such that the development could connect through to the existing road drainage network on Seaview Street as the proposed stormwater discharge method is not supported.
- Revise the driveway design.
- Revise the basement parking layout.

Revised plans were received on the 19 August 2022, which responded to Council's request by:

- Revising the design of the apartment building so that it stepped down at the rear.
- Reduced the height of the main building to be under the 11m height limit.
- The lift overrun reduced to be only 0.3m above the height limit.
- Relocated the building so that it is a minimum 9m from the rear boundary.
- Revised driveway, turning paths & carparking layout.
- Revised stormwater plan.

Adjoining property owners (Seaview St) refused to grant an easement through their properties.

The revised plans were renotified on 25 August 2022 and referred to the Development Engineer for comment.



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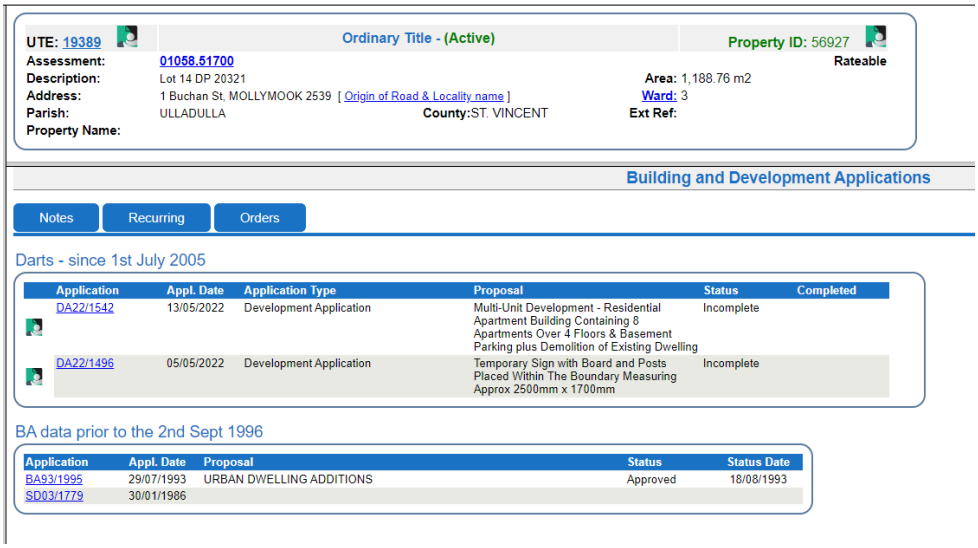
Site History and Previous Approvals



UTE: 19389 | Ordinary Title - (Active) | Property ID: 56927
Assessment: 01058.51700 | Rateable
Description: Lot 14 DP 20321 | Area: 1,188.76 m2
Address: 1 Buchan St, MOLLYMOOK 2539 [Origin of Road & Locality name] | Ward: 3
Parish: ULLADULLA | County:ST. VINCENT | Ext Ref:
Property Name:

Building and Development Applications

Notes | Recurring | Orders

Darts - since 1st July 2005

Application	Appl. Date	Application Type	Proposal	Status	Completed
DA22/1542	13/05/2022	Development Application	Multi-Unit Development - Residential Apartment Building Containing 8 Apartments Over 4 Floors & Basement Parking plus Demolition of Existing Dwelling	Incomplete	
DA22/1496	05/05/2022	Development Application	Temporary Sign with Board and Posts Placed Within The Boundary Measuring Approx 2500mm x 1700mm	Incomplete	

BA data prior to the 2nd Sept 1996

Application	Appl. Date	Proposal	Status	Status Date
BA93/1995	29/07/1993	URBAN DWELLING ADDITIONS	Approved	18/08/1993
SD03/1779	30/01/1986			

4. Consultation and Referrals

Internal Referrals	
Referral	**Comments**
Building Surveyor	Council has not been nominated for the CC or as the PC. In this regard, NO National Construction Code assessment has been completed for the proposal. The proposal may be subject to performance base solutions provisions of the NCC. No comments have been provided in relation to compliance with the requirements of the Liveable Housing Australia Design Guideline - https://livablehousingaustralia.org.au/ The plans should be stamped by a Registered LHA Assessor (Accredited Assessor) certifying compliance with the Liveable Housing Australia Design Guideline for appropriate level (Sliver, Gold or Platinum)
Development Engineer	**Earthworks** Due to the proximity of the cut to the boundary and existing structures, shoring of the embankment is required and will be conditioned with a standard condition. **Stormwater Drainage** The applicant has submitted documentation indicating that a downstream easement will not be agreed to by the owners. Therefore, it will be conditioned that a split stormwater disposal system incorporating the following features will be conditioned into the recommended conditions of consent:

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	1 - Charged collection all roof stormwater and basement pump system piped to a suitably sized OSD tank located in the southern end of the site that overflows to a 450 x 450mm grated boundary pit located in the southeast corner of the site to Buchan Street stormwater drainage. The discharge pit would have to be arranged so that any stormwater surcharge from the top of the pit could only fall to Buchan Street and not back into the site or neighbouring properties. This would require a revision to the OSD stormwater calculations and design of a revised stormwater system in accordance with Council's Engineering Design Specifications. 2 - Other impervious areas that can grade via gravity to the grated boundary pit, (such as partial driveway) to be piped to the pit. 3 - Collect remaining impervious area stormwater that cannot fall by gravity to Buchan Street and discharge via a suitably sized adsorption system designed in accord with Council's DCP and Engineering Design Specifications. 4 - Roof as much of the entry/exit driveway as reasonably possible and direct stormwater off this roof to Buchan Street. 5 - Demonstrate that discharge i) towards the northern boundary and ii) total site discharge, does not exceed pre-development peak flows. **Roads/Access** The driveway design has been revised and considered acceptable considering the location of the existing power pole and to meet clearance requirements. Turning paths have been provided by the applicant to address this matter (D22/374831) and is considered acceptable. Recommended conditions provided. See full comments in Trim file D22/357521
Shoalhaven Water	Shoalhaven water will prepare a notice of requirement for the development once the applicant has made an application for a Certificate of Compliance.
Waste	The site is suitable for participation in Council's Kerbside Waste Collection service. Bins will need to be presented to the kerbside at Princes Highway as there is insufficient kerbside space in Buchan Street. It is not clear who will be responsible and the proposed path of travel for transferring bins from the basement area to the kerbside. Conditions provided.
GIS	The addressing for the proposed multi unit development with reference to the lodged suite of architectural plans D22/199675 is: Primary Address/Common Property Address – 1 Buchan Street Mollymook

	Ground Level: G01/1 Buchan Street Mollymook G02/1 Buchan Street Mollymook First Level: 101/1 Buchan Street Mollymook 102/1 Buchan Street Mollymook Second Level: 201/1 Buchan Street Mollymook 202/1 Buchan Street Mollymook Third Level: 301/1 Buchan Street Mollymook 302/1 Buchan Street Mollymook

External Referrals	
Referral	**Comments**
Transport for NSW	No objection subject to recommended conditions.
Endeavour Energy	No objection subject to recommended conditions.

5. Other Approvals

N/A

6. Statutory Considerations

Environmental Planning and Assessment Act 1979

Section 4.14 Consultation and development consent – certain bush fire prone land

Is the development site mapped as bush fire prone land?	No
Is there vegetation within 140m of the proposed development that would form a bush fire hazard as identified in Planning for Bush Fire Protection? *Note: The bush fire mapping cannot be relied upon solely for identifying bush fire hazards.*	No

Biodiversity Conservation Act 1979

Does the application include works or vegetation removal within the Biodiversity Values mapped area?	No
Does the application involve clearing of native vegetation above the area clearing threshold? **Area clearing threshold** The area threshold varies depending on the minimum lot size (shown in the Lot Size Maps made under the relevant Local Environmental Plan (LEP)), or actual lot size (where there is no minimum lot size provided for the relevant land under the LEP). **Minimum lot size associated with the property** / **Threshold for clearing, above which the BAM and offsets scheme apply** Less than 1 ha — 0.25 ha or more 1 ha to less than 40 ha — 0.5 ha or more 40 ha to less than 1000 ha — 1 ha or more 1000 ha or more — 2 ha or more The area threshold applies to all proposed native vegetation clearing associated with a proposal, regardless of whether this clearing is across multiple lots. In the case of a subdivision, the proposed clearing must include all future clearing likely to be required for the intended use of the land after it is subdivided. If the land on which the proposed development is located has different minimum lot sizes the smaller or smallest of those minimum lot sizes is used to determine the area clearing threshold.	No
Will the proposed development have a significant impact on threatened species or ecological communities, or their habitats, according to the test in section 7.3 of the Biodiversity Conservation Act 2016 (i.e. 'test of significance)? *Note: Consideration should be given to the site's proximity to NPWS land (see guidelines) and other natural areas, as well as any area that may contain threatened species, vulnerable or endangered ecological communities or other vulnerable habitats.*	No
*If the application exceeds the Biodiversity Offsets Scheme Threshold (i.e. if yes to **any** of the above), has the application been supported by a Biodiversity Development Assessment Report (BDAR)?*	N/A

Local Government Act 1993

Do the proposed works require approval under Section 68 of the Local Government Act 1993?	No

7. Statement of Compliance/Assessment

The following provides an assessment of the submitted application against the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

(a) Any planning instrument, draft instrument, DCP and regulations that apply to the land

i) Environmental Planning Instrument

This report assesses the proposed development/use against relevant State, Regional and Local Environmental Planning Instruments and policies in accordance with section 4.15 (1) of the

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Environmental Planning and Assessment Act 1979. The following planning instruments and controls apply to the proposed development:

Environmental Planning Instrument
Shoalhaven Local Environmental Plan 2014
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development
State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 3 Koala Habitat Protection 2020

Question	**Yes**		**No**	
1. Does the subject site have a site area >1ha or does the site form part of a landholding >1ha in area?	☐	Proceed to Question 2	☒	Assessment under SEPP not required.

Chapter 4 Koala Habitat Protection 2021

Question	**Yes**		**No**	
1. Is there an approved koala plan of management for the subject land?	☐	Proceed to Question 2	☒	Proceed to Question 3

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

A valid BASIX certificate has been submitted as part of the application. The certificate demonstrates compliance with the provisions of the SEPP and is consistent with commitments identified in the application documentation.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2 Coastal Management

The subject land is mapped as “coastal use area” under the SEPP.

It is considered that the proposed development does not unduly impact upon the coastal environment. The proposed development is acceptable with regard to SEPP.

Chapter 4 Remediation of Land

Question	Yes		No	
1. Does the proposal result in a new land use being a residential, educational, recreational, hospital, childcare or other use that may result in exposure to contaminated land?	☐	Proceed to Question 2	☒	Assessment under SEPP 55 and DCP not required.

Shoalhaven Local Environmental Plan Local Environmental Plan 2014

Land Zoning

The land is zoned R1 General Residential under the *Shoalhaven Local Environmental Plan 2014*.

Characterisation and Permissibility

The proposal is best characterised as Residential Flat Building under *Shoalhaven Local Environmental Plan 2014*. The proposal is permitted within the zone with the consent of Council.

Zone Objectives

Objective	Comment
To provide for the housing needs of the community.	The proposal provides housing for the community, contributing to the variety of housing types and densities and is therefore consistent with the objectives of the zone.
To provide for a variety of housing types and densities.	

To enable other land uses that provide facilities or services to meet the day to day needs of residents.	
To identify land suitable for future urban expansion.	

Applicable Clauses

Clause	Comments	Complies/ Consistent
Part 2 Permitted or prohibited development		
2.7 Demolition requires development consent	The application includes the demolition of an existing old dwelling. Conditions will be included in the consent.	Complies
Part 4 Principal development standards		
4.3 Height of buildings	The site is subject to a maximum building height control of 11m. The majority of the building is compliant with the 11.0m HOB limit for the site with an overall height of 11.3m for the lift overrun and 11.1m for a small number of solar collectors. The proposal is to vary the control by 2.7% for the lift overrun and 0.9% for a portion of the solar collectors which are located towards the centre of the building.	Non compliant – has requested a cl 4.6 variation.
4.4 Floor space ratio	Not mapped	
4.6 Exceptions to development standards	See Full Assessment in Appendix	
Part 5 Miscellaneous provisions		
5.6 Architectural roof features	The lift overrun is integrated into the main roof feature which is a flat roof with curved building corners. This style is reflected in more modern development in the area.	Complies
Part 7 Additional local provisions		
7.1 Acid sulfate soils	Mapped as Class 5 Acid Sulfate Soils and no other class within 500 metres of the site	Complies
7.2 Earthworks	Proposing cut and fill to create the basement car parking. The application has been referred to Council's Development Engineer for review and conditions of consent are included to mitigate against any adverse impacts.	Complies
7.11	All essential services are available to the site. The application was referred to Endeavour Energy who have	Complies

Essential services	offered advice to the applicant in regard to possible augmentation of the service. The applicant is proposing an electricity substation at the front of the property.	

ii) Draft Environmental Planning Instrument

The proposal is not inconsistent with any Draft Environmental Planning Instruments.

iii) Any Development Control Plan

Shoalhaven Development Control Plan 2014

Generic DCP Chapter	**Relevant**
G1: Site Analysis, Sustainable Design and Building Materials	
A suitable site analysis plan and schedule of proposed materials has been submitted as part of the application and is deemed acceptable.	
G2: Sustainable Stormwater Management and Erosion/Sediment Control	
Has the application been supported by appropriate erosion and sediment control details?	Yes
Has the application been supported appropriate stormwater drainage details?	Yes - Complete table below Stormwater Management Plan referred to the Development Engineer for comment.
The applicant has unsuccessfully attempted to obtain an easement to drain stormwater through the properties below which face Seaview St and Council's Development Engineer has proposed a split system. The Development Engineer provided the following assessment of the proposed stormwater system. The application proposes to collect stormwater from the driveway, roof, basement and other impervious areas and discharge to an OSD tank at the rear of the lot and through to a grated drain level spreader. The pre-lodgement advice provided outlined that the application should explore opportunities for an easement to be created downstream such that the development could connect through to the existing road drainage network on Seaview Street. Disappointingly, this does not seem to have been explored as there is insufficient information to reflect this in the application. Council's DCP Chapter G2 outlines a list of acceptable solutions relating to stormwater discharge within Section A2.1. As the site falls away from the street frontage at Buchan Avenue, this option can not be utilised. Therefore, the next option to be considered is a downstream easement. As the development is for greater than 2 dwellings, other options outlined in this section cannot be supported. In reference to other controls outlined within the DCP, the development does not discharge runoff from the development without adverse impacts on existing infrastructure and neighbouring properties (P1), it directs and has potential to concentrate stormwater onto neighbouring properties (A1.1), it does not direct roofs and paved areas to an appropriate discharge point (P2,	

A2.2), the overflow from the tank is certain to cause nuisance to downstream properties (A8.2). For these reasons, the stormwater discharge method as proposed cannot be supported.

The applicant has submitted documentation indicating that a downstream easement will not be agreed to by the owners. Therefore, it will be conditioned that:

1 - Charged collection all roof stormwater and basement pump system piped to a suitably sized OSD tank located in the southern end of the site that overflows to a 450 x 450mm grated boundary pit located in the southeast corner of the site to Buchan Street stormwater drainage. The discharge pit would have to be arranged so that any stormwater surcharge from the top of the pit could only fall to Buchan Street and not back into the site or neighbouring properties. This would require a revision to the OSD stormwater calculations and design of a revised stormwater system in accordance with Council's Engineering Design Specifications.

2 - Other impervious areas that can grade via gravity to the grated boundary pit, (such as partial driveway) to be piped to the pit.

3 - Collect remaining impervious area stormwater that cannot fall by gravity to Buchan Street and discharge via a suitably sized adsorption system designed in accord with Council's DCP and Engineering Design Specifications.

4 - Roof as much of the entry/exit driveway as reasonably possible and direct stormwater off this roof to Buchan Street.

5 - Demonstrate that discharge i) towards the northern boundary and ii) total site discharge, does not exceed pre-development peak flows.

The speed hump proposed across the footpath crossing is likely to induce a trip hazard for pedestrians and affect trafficability of vehicles entering the development due to the proximity to the driveway layback. An acceptable solution for the applicant may be to grade the footpath crossing back to the layback so that stormwater is directed towards the road gutter. This is to be conditioned.

G3: Landscaping Design Guidelines

The applicant has provided an appropriate Landscape Plan prepared by Arcadia sustainable design which provides a species list.

G4: Tree and Vegetation Management

Have any trees proposed to be removed been clearly shown on the site plan (where required)?	Yes Five trees are proposed to be removed for the development. The trees are exotic species and are not significant. See photos in Site Visit above. The neighbour to the east has raised concerns regarding the impact of the development on the health of their trees. The applicant has provided an Arborist report that has provided recommendations for the protection and pruning of the parts of the trees that encroach onto the property and will be impacted by the proposed development.

G7: Waste Minimisation and Management Controls

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Has the application been supported by an appropriate waste minimisation and management plan?	Yes
G13: Medium Density and Other Residential Development	
Part 6 Residential Flat Buildings and Shop Top Housing The requirements are that it complies with SEPP 65 and the Apartment Design Guide. A checklist of compliance is addressed in **Appendix A**.	
G21: Car Parking and Traffic	
The applicant has provided a Traffic impact study and car parking plans that indicate that there are 17 car parking spaces including 1 visitor space and 2 accessible spaces. The proposed parking exceeds councils DCP requirement by 13% and is compliant.	
G26: Acid Sulphate Soils and Geotechnical (Site Stability) Guidelines	
A Geotechnical report has been provided to support the application. The recommendations will be included in the consent.	

Area Specific DCP Chapter		
V3: Miscellaneous Site Specific Issues – 5 - Ulladulla/Mollymook Gateway Precinct		
Commentary		
Performance Criteria	Acceptable Solution	Complies/Comment
P4 The building height, bulk and scale of the development: • Is compatible with the desired future character of the area. • Minimises adverse amenity impacts associated with the overshadowing of adjoining properties. • Relates to the land form, with minimal cut and fill. • Enables view sharing.	A4.1 With the exception of the Buchan Street Triangle, buildings are sited within a building envelope determined by the following method: planes are projected at 45 degrees from a height of 5m above existing ground level at the front, side and rear boundary as shown in Figure 4. Figure 4: Building envelope A4.2 Building heights must comply with Clause 4.3 of Shoalhaven LEP 2014	Non compliant with the acceptable solutions but compliant with the performance criteria. The proposed building will breach the building envelope on the north western elevation and the applicant has requested a variation to the Acceptable Solution. Please see Appendix below. There is a minor variation to the 11 metre building height. The north eastern corner of the lift overrun exceeds the height limit by 0.3m
P5.1 The front setback does not undermine the integrity of the prevailing building lines. P5.2 The proposed development is setback and of a scale that is relative to the street reserve width, in such a way to ensure pedestrians and road users do not feel	A5.1 Side setbacks in Area 1 (where lot has no secondary road frontage) shall comply with the following: Buildings are to be sited to provide one minimum side setback equivalent to 10% of the width of the allotment, and up to a maximum of 3.5m in any case	Complies. The setback to the eastern side boundary is 2.1m which is 10% of the average width of the site as measured at the front and rear building lines. Rear and side setbacks are compliant.

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buildings are overbearing. P5.3 Setbacks avoid loss of view, undue overshadowing, maintain adequate daylight and sunlight and provide/maintain privacy (visual and acoustic) to adjoining properties. P5.4 Setbacks are progressively increased to reduce bulk and overshadowing while maintaining adequate daylight, sunlight and ventilation to adjoining buildings, landscaping, services and infrastructure. P5.5 Setbacks maintain adequate provision for on-site car parking behind the building line.	(Refer to Figure 5). A5.2 Rear setbacks shall comply with the following: • 3m to walls/posts of dwellings, including attached verandahs, patios and the like. • 900mm to detached non-habitable outbuildings, including swimming pools. A5.3 Where the predominant front setback of the same side of the street is greater than the front setback applicable, the proposed setback must be compatible with the predominant setback on the same side of the street, whether uniform or varied. A5.4 Parking is not provided within the front setback unless it is: • Substantially below the level of the street and well landscaped and screened; or • If at ground level, meet relevant streetscape and safety provisions and be well landscaped and screened.	Rear setback is 9m and 2.1 to the east and west side boundaries. The front setback varies from 7 to 9m on the irregular shape of the boundary line. The verge is quite wide in front of the property which contributes to the sense of setback from the street and spaciousness of the public domain. Parking is provided in the basement.

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5.4.2 Site and Building Design Considerations P6.1 Development of the Buchan Street Triangle is of a scale and form that defines the location as the key "Gateway" site. P6.2 The site layout, building design and orientation of the dwellings and buildings: • Positively contribute to the future desired character of the area and responds to the local context • Enhance and address the streetscape and public domain. • Provide visual interest. • Allow casual surveillance of public or communal streets or public domain. P6.3 The building design, layout and materials shall respond to the natural elements and context of the area.	A6.1 The Buchan Street Triangle shall be consolidated to reinforce the key Gateway site. A6.2 Each dwelling or building adjacent to a street frontage must: • Address the street by having a front door facing the street at the ground level. • Ensure that any wall of a dwelling facing a street frontage includes a window to a habitable room on each level. • Ensure that the walls of any other building facing a street frontage includes adequate articulation. • Provide surveillance of the street and entrance to the development.	Complies Not in the Buchan St 'Triangle'. The proposed apartment building will positively contribute to the future desired character of the area and responds to the local context. The building provides visual interest through articulation on the front elevation. The front door entrance to the building addresses the street at ground level. The windows above are lobby windows will provide for casual surveillance. The design promotes a sense of address.

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External metallic wall and roof materials are suitable and minimise reflectivity. P8 Vehicular access and egress is safe and does not adversely impact upon the surrounding road network.	A7.1 External metallic walls and roof surfaces shall consist of colours and finishes that will minimise the reflectivity of the surface when viewed from the public domain or another dwelling/habitable room. A8.1 Provision is made to ensure vehicular access and egress for all lots is in a forward direction. A8.2 Vehicle access and egress to the Buchan Street Triangle shall be from Buchan Street and not the Princes Highway. Note: Ref	Complies – external metal surfaces visible from the public domain or other properties will be suitably finished, ie: □ Privacy/shade screen “blades” on building and “blade” style fencing to street frontage –champagne anodized finish; □ Metal window frames - matt dark grey finish. The roof finish will not be visible from other properties. A schedule of building materials has been provided and materials and finishes are appropriate for the area. Vehicular access from the basement parking will be able to access and egress in a forward direction. Access and egress to the proposed building will be from Buchan St and not the highway.
5.4.3 Views P9.1 Existing views to the ocean from the public domain are not significantly or unreasonably affected where it is possible to design for the sharing of views. P9.2 Existing views from private property are not significantly or unreasonably affected where it is possible to design for the sharing of views.	A9.1 Any reduction in views from the public domain or private property is not to be severe or devastating based on the following NSW Land & Environment Court Planning Principles: • Views - Impact on public domain views. • Views – general principles.	Complies Views from the neighbouring properties are to the north east and will be largely unaffected by the proposal. No 34 Princes Highway has a significant amount vegetation adjacent to the side boundary that would inhibit any views presently.

5.4.4 Landscaping P10.1Development protects mature trees and other significant vegetation. P10.2Landscaping is: • Incorporated into the design of new development and contributes to the future desired character of the area. • Of low scale and does not impede site lines in relation to the Princes Highway. P10.3Development of the Buchan Street Triangle features landscaping elements that contribute to the key gateway site.	A10.1 Where existing mature trees or other significant vegetation exists, development is to be designed to retain and protect these features and integrate them into the overall site and building design where possible. A10.2 Landscaping elements shall consider the local environment, built form and future desired character. A10.3 At least 35% of the front setback is to be landscaped with low scale landscape species that do not generally exceed 1.5m in height when mature. A10.4 Despite A10.3, feature plantings in the front setback may exceed 1.5m in height when mature, if: • Located so as not to not impede site lines in relation to the Princes Highway. • Feature plantings are selected to complement the future desired character and building design.	Complies No significant vegetation exists on the property at present. The applicant has provided an appropriate Landscape Plan to support the application. The percentage of landscaping in the front setback is 42%. Plant species chosen are low water usage and native species that complement the building design. The proposed plantings will not impede site line to the highway and will complement the future desired character.
5.4.5 Visual Privacy/ Overlooking P11 The visual privacy of indoor living areas and private open space is protected.	A11.1 Direct overlooking of main internal living areas and private open space of other dwellings and adjoining properties shall be minimised by building layout, location and design of windows, balconies, screening devices, landscaping, or other effective means.	Complies The building design with fins/blades on the sides and appropriately placed planter boxes will provide privacy to the neighbours to the east and west of the site. The privacy fins/blades will be conditioned to extend along the side verandahs of all the dwellings above the ground floor. The building has been setback a minimum 9m to 11.2m from the rear boundary. There is bamboo screen proposed on the rear boundary and a large tree in the north east corner that will also assist in providing privacy to the POS of properties that adjoin at the rear.

5.4.6 Fences and Walls P12 Front fences and walls: • Enable some outlook from buildings to the street for safety and surveillance. • Do not impede the safety of pedestrians and cyclists with the movement of vehicles between the property and the roadway. • Assist in highlighting entrances and in creating a sense of communal identity within the streetscape. • Are constructed of materials compatible with the proposed development elements and the local context • Are compatible with facilities in the street frontage area, such as mailboxes.	A12.1 Front fences and walls along the primary frontage, shall be no higher than 1.2m (averaged for sloping sites) unless: • The fence and/or wall does not exceed 10m in length without some articulation or detailing to provide visual interest; or • Landscape planting is included within a 1.5m setback between the fence/wall and the boundary to achieve mature heights of 1.5m. A12.2 On a corner lot, the fence or wall along the secondary frontage, behind the front building line shall be no higher than 1.8m. A12.3 The design and materials of fences and walls is to be compatible with the surrounding streetscape. A12.4 Solid metal fencing shall not be erected along a primary or secondary frontage.	Complies – fencing and balustrading within the front setback will be of the "blade' style in a Champagne anodized finish, a style used elsewhere on the building for solar control and privacy. Fencing along the frontage is not continuous and will not exceed 1.2 metres in height.

iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There are no planning agreements applying to this application.

iv) Environmental Planning and Assessment Regulation 2000

The proposal ensures compliance with the applicable requirements within the *Environmental Planning and Assessment Regulations 2021* subject to recommended conditions of consent.

Clause	Comment
Additional matters that consent authority must consider	Demolition of a building, the provisions of AS 2601 – appropriate conditions addressing demolition of the existing dwelling are incorporated into the recommended conditions of consent.
Fulfilment of BASIX commitments	Basix and Nathers Certificates provided. Conditions are included in the consent.

Shoalhaven Contribution Plan 2019 & Section 64 Contributions

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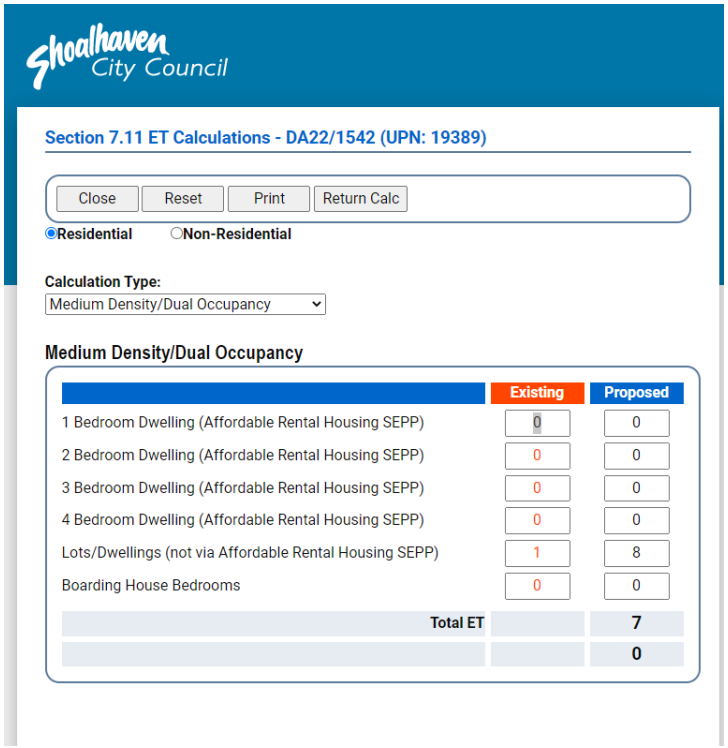
Is the development site an "old subdivision property" identified in Shoalhaven Contributions Plan 2019?	No
Is the proposed development considered to increase the demand for community facilities in accordance with the Shoalhaven Contributions Plan 2019?	Yes - s7.11 contributions are applicable.
Is the proposed development considered to increase the demand for on water and sewer services (i.e. s64 Contributions)	Yes - See Shoalhaven Water Development Applicaiton Notice.

The development is most aptly characterised as a 'Residential Flat Building' development for the purpose of calculating contributions under the Plan.



Shoalhaven City Council

Section 7.11 ET Calculations - DA22/1542 (UPN: 19389)

Close | Reset | Print | Return Calc

◉Residential ○Non-Residential

Calculation Type: Medium Density/Dual Occupancy

Medium Density/Dual Occupancy

	Existing	Proposed
1 Bedroom Dwelling (Affordable Rental Housing SEPP)	0	0
2 Bedroom Dwelling (Affordable Rental Housing SEPP)	0	0
3 Bedroom Dwelling (Affordable Rental Housing SEPP)	0	0
4 Bedroom Dwelling (Affordable Rental Housing SEPP)	0	0
Lots/Dwellings (not via Affordable Rental Housing SEPP)	1	8
Boarding House Bedrooms	0	0
Total ET		7
		0

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Calculation ID	0		
Address:	1 Buchan St, MOLLYMOOK		
Location:	Lot 14 DP 20321		
UTE: 19389	**Stage:** 1	Calculate ET	**Contribution Total:** $42,047.16

Calculation Financial Year: **2022**

Project	Description	Benefit Area	Contribution Amt	Qty	Contribution	ADD
05 AREC 0005	Planning Area 5 - Active recreation facility upgrades various locations	01 Equivalent Tenement	$1,100.93	7	$7,706.51	✕
05 CFAC 2010	Southern Shoalhaven Branch Library	01 Equivalent Tenement	$553.98	7	$3,877.86	✕
CW AREC 5005	Shoalhaven Community and Recreational Precinct SCaRP Cambewarra Road Bomaderry	05 Equivalent Tenement	$1,153.01	7	$8,071.07	✕
CW CFAC 5002	Shoalhaven Entertainment Centre (Bridge Road Nowra)	05 Equivalent Tenement	$871.44	7	$6,100.08	✕
CW CFAC 5006	Shoalhaven City Library Extensions (Berry Street, Nowra)	01 Equivalent Tenement	$1,348.90	7	$9,442.30	✕
CW CFAC 5007	Shoalhaven Regional Gallery	01 Equivalent Tenement	$74.05	7	$518.35	✕
CW FIRE 2001	Citywide Fire & Emergency services	01 Equivalent Tenement	$145.50	7	$1,018.50	✕
CW FIRE 2002	Shoalhaven Fire Control Centre	01 Equivalent Tenement	$212.86	7	$1,490.02	✕
CW MGMT 3001	Contributions Management & Administration	01 Equivalent Tenement	$605.06	7	$3,822.47	✕

This is based on the number of units and bedrooms: 6 x 3 bedroom units and 2 x 2 bedroom units with a 1 lot credit.

(b) The Likely impacts of that development, including environmental impacts on the natural and built environments, and social and economic impacts in the locality

Head of Consideration	Comment
Natural Environment	The proposed development will not have a significant adverse impact on the natural environment.
Built Environment	The proposed development will not have a significant adverse impact on the built environment.
Social Impacts	The proposed development will not have a negative social impact in the locality.
Economic Impacts	The proposed development will not have a negative economic impact in the locality.

(c) Suitability of the site for the development

The site is suitable for the proposed development.

- The development is permissible with Council consent within the zone.
- The proposal supports the local zoning objectives.
- The proposal is consistent with the objectives and requirements of the *Shoalhaven Local Environmental Plan 2014*.
- The proposal is consistent with the objectives and requirements of the *Shoalhaven Development Control Plan 2014*.
- The intended use is compatible with surrounding/adjoining land uses

(d) Submissions made in accordance with the Act or the regulations

The DA was notified in accordance with Council's Community Consultation Policy for Development Applications.

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Twenty five (25) 25 submissions in objection were received in the first notification period from 24.5.2022 until 17.6.2022

Fifty four (54) submissions in objection were received in the second notification period from 25.8.2022 to 16.9.2022

Most of the submissions from the second notification were the same pro forma type objecting to the same issues.

Summary of Public Submissions	
Objection Raised	**Comment**
No kerb and guttering on Buchan St & footpath provision	Kerb and guttering are not a development consideration for this property as it is already in place. In relation to the footpath on Buchan St, the delivery of footpaths in the city is subject to Council's Pedestrian Access & Mobility Plan and Buchan St is not on the priority list.
Privacy & Amenity to adjoining properties	The building has fins/blades on the side elevations, as well as planter boxes and landscaping on the perimeter that provides privacy to adjoining dwellings. The fins/blades on the side elevations will be conditioned to extend to the columns at the end of the balconies on the first storey and above. The applicant has accepted this.
Transition to R2 Low Density Residential zone	The applicant has revised the plans to step down the building at the rear and provided a minimum rear setback of 9m in accordance with the Apartment Design Guidelines directions for transitioning to lower density zones.
Step down to 8.5m height as required by SEPP 65	There is no development control that requires the building to have a maximum height of 8.5m at the rear. The pro forma objections refer to Section 2 of the SEPP 65 Apartment Design Guidelines, however Part 2 of the ADG titled 'Development Controls' provides tools to support the strategic planning process when preparing controls and is not relevant to the assessment of development applications. The building steps down appropriately, the only height exceedance is 0.3m for the lift overrun in the centre of the building and 0.1m exceedance for the northern most row of solar collectors in the centre of the building which given its size and location will not have an amenity impact on any surrounding residences and will not detract from the visual aesthetics of the building.
The rear setback is inadequate and does not comply with SEPP 65 requirements	The applicant revised the minimum setback from 6m to 9m which many objectors requested in their initial submissions. The 9m setback is the recommended setback for a transition zone in the ADG Guidelines at 3F.

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	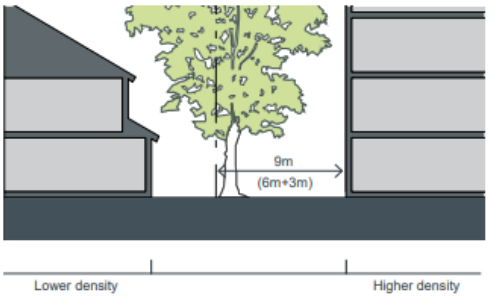 Figure 3F.5 To resolve amenity impacts, apartment buildings should increase the building separation distance (+3m) when adjacent to a different zone that permits lower density residential development It is noted that due to the angled shape of the boundary at the rear that the building ranges from 9m to 11m rear setback.
Stormwater Management	Refer to Chapter G2 comments above.
Noncompliance DCP Ulladulla/Mollymook Gateway Precinct	The application is generally compliant with the objectives and performance criteria of the DCP chapter. See assessment above.
Bulk/Scale & Character	To determine the impact of height and bulk, reference is made to **Planning Principle** - *Veloshin v Randwick Council [2007] NSWLEC 428***.** This case makes specific reference as to how matters relating to height, bulk and character may be assessed, which is stated as follows: *"Planning principle: assessment of height and bulk* The appropriateness of a proposal's height and bulk is most usefully assessed against planning controls related to these attributes, such as maximum height, floor space ratio, site coverage and setbacks. The questions to be asked are: *Are the impacts consistent with impacts that may be reasonably expected under the controls?* For complying proposals this question relates to whether the massing has been distributed so as to reduce impacts, rather than to increase them. For noncomplying proposals, the question cannot be answered unless the difference between the impacts of a complying and a non-complying development is quantified. *How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?* Where the planning controls are aimed at preserving the existing character of an area, additional questions to be asked are: *Does the area have a predominant existing character and are the planning controls likely to maintain it?* *Does the proposal fit into the existing character of the area?*

	Where the planning controls are aimed at creating a new character, the existing character is of less relevance. The controls then indicate the nature of the new character desired. The question to be asked is: *Is the proposal consistent with the bulk and character intended by the planning controls?* Where there is an absence of planning controls related to bulk and character, the assessment of a proposal should be based on whether the planning intent for the area appears to be the preservation of the existing character or the creation of a new one. In cases where even this question cannot be answered, reliance on subjective opinion cannot be avoided. The question then is: *Does the proposal look appropriate in its context?* Note: the above questions are not exhaustive; other questions may also be asked. The following is an assessment of the relevant questions in relation to the proposed development in the context of the above judgment: *'Are the impacts consistent with impacts that may be reasonably expected under the controls?"* **Comment**: Despite the minor intrusion of the lift overrun and some solar collectors above the 11-metre height plane, the bulk of the building is consistent with the LEP height requirement. The proposed development seeks a form of residential accommodation consistent with what the 'new' R1 General Residential zone permits. The building is a narrow infill apartment on a traditional narrow and deep residential lot. The building is 15m wide at the front, 13.5m at the rear, and 3 storeys high containing 8 units. The design has considered privacy to the neighbours by providing fixed angled blades on the side of the building, planter boxes, a rear setback that ranges from 9m to 11m, and landscaping on the perimeter of the site. Chapter V3 of the Shoalhaven DCP 2014 states that the future context of the area is anticipated to continue to be predominantly residential in nature with the opportunity for other compatible uses, including the continuation of appropriate tourist and visitor accommodation uses, and increased density. It is considered that the proposal is consistent with the zone objectives, with impacts that may be reasonably expected under the controls. *How does the proposal's height and bulk relate to the height and bulk desired under the relevant controls?* **Comment**: The current development standards for height are the same along the Princes Highway frontage, irrespective of the land use. The applicant has stepped down the building at the rear to 10m height to transition the building into the R2 Low Density Residential zoned land that adjoins at the rear that have a maximum Height of Building of 8.5m. The only breach of height is the lift overrun by **0.3m or 2.7%** and **0.1m** for some solar collectors or **0.9%** variation of the control, the bulk of the

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building is compliant with the relevant controls. The 11-metre height line is shown in blue in Figure 18.

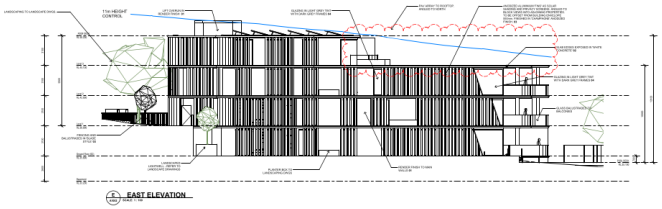

Figure 18: Proposed East Elevation

Does the area have a predominant existing character and are the planning controls likely to maintain it?

Comment:

The predominant character of the Mollymook/Ulladulla Gateway Precinct is single detached residential dwellings interspersed with tourist accommodation in the form of motels. DCP Chapter V3: Miscellaneous Site-Specific anticipates that the Ulladulla/Mollymook Gateway Precinct will continue to be predominantly residential in nature with continuation of appropriate tourist and visitor accommodation uses and increased density.

The DCP outlines that future development should have a strong street presence whilst sympathetically blending with the surrounding area and protecting the amenity of adjacent dwellings.

The front façade to the Princes Highway has adequately addressed the gateway location of the subject site by creating ‘a sense of arrival’ and provides a strong street presence whilst sympathetically blending with the surrounding area. See Figure 19 below.

Figure 19: photomontage of proposed building façade facing south to the Princes Highway

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	Does the proposal look appropriate in its context? **Comment:** The proposal will be appropriate to the existing and desired future residential context. The area surrounding the development is a mix of one and two storey residential dwellings interspersed with motels. Many of the dwellings are on large residential lots and are of an age that makes them suitable for redevelopment. Given the high amenity location it is likely that future development will aim to utilise the building envelope available and increase development to the maximum height with views which are highly sort after in the area. The DCP Ulladulla/Mollymook Gateway Precinct Chapter recognises that the area will undergo transition in the future and provides guidelines to shape future development. The applicant has provided a visual analysis (see Figures 20 to 22) from the surrounding area which indicates that the building will be obscured by two storey development on Seaview St, tall mature vegetation along the Princes Highway and Seaview St neighbouring sites.

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Figure 16: "Before" view of the site from Seaview Street (Nos. 76 and 74 Seaview Street to the left and right).

Figure 17: "After" view from Seaview Street. The upper northern edge of the roof is just visible behind the rear gable roof of No. 76 and above the left end of the roof of No. 74.

Figure 20: Photomontages - before and after of view to proposed development from Seaview St

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Figure 20: "Before" view from Seaview Street (near No. 45) looking towards the site

Figure 21: "After" view from Seaview Street (near No. 45) looking towards the site. The northern edge of the building is just visible to the right of the Telstra phone tower and behind the roof of 76 Seaview Street.

Figure 21: Photomontages before and after more distant views from Seaview St.

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	 *Figure 22: Approaching the Princes Highway/Golf Avenue roundabout from the north* The proposed building presents as a three-storey building at the front and rear, the bulk of the building complies with the 11m height restrictions and steps down at the rear to transition to the R2 low density zone. The lot is surrounded by low density housing and older style motels. The future character of the area is for increased density that responds sympathetically to the adjoining lower density area of Mollymook. The proposed residential flat building comprising 8 units and is a small scale Residential Flat Building development which is complementary to the existing and future desired character of the gateway precinct.
Swept path plans	The applicant has provided swept path plans that have been reviewed by Council's Development Engineers and found to be acceptable subject to conditions of consent.
Safety of the side boundary with 3 Buchan St	The applicant will be required as part of their approval to prepare a dilapidation report that will investigate the stability and impacts of the proposed development on surrounding properties prior to works commencing.
Solar access to neighbouring dwellings	The applicant has provided shadow diagrams that indicate that the adjoining neighbours will receive a minimum of 3 hours sunlight between 9am and 3pm on June 21 in line with the ADG and the NSW Planning Principle for solar access.

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Light spill	The proposal will not have significant light spill in. It is within an existing residential area and conditions will be included in the consent to mitigate against any offensive light spill from the property
Noise form vehicles, occupants, air conditioners, and swimming pool	A noise barrier fence is required to be provided to address potential noise of vehicle movements when entering and leaving the basement car park adjacent to the eastern side boundary of the adjoining dwelling at (3) Buchan Street. The noise barrier fence is conditioned as part of the recommended conditions of consent. The swimming pool pump equipment is proposed to be located within a dedicated pool plant room located in the basement which will ensure that noise from this equipment is minimised. Residential and swimming pool and mechanical ventilation noise is regulated by the POEO Act and the development consent will also have conditions relating to noise regulations.
Waste bin collection	Waste bins are proposed to be presented to the highway for collection. The application was referred to waste services who have no objections and have provided appropriate conditions to be included in the consent.
LEP height exceedance	The height exceedance related to the lift overrun and is 0.3m or 2.7% and solar collectors 0.1m or 0.9% which are considered to be a minor variations with minimal impact. The applicant has requested a clause 4.6 variation which has been assessed and is supported.
Precedent	The R1 zone permits Residential Flat Buildings, and a proposal of this size will not set an undesirable precedent. The Mollymook/Ulladulla area is in a flux of change at present whereby older low density housing is being turned around into medium density living. *Note from Manager: each application is to be assessed on merit based on the controls at the time of lodgement. Existing development and the context is taken into account in the assessment of each application.*
Trees on adjoining properties	The applicant has provided an Arborist Report that assesses the health of the trees and includes recommendations for the removal of trees on the subject property, tree protection and the pruning of trees on adjoining properties that may be impacted by the proposed development.

<table>
<tr><td></td><td></td></tr>
<tr><td>Play areas for children</td><td>There is a requirement for communal open space which has been provided by the applicant. There is no requirement specifically for children's play areas for this development.</td></tr>
<tr><td>Lack of Parking</td><td>The provisions of Chapter G21: Car Parking & Traffic have been considered by Council's Development Engineer who reviewed the proposal from an access and manoeuvring perspective and raised no objections subject to imposition of conditions of consent.

The parking demand provisions have been calculated under the Chapter G21: Car Parking & Traffic.

The carparking ratio requirements relevant for the type of development at the time of submission, and in accordance with savings provisions. Therefore, the proposed development generates the following car parking requirements:

• 1.5 spaces per two bedroom dwelling
• 2 spaces per dwelling containing 3 or more bedrooms

The proposal consists of the following:

<table>
<tr><th>Standard</th><th>No of Apartments</th><th>No of car</th></tr>
<tr><td>2 Bedroom Units</td><td>2</td><td>3</td></tr>
<tr><td>3 Bedroom Units</td><td>6</td><td>12</td></tr>
<tr><td colspan="2">Total Car-spaces Required</td><td>15</td></tr>
</table>
The application proposes 17 car parking spaces including 1 visitor space and 2 accessible spaces. The number of car parking spaces proposed exceeds the DCP requirements by 13% - complies.</td></tr>
<tr><td>No unit for social/affordable housing</td><td>There is no requirement under any legislation that requires a unit to be provided for social or affordable housing.</td></tr>
</table>

Applicants Response to Submissions (First Notification Period)

The applicant was invited to respond to the submissions and has provided a response

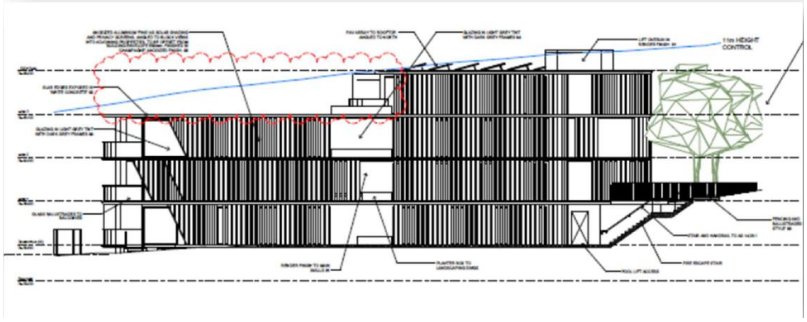
which is summarised below:

The issues generally raised in submissions by Seaview Street residents were that the proposal:

- significantly exceeds the 11-metre height limit;
- does not comply with the SEPP 65 rear setback requirement of 9 metres;
- does not 'step down' or transition to the adjoining lower density area;
- does not minimise the amenity impact on properties in Seaview Street, as outlined in
- Shoalhaven DCP 2014 Chapter V3 Ulladulla/Mollymook Gateway Precinct;
- will set a precedent for the approval of future non-complying development in this area.

These issues have been addressed as follows:

- ***Height Limit:*** *The building has been redesigned to step down the site which has been achieved by reducing the footprint of the upper floor apartments which are now 2 bedrooms. The northern end of the building is now well within the height limit.*



- ***Rear Setback:*** *The revised plans show the building setback 9m to comply with SEPP 65.*
- ***Minimising Amenity to Seaview St:*** *The above changes to building height, rear setback and stepping down of the building will minimise the impact top the Seaview St properties.*
- ***Precedent:*** *The building is now compliant with SEPP 65, The Apartment Design Guide and the provisions of Shoalhaven DCP Chapter V3 in relation to minimising the impacts on Seaview St.*

Other submissions:

- ***Stormwater issues:*** *The stormwater design plan has been prepared by Rienco Consulting that meets the acceptable solutions of DCP Chapter G2.*
- ***Inappropriate high rise development:*** *The R1 zoning and 11m height limit as well as the provisions of the Ulladulla/Mollymook Gateway Precinct Chapter of Shoalhaven DCP facilitate and encourage development of this type. The revised proposal fully addresses and is consistent with the controls.*
- ***Affordable housing:*** *The proposal does not and is not required to provide affordable housing but will make a useful addition to the housing stock in the Ulladulla area.*
- ***Car parking:*** *The proposal provides 17 covered car spaces in basement car park as per Council requirements.*
- ***Increase in traffic:*** *A Traffic and Parking Impact Assessment Report has been provided. The report found an increase of 6 vehicle trips per hour and that the increase in traffic activity was minimal and will not have any unacceptable traffic implications.*
- ***Noise:*** *A dedicated pool plant room is located in the north-western corner of the basement which will ensure that noise is minimised and will not adversely affect adjoining properties. Any future installations of air conditioners will need to comply with NSW noise controls.*
- ***Construction impacts:*** *A detailed Construction Management Plan will be required as a condition of consent and will identify all construction impacts and specify measures to address the impacts.*
- ***Geotechnical issues:*** *Issues and risks are covered in the Geotechnical Report prepared by Terra Insight. It is expected that Council will impose conditions of consent that will require compliance with the recommendations of the Geotechnical Report.*
- ***Waste management:*** *All waste from occupied apartments will be disposed of using the Council kerbside collection.*

- ***Impacts on 3 Buchan St:*** *The application submission demonstrated that the impact of the initial proposal on solar access to 3 Buchan St was acceptable, the revised proposal provides an improvement to solar access. Privacy impacts are mitigated by design elements including fixed angled aluminium fins along the sides of the building.*

(e) The Public Interest

The public interest has been taken into consideration, including assessment of the application with consideration of relevant policies and process. The proposal is considered to be in the public interest.

Delegations

Are any clause 4.6 exceptions proposed?		Yes
Development Standard	Numerical Extent of Departure	Percentage (%) Extent of Departure
11m	0.3m – Lift overrun	2.7%
	0.1m – solar collectors	0.9%
Are any DCP performance-based solutions proposed?		Yes
Acceptable Solution	Numerical Extent of Departure	Percentage (%) Extent of Departure
A4.1	2.79 m over 5m	56%

Recommendation

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the *Environmental Planning and Assessment Act 1979*. As such, it is recommended that DA22/1542 be approved subject to appropriate conditions of consent.

Appendix A – SEPP No 65 - Design Quality of Residential Flat Development

This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed-use development with a residential accommodation component if:

a) the development consists of any of the following:

(i) the erection of a new building,

(ii) the substantial redevelopment or the substantial refurbishment of an existing building,

(iii) the conversion of an existing building, and

(b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and

(c) the building concerned contains at least 4 or more dwellings.

The proposed development consists of a new building, of at least 3 storeys and containing at least 4 or more dwellings.

Council does not have a Design Review Panel constituted by the Minister of Planning.

In accordance with Clause 28(2) of the Policy, *In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*

(a) the advice (if any) obtained from the design review panel, and

(b) the design quality of the development when evaluated in accordance with the design quality principles, and

(c) the Apartment Design Guide.

The development application as amended is supported by a SEPP 65 – Apartment Design Guide - Compliance Table by Box Architects.

Clause 28(2)(b)

In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

(b) the design quality of the development when evaluated in accordance with the design quality principles

An assessment of the proposed development against the Design Quality Principles of Schedule 1 below:

Schedule 1 Design quality principles	
Design quality principle	**Comment**
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.*	Existing development in the area comprises one and two storey dwellings intermixed with single storey ageing motels facing the Princes Highway. The existing dwellings are older style dwellings on larger residential allotments, many of which are suitable for redevelopment. The site is zoned R1 General Residential and adjoins residential dwellings at the rear that are zoned R2 Low Density Residential. The proposed residential flat building presents as three storeys at the Princes Highway and three storeys at the rear as the land falls away from the street to the rear of the lot. The front street presentation is appropriate and will contribute to the existing and future character. The applicant has revised the plans to move the building to be a minimum of 9m from the rear boundary and has reduced the fourth storey to 2 x two bedroom units that are setback from the rear of the building so that it steps down the site. The application is supported by photo montages which show that it will have an appropriate presentation to the highway and from Seaview St. They have also provided a view plane analysis.

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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*	The bulk, scale and height of the building is appropriate to the desired future character of the area. It exceeds the LEP height limit by 0.3m due to the lift overrun and 0.1m for the northern most solar collectors and the applicant has requested a Clause 4.6 variation. It complies with the ADG setback guidelines for development that adjoins a

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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.*	low density zone which recommends a 9m (6m + 3m) setback at 3F-1 for apartment buildings when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping. The plans have been revised so that the building steps down and transitions into the zone. The building itself is well articulated with mixed coastal style building materials and blades that provide privacy screening. The front of the building will contribute to the Princes Hwy streetscape. The design has made appropriate use of articulation of the façade and modulation of the built form. The development provides a clear expression of the public and private domain through clear vehicle entry to Buchan St. The built form contributes to the character of the Princes Highway and the desired future landscape character of the locality. The design provides a satisfactory level of amenity across the development. The design delivers an appropriate level of amenity for residents in accordance with the objectives and design criteria of the Apartment Design Guide. All of the units have views at the rear to the north east over Mollymook, the Golf Course and towards the ocean. The proposed landscaping will improve the amenity of the development and soften the look of the development when viewed from the surrounding area.
Principle 3: Density	The development provides a total of 8 units, 6 with 3 bedrooms over three storeys and the top fourth storey 2 x two bedrooms in each. The density is

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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.*	appropriate to the site and it's context and consistent with the R1 General Residential zone and the Ulladulla/Mollymook Gateway Precinct DCP which promotes future increases in density for the area. The design provides a high level of amenity for future residents of the apartments and the revised stepping down of the design will improve the amenity of the residences that adjoin at the rear. The land drops away at the rear to the neighbouring dwellings on Seaview St and the balconies are now set back a minimum of 9m in the north east corner and 11.2m on the south east corner as the rear boundary is angled and not square. The proposed building exceeds the SLEP 2014 11m maximum building height by 0.3m by part of the lift overrun & 0.1m for the northern most solar collectors. The main roof of the structure complies with the height limit and steps down to 9m at the rear which is appropriate for the sloping site and the transition to the R2 Low Density Residential area.
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*	The proposed development is supported by BASIX and NatHERS Certificates. Stormwater is proposed to be dealt with via a split system which will be conditioned in the consent. It is proposed that all roof and hard stand water will be collected and discharge to Buchan St. In addition, the roof will be extended at the car park ramp entrance to reduce the runoff entering the basement carpark. They have provided Ventilation Plans that show that each of the units is well ventilated and

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sustainable materials and deep soil zones for groundwater recharge and vegetation.	orientated to receive adequate solar access to the living areas which are at the rear. The outdoor common areas including the swimming pool will receive good solar access at the rear. The Waste Management Plan lodged with the application details of how waste management will work on the site. The application was referred to Council's Waste Service who have reviewed the proposal and have no objections subject to conditions of consent.
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 useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.*	The proposed landscaping plans address the principle. The landscaping provides an attractive image and contextual fit within the surrounding landscape character, and broader locality. The landscaping will assist in providing privacy at the rear of the site around the common areas.

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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 wellbeing.* *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.*	The design of the building will provide good amenity to residents with living areas extended on to the rear balconies that have a northerly aspect, good ventilation, appropriate room dimensions, an attractive outdoor space with swimming pool and enjoy views of the ocean and wider Mollymook area. The applicant has revised the plans to increase the setback at the rear which ranges from 9m to 11.2m which is on average a 10.1m setback which provides adequate separation to preserve the amenity of the properties that adjoin at the rear. The building now steps down at the rear with three storeys and the fourth top storey setback a further 17m from the rear of the structure. The building has louvre type blades on the side of the building, planter boxes and landscaping that will provide privacy to the neighbouring residences. The building will be serviced by a lift in the front lobby which will provide ease of access for all age groups and mobility. Four of the units will be constructed in accordance with the silver level Liveable Housing Guidelines.
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*	The design is considered to appropriately address CPTED matters and reduces areas of concealment. Passive surveillance opportunities are available. The design provides a positive relationship between public and private spaces and is achieved

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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.*	through clearly defined secure access points and well-lit and visible areas, that are easily maintained and appropriate to the location and purpose. The apartment is located with a frontage to the Princes Highway which has varying amounts of traffic during the day and into the evening which will offer good street surveillance.
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 and providing opportunities for social interaction among residents.*	The development will provide housing residential apartments in an accessible locality as well as in a high amenity location, in close proximity to two bus stops and a short drive or walk to the beach and the Ulladulla CBD. The communal space at the rear includes a pool which will provide an attractive space for social interaction for the residents. The development will be attractive to persons, particularly over 55s wishing to downsize into low maintenance apartment living.
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 a well designed apartment development responds to the existing or future local context, particularly*	The design and aesthetics of the building are considered to be appropriate and reflective of the desired future character of the area. The variation in materials, colour and textures provides an attractive design outcome.

desirable elements and repetitions of the streetscape	

Clause 30(2) of SEPP 65 requires residential apartment development to be designed in accordance with the Apartment Design Guide (ADG). The following table outlines compliance with the ADG.

The Table below provides an assessment of the proposed development against the Apartment Design Guide.

Provision	**Comment**
PART 3 SITING THE DEVELOPMENT	
3A Site Analysis	
Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	Complies. The proposed development is appropriate for its residential context. A site analysis plan, and survey were included with the Architectural Drawings, photomontages and detailed elevations and landscape plans submitted with the development application.
3B Orientation	
3B-1. Building types and layouts respond to the streetscape and site while optimising solar access within the development	Complies. The development fronts the Princes Highway and Buchan St. Access is provided from Buchan St. The Development is orientated south to north to maximise solar access to individual units, with living areas and balconies facing the north looking out to the ocean views. The design has considered the solar access requirements in the layout of the apartments and outdoor spaces. The design provides for significant views of the ocean and the wider Mollymook area to the north and east. The applicant has provided shadow diagrams that indicate there is no significant overshadowing of neighbouring development.
3B-2. Overshadowing of neighbouring properties is minimised during mid-winter	Complies.

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	Shadow diagrams demonstrate compliance with minimum solar access requirements.
3C Public domain interface	
3C-1 Transition between private and public domain is achieved without compromising safety and security	Complies. The development provides a pedestrian points of access from Buchan St, which can also be accessed from the Princes Highway, allowing safe access to the development without crossing the driveway. The access points are clearly defined as entry point. The development provides a front gate and entry lobby that address the Princes Highway
3C-2 Amenity of the public domain is retained and enhanced	Complies Improved by vehicular access from Buchan St while retaining easy pedestrian access to the Princes Highway.
3D Communal and public open space	
3D-1. An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	Part compliant, 1% short of the minimum area. The site offers 24% of communal open space which includes the area in the front setback which has an open and landscaped area and the area to the rear of the building which includes a swimming pool and landscaping. The applicant has stated that due to the large balconies and open living areas allows for social events to occur within the units rather than in the common areas. Adequate sunlight will be available to the rear communal space with 7 hours direct sunlight on the winter solstice. the section within the front setback will receive sunlight in the afternoon from 1 pm mid winter. Communal open space is landscaped with seating and swimming pool for residents.
3D-2. Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	
3D-3. Communal open space is designed to maximise safety	

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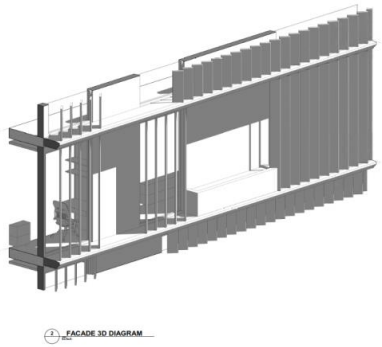
3D-4. Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood	The clear delineation between the public and private domain The ground floor public open space is well connected with the public street and boundaries are clearly defined.
3E Deep soil zones	
3E-1 Site Area Range 350m2 to 1500m2. Dimensions 3m Deep soil zone required (% of site area) - 7%	Complies There is approximately 83m2 deep soil planting provided in 2 separate areas of the development improving resident amenity and assist in providing privacy to adjoining residences at the rear.
3F Visual Privacy	
3F-1Building Separation Requirement to side and rear boundaries: Building Height / Habitable Rooms /Balconies / Non Habitable Rooms Up to 12m (4 Storeys): **6m** / 3m Up to 25m (5-8 Storeys): 9m / 4.5m Over 25m (9+ storeys): 12m / 6m 3F-2 Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.	The proposed building does not adjoin a site with another residential flat building but single dwelling houses that have their Private Open Spaces in their back yards. The proposed building has blades on the side that are oriented to provide privacy to the neighbours on the east and west. The building is setback 9m minimum from the rear boundary towards the north western corner and tapers to 11.21m at the north eastern corner.  FACADE 3D DIAGRAM

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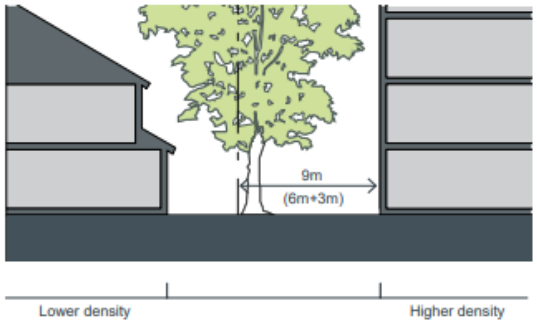
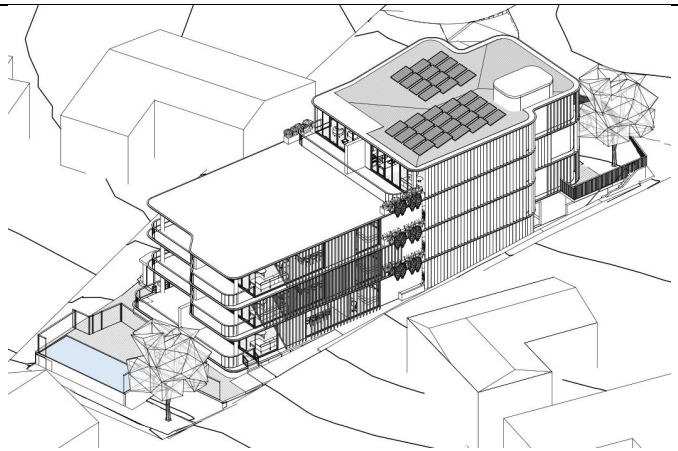
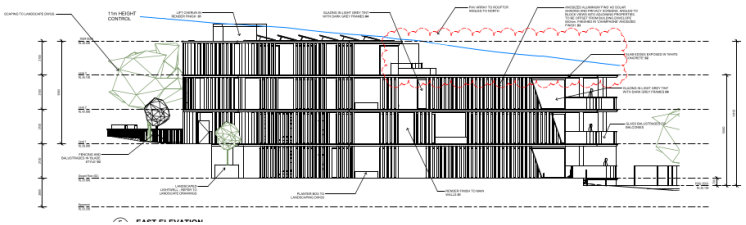


Figure 3F.5 To resolve amenity impacts, apartment buildings should increase the building separation distance (+3m) when adjacent to a different zone that permits lower density residential development



This provides adequate transition as provided at 3F-1.

The proposed building is setback 2.1m to the west side boundary and tapers from 7m to 2.4m on the eastern side boundary. The fixed aluminium fins/blades are proposed on the side elevations in front of the windows to provide privacy to the neighbouring properties. The fins/blades do not extend to the sides of the balconies and in part the living rooms on the upper levels and will be conditioned to do so to enhance the privacy of the neighbouring dwellings and for any future proposed dwellings or multi-unit developments.



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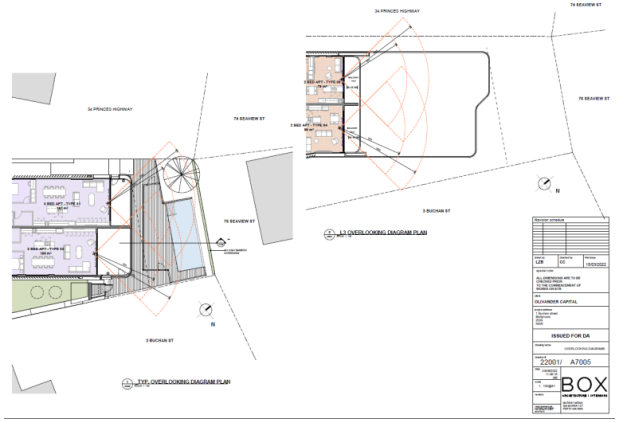
	Landscaping and appropriately placed planter boxes will also assist in reducing overlooking of neighbouring properties private open space. There is also existing established vegetation and trees at the rear of the adjoining properties that will assist in maintaining privacy and reducing any impacts. The applicant has provided a visual analysis and overlooking diagrams that demonstrate that privacy of the neighbours that adjoin at the rear will be protected. 

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	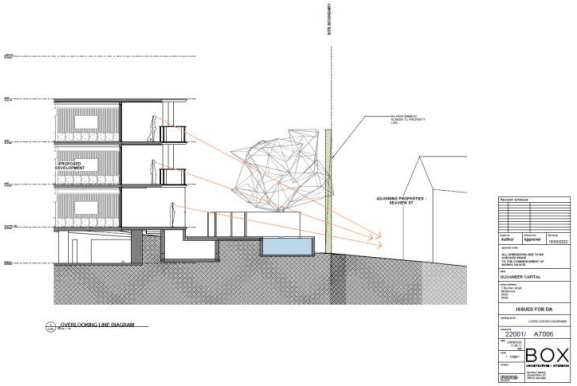
3G Pedestrian access and entries	
3G-1. Building entries and pedestrian access connects to and addresses the public domain	Complies. The building is accessed off the Princes Highway via an accessible walkway with clearly defined lines of site and letterboxes. The main entrance is defined by a roofed structure adjacent to the street which also houses the letterboxes. A secondary accessible path from the street is provided to the two units that face the Highway at street level. The points of entry connect to the existing street side footpath. The access provides compliant disabled access from the footpath to the point of entries.
3G-2. Access, entries and pathways are accessible and easy to identify	
3G-3. Large sites provide pedestrian links for access to streets and connection to destinations	
3H Vehicle Access	
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	Complies.

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	Vehicle access is from Buchan St and the pedestrian access runs alongside the western side of the driveway to the front entry gate which is appropriate. Buchan St is a quiet street with only two dwellings accessed from the street and safe for vehicles and pedestrians given its low use. Garbage collection areas are in the basement and screened from view. Council's Development Engineer is reviewing the car parking layout and manoeuvrability plans and has no objections subject to conditions of consent.
3J Bicycle and Car Parking	
3J-1. Not applicable	Complies. Parking is provided off street in the basement. Secure undercover bicycle parking is provided. Excavation is minimised and car parking layout of 42 spaces is provided which complies with DCP chapterG21. Natural ventilation has been provided to the carpark area.
3J-2.Parking and facilities are provided for other modes of transport	
3J-3. Car park design and access is safe and secure	
3J-4. Visual and environmental impacts of underground car parking are minimised	
3J-5. Visual and environmental impacts of on-grade car parking are minimised	
3.J-6 Visual and environmental impacts of above ground enclosed car parking are minimised	
PART 4 DESIGNING THE BUILDING	
4A Solar and Daylight Access	
1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter. 3. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	Complies. All of the units receive at least 3 hours direct sunlight between 9am and 3pm mid winter as demonstrated on the solar access plan provided.

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	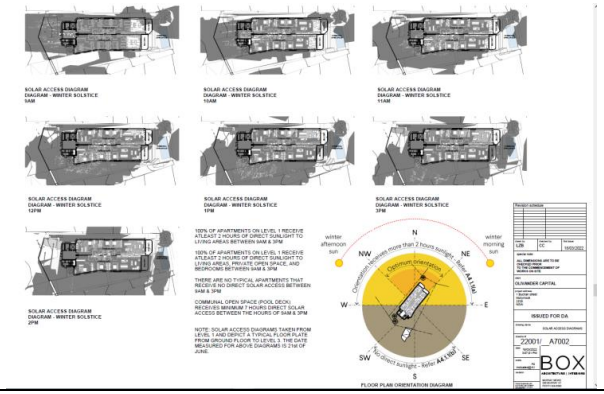
4A-2 Daylight access is maximised where sunlight is limited	Complies.
4A-3 Design incorporates shading and glare control, particularly for warmer months	Complies. The design incorporates a variety of shading devices to ensure glare control is achieved and solar access can be managed.
4B Natural Ventilation	
4B-1 All habitable rooms are naturally ventilated to create healthy indoor living environments. 1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed. 2. Overall depth of a cross-over or crossthrough apartment does not exceed 18m, measured glass line to glass line	Complies. The applicant has provided a ventilation diagram that indicates that all of the units are naturally ventilated. Maximum depth of the apartments is 6.3m.

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4B-2 The layout and design of single aspect apartments maximises natural ventilation	
4B-3 The number of apartments with natural cross ventilation is maximised	
4C Ceiling Heights	
4B-1 Ceiling height achieves sufficient natural ventilation and daylight access.	Complies. Minimum 2.7m to habitable spaces and 2.4m to non habitable spaces which will be used for services for air conditioning units. *Note from Manager – condition required – survey.*
4B-2 Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	
4B-3 Ceiling heights contribute to the flexibility of building use over the life of the building.	
4C-1 Ceiling height achieves sufficient natural ventilation and daylight access. Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Minimum ceiling height for apartment and mixed use buildings Habitable Rooms 2.7m Non-Habitable 2.4m If located in mixed use areas 3.3m for ground and first floor	
4C-2 Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	

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4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building	
4D Apartment Size and Layout	
4D-1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity 1. Apartments are required to have the following minimum internal areas: • Studio 35m² • 1 bedroom 50m² • 2 bedroom 70m² • 3 bedroom 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each. 2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	Complies All 3 bedroom apartments are 185m^2 internally. The two bedroom apartments are 79m^2. The layout of the rooms is functional and well organised and provide a high level of amenity. Each apartment has two bathrooms and a powder room. All habitable rooms have large windows that exceed 10% of the floor area
4D-2 Environmental performance of the apartment is maximised. 1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height Based on ceiling heights of 2.7m, habitable room depths are required to be limited to 6.75m.	Complies. Habitable room depths are less than 6.75m

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<table>
<tr><td>2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window</td><td></td></tr>
<tr><td>4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs

1. Master bedrooms have a minimum area of 10m2 and other bedrooms 9m2 (excluding wardrobe space)

2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)

3. Living rooms or combined living/dining rooms have a minimum width of:

• 3.6m for studio and 1 bedroom apartments

• 4m for 2 and 3 bedroom apartments

4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</td><td>Complies.

Bedroom area sizes comply with minimum size requirements.

The bedroom minimum dimension of 3m (excluding wardrobe space) comply.

Combined living /dining rooms comply with the minimum widths.</td></tr>
<tr><td colspan="2">4E Private Open Space and Balconies</td></tr>
<tr><td>4E-1 Apartments provide appropriately sized

private open space and balconies to enhance residential amenity

1. All apartments are required to have

primary balconies as follows:

Dwelling type Minimum Area Minimum

Depth

Studio 4m²</td><td>Complies.

Private open space at ground level and balconies comply with the minimum requirements as per the calculation table provided below

<table><tr><td>Floor 4 – 2 Bed Apt – Type 03</td><td>18m²</td></tr><tr><td>Floor 4 – 2 Bed Apt – Type 04</td><td>18m²</td></tr><tr><td>Floor 3 – 3 Bed Apt – Type 01</td><td>18m²</td></tr></table></td></tr>
</table>

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1 bedroom 8m² 2m 2 bedroom 10m² 2m 3+ bedroom 12m² 2.4m 2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m2 and a minimum depth of 3m.	<table><tr><td>Floor 3 – 3 Bed Apt – Type 02</td><td>18m^2</td></tr><tr><td>Floor 2 - 3 Bed Apt – Type 01</td><td>18m^2</td></tr><tr><td>Floor 2 - 3 Bed Apt – Type 01</td><td>18m^2</td></tr><tr><td>Floor 1 - 3 Bed Apt – Type 01</td><td>18m^2</td></tr><tr><td>Floor 1 - 3 Bed Apt – Type 02</td><td>29m^2</td></tr></table>
4E-2 Primary private open space and balconies are appropriately located to enhance liveability for residents	POS and balconies are appropriately located and provide screening where necessary to improve amenity. POS and balconies contribute to the architectural form and detail of the building with varying shapes and sizes that complement the overall design and the irregular shape of the allotment. Each unit has a minimum 18m^2 balcony which has a depth of 2.805m which exceeds minimum requirements. The ground floor apartments are provided with balconies. The balconies are appropriately positioned at the rear of the units, maximising solar access and views at the rear which faces north east. The balconies integrate into the design of the building appropriately and maximise safety with building materials.
4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building	
4E-4 Private open space and balcony design maximises safety.	
4F Common circulation and spaces	
4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments. 1. The maximum number of apartments off a circulation core on a single level is eight. 2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	Complies. Two units on each level. The space promotes safety and social interaction.

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4F-2 Common circulation spaces promote safety and provide for social interaction between residents	
4G Storage	
4G-1 Adequate, well-designed storage is provided in each apartment. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: Dwelling Type Storage volume Studio 4m3 1 bedroom 6m3 2 bedroom 8m3 3+ bedroom 10m3 At least 50% of the required storage is to be located within the apartment.	Complies. Each unit complies with the storage requirements and additional external storage rooms are available at each foyer level.
4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments	
4H Acoustic Privacy	
4H-1 Noise transfer is minimised through the siting of buildings and building layout	Complies. Each balcony area is slightly offset with a solid wall between to provide acoustic privacy. The acoustic privacy between units is to be managed through suitable insulation and air space in the enclosing walls. The separation between living areas and bedrooms has been considered to provide acoustic separation. Living areas adjoin other unit living areas and the same with bedrooms which are adjacent to external walls and well separated through design.
4H-2 Noise impacts are mitigated within apartments through layout and acoustic treatments	
4J Noise Pollution	

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4J-1 In noisy or hostile environments the impacts of external noise and pollution are minimised through careful siting and layout of buildings.	N/A. Complies with 4J-2.
4J-2 Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission	The building has been sited to place circulation spaces facing the Princes Highway to reduce the impact on noise pollution on habitable areas. An acoustic fence will be conditioned adjacent to the eastern side boundary to address the impact of any noise coming from the driveway access to the basement garage. The building certifier must address Part J of the BCA that will provide for minimum required sound attenuation construction between units. The pool pump and filtration equipment are proposed to located within a dedicated plant room in the basement that will contain pump noise. Pool use will be conditioned to comply with noise requirements under relevant noise legislation.
4K Apartment Mix	
4K-1 A range of apartment types and sizes is provided to cater for different household types now and into the future.	Complies. Six of the apartments are 3 bedroom and two are 2 bedrooms. The 2 bedroom apartments are on the top floor.
4K-2 The apartment mix is distributed to suitable locations within the building	
4L Ground Floor Apartments	
4L-1 Street frontage activity is maximised where ground floor apartments are located	N/A

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4L-2 Design of ground floor apartments delivers amenity and safety for residents	The ground floor units have offset floor level from the COS and comply with safety regulation around the pool fencing. The ground floor apartment balconies are to be planted to provide screening to the COS as shown on the landscape plan.
4M Facades	
4M-1 Building facades provide visual interest along the street while respecting the character of the local area	Complies.
4M-2 Building functions are expressed by the facade	The development provides a satisfactory façade design and building function, having well composed vertical and horizontal elements that define the floors.
4N Roof Design	
4N-1 Roof treatments are integrated into the building design and positively respond to the street	Complies.
4N-2 Opportunities to use roof space for residential accommodation and open space are maximised.	The design of the roof is considered to be innovative and appropriate for the site and local character.
4N-3 Roof design incorporates sustainability features	The building design steps down to transition into the R2 Low Density Zone. Solar panels are proposed to be on top of the roof.
4O Landscape Design	
4O-1 Landscape design is viable and sustainable	Complies. Suitable long lasting and low maintenance landscaping is proposed.
4P Planting on Structures	

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4P-1 Appropriate soil profiles are provided	Soil profiles for planting on structures have been allowed for in the landscape design, including dense planting and planter boxes. Native planting palette has been utilised to ensure optimal growth and low maintenance. Planting on top of structure (roof of car park entrance) is proposed and will contribute to the streetscape presentation by softening the look of the building. Landscaping is also proposed between the ground floor balconies and the COS terrace to provide privacy. A bamboo screen and large tree in the deep soil area at the rear will assist in providing privacy to the dwellings at the rear.
4P-2 Plant growth is optimised with appropriate selection and maintenance	
4P-3 Planting on structures contributes to the quality and amenity of communal and public open spaces	
4Q Universal Design	
4Q-1 Universal design features are included in apartment design to promote flexible housing for all community members.	Complies. 50% of the apartments are LHA Silver standard compliant. The applicant has provided an Accessibility Report to support the application.
4Q-2 A variety of apartments with adaptable designs are provided.	
4Q-3 Apartment layouts are flexible and accommodate a range of lifestyle needs	
4R Adaptive Reuse	
4R-1 New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place	N/A.

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4R-2 Adapted buildings provide residential amenity while not precluding future adaptive reuse	
4S Mixed Use	
4S-1 Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	N/A.
4S-2 Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents	
4T Awnings and signage	
4T-1 Awnings are well located and complement and integrate with the building design	N/A
4T-2 Signage responds to the context and desired streetscape character	
4U Energy efficiency	
4U-1 Development incorporates passive environmental design	Complies.
4U-2 Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer	Living spaces of most of the units have northern orientation and are protected from the west.
4U-3 Adequate natural ventilation minimises the need for mechanical ventilation	The applicant has provided a cross ventilation plan that indicates that the proposed apartments will have access to adequate natural cross ventilation.

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4V Water management and conservation	
4V-1 Potable water use is minimised	Complies. Water minimisation and reuse are available through fittings, fixtures. Basix and Nathers Certificates have been provided for each unit. Refer to stormwater assessment under Chapter G2 of the DCP above.
4V-2 Urban stormwater is treated on site before being discharged to receiving waters	
4V-3 Flood management systems are integrated into the site design	
4W Waste management	
4W-1 Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	Complies. Applicant's WMMP demonstrates reduction, reuse and recycling. Waste storage areas shown on the basement plan and WMMP referred to waste services who have reviewed it and provided recommended conditions.
4W-2 Domestic waste is minimised by providing safe and convenient source separation and recycling	
4X Building maintenance	
4X-1 Building design detail provides protection from weathering	Complies. Building materials and maintenance regimes and considered satisfactory.
4X-2 Systems and access enable ease of maintenance	
4X-3 Material selection reduces ongoing maintenance costs	

	All plant areas and services are suitably protected from the weather and located accordingly. Access from the property boundaries to all areas within the development is achievable through covered circulation. Materials have been selected for durability and lack of maintenance in the marine environment.

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Appendix B – Clause 4.6 Variation

4.6 Exceptions to development standards

The applicant has submitted a written request to justify the contravention of the development

standard. Council is required to consider subclauses (3), (4) and (5) of clause 4.6. Clause 4.6(3)-(5) are extracted from SLEP 2014 below:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

(a) the consent authority is satisfied that:

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Council must be satisfied that clause 4.6(4)(a)(i) and (ii) have been addressed prior to the grant of development consent. That is, a written request must be made, be adequate and be in the public interest because it is consistent with the objectives of the development standard and zone.

Further, the applicant's written request seeking to justify the contravention of the development standard must adequately address the matters required to be demonstrated by clause 4.6(3). Subclause (3) requires the following two matters to be addressed:

1. *That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)); and*
2. *That there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.*

Stepping through the subclauses of cl. 4.6:

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

The applicant is requesting a variation to clause 4.3 Height of Buildings. The proposed maximum height of the residential flat building is 11.3m and the maximum HoB is 11m as mapped in SLEP 2014 which is a 2.7% variation.

The applicant has provided the following statements:

The elements of the building that exceed the 11 metre height plane are shown below at Figure 1. The top of the lift overrun exceeds the height limit by 0.3 metres. The only other building component exceeding the height limit is the uppermost part of the northern-most bank of solar PV collectors, although this exceedance is only about 0.1 metre.

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Figure 1

The building elements involved are the top of the lift overrun (0.3 metres above the 11 metre height plane) and the top of the solar PV collectors (nominal - 0.1 metres). The variation to the 11 metre building height limit is detailed in the table below.

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Point	Lift overrun

Natural Ground RL (m)	38.4
Height limit	11
11m Height RL (m)	49.4
Proposed RL (m)	49.7
Proposed building height above NGL	11.3
Height Exceedance (m)	0.3
Percentage Exceedance	2.7%

To assess whether compliance with a development standard is unreasonable or unnecessary the Courts have provided guidance in the required assessment, with particular reference to the accepted "5 Part Test" for the assessment established by the NSW Land and Environment Court (L&EC) in Wehbe v Pittwater Council [2007] NSWLEC 827 the principles outlined in Winten Developments Pty Ltd v North Sydney Council [2001] NSWLEC 46 and further clarified by Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118. The “5-part Test” is outlined as follows:

1. *The objectives of the development standard are achieved notwithstanding non-compliance with the standard.*
2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*
3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*
4. *The development standard has been virtually abandoned or destroyed by the Council’s own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.*
5. *The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.*

The applicant appears to not rely on parts 2-5 of the ‘5 Part Test’ as they are not considered applicable. The focus is on the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The objectives of clause 4.3 (height) are:

(a) to ensure that buildings are compatible with the height, bulk, and scale of the existing and desired future character of a locality;

(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development; and

(c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.

The applicant has addressed (a) and (b) and (c) is not relevant as it is not located near a heritage item.

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Applicants Request

The following is an extract from the applicant's request (inclusive of Figures)

The judgment in Wehbe v Pittwater Council [2007] NSWLEC 827 identified a 'five part test' that could be applied to establish whether compliance is unreasonable or unnecessary. The elements of the "five part test" are discussed below:
1. Compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard. As set out below, the proposal will achieve the objectives of the development standard despite numerical non-compliance with the development standard.

Objective (a): to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality.

In addressing this objective, it is submitted that compatibility with the desired future character of the area should be preferred and be given more weight in this assessment. The reasons for this are set out below:
1. The area in which the site is located is known as the Ulladulla/Milton Gateway Precinct. The context, objectives and DCP-level development controls for the Gateway Precinct are established in Shoalhaven DCP 2014's Chapter V3.
2. Among the suite of development controls for the Gateway Precinct are the 11 metre building height limit established by Clause 4.3 of Shoalhaven LEP 2014.
3. Existing development character within the Gateway Precinct is of single and some two storey development that is largely single dwelling residential, with a significant sprinkling of tourist and visitor accommodation such as motels. Much of the existing development, particularly the residential component, is more than 50 years old and is nearing the end of its economic life.
4. It is clear that Council's intention is for an orderly but decisive transformation of the area from the existing low density residential development to a much higher density style of development, though still primarily residential in character.

Aspects of the Planning Principle: Compatibility in the Urban Environment as set out in Project Venture Developments v Pittwater Council [2005] NSWLEC 191 have relevance to the weight that should be given to the desired future character of the Ulladulla/Mollymook Gateway Precinct. At paragraph 23 in that judgement, the Planning Principle states:

It should be noted that compatibility between proposed and existing is not always desirable. There are situations where extreme differences in scale and appearance produce great urban design involving landmark buildings. There are situations where the planning controls envisage a change of character, in which case compatibility with the future character is more appropriate than with the existing. Finally, there are urban environments that are so unattractive that it is best not to reproduce them.

In the contextual statement and objectives for the Gateway Precinct, we can observe the desire for new development to bring the following attributes, which require a change of the area's character:
- *to create a 'sense of arrival'*
- *to enhance and make a positive contribution to the character of the Gateway Precinct as the northern gateway to the Ulladulla Town Centre*

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Shoalhaven DCP Chapter V3 provides the following context for the Ulladulla/Mollymook Gateway Precinct:

The Ulladulla/Mollymook Gateway Precinct is located on both sides of the Princes Highway at the northern approach to the Ulladulla Town Centre. The Princes Highway runs along a ridgeline that transects the Gateway Precinct. The land generally falls away from the road on both sides and there are significant views to the ocean to the east and some views of the escarpment to the west. The current development of the subject land is characterised by predominantly low density residential and tourist and visitor accommodation uses.

The opportunity exists for development fronting the Princes Highway in this location to create a 'sense of arrival' and positively respond to the natural environment elements that define the coastal location. It is anticipated that the precinct will continue to be predominantly residential in nature into the future with the opportunity for other compatible uses, including the continuation of appropriate tourist and visitor accommodation uses, and increased density. Future development should have a strong street presence whilst sympathetically blending with the surrounding area and protecting the amenity of adjacent dwellings.

The Buchan Street triangle (Lots 1-3 DP 33065) is considered to be the key site within the Gateway Precinct due to its visual prominence and unique characteristics.

Chapter V3 also contains the following objectives for the Gateway Precinct:

i. Ensure that development enhances and makes a positive contribution to the character of the Gateway Precinct as the northern gateway to the Ulladulla Town Centre.
ii. Encourage consolidation of the lots within the Buchan Street Triangle.
iii. Ensure that development is sensitive to the landscape, built form and environmental conditions of the locality, including distinctive views of the Ocean.
iv. Encourage the sharing of views, while not restricting the reasonable development potential of a site.
v. Minimise the amenity impact on adjoining or adjacent properties, especially Seaview Street, Mollymook.
vi. Set appropriate criteria for vehicular access and parking. In choosing to apply a building height limit of 11 metres, Council is encouraging new development to take advantage of the development potential provided by the height limit. Thus, a central element of the desired future character of the Gateway Precinct is for new development to achieve building heights of around 11 metres, which is significantly higher than what exists at present. Given that new development in the Gateway Precinct would be expected to take advantage of the 11 metre building height limit, the height of the proposed apartment building will be compatible with that height limit. It will not conflict with the element of character that relates to height. The compatibility of a building with the streetscape is an important element of its harmony with the character of the locality. The photomontage below at Figure 2 shows a view of the streetscape with the proposed apartment building superimposed.

Figure 2: The building is within the 11-metre height limit when viewed from the street, as shown on the extract from the street elevation plan at Figure 3 below.

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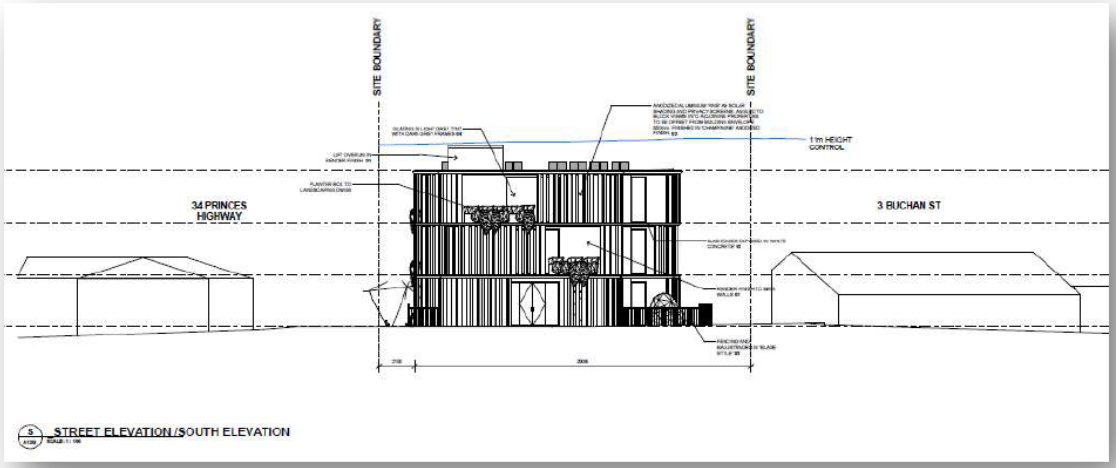

Figure 3: Street elevation, showing the building within the 11 metre height limit (blue line)

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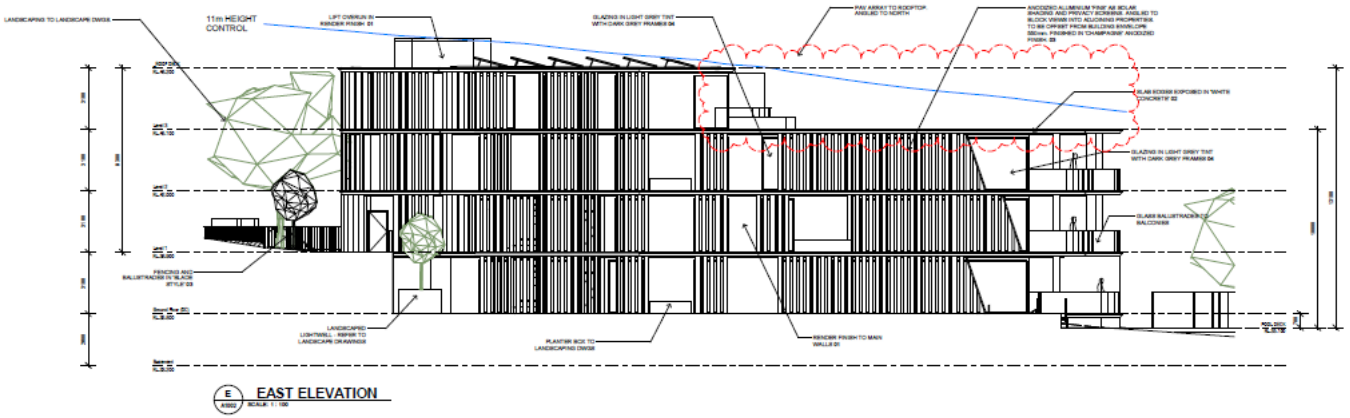

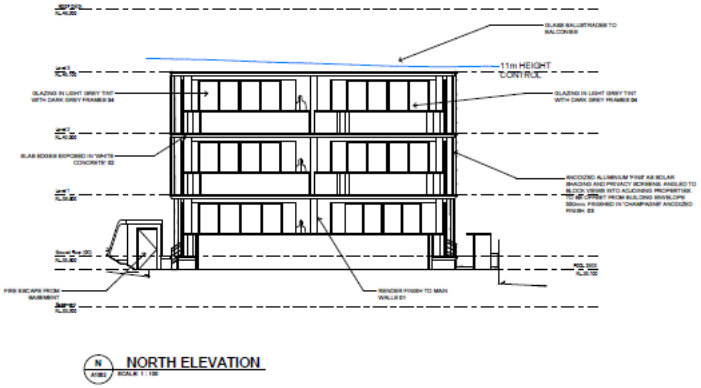

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The entrance lobby at the front of the building observes a typical front setback for the locality. Combined with the slimness of the overall building, the reduced bulk of the entrance lobby and the typical side setbacks, the building is not incompatible with the existing bulk and scale of development, and will be entirely harmonious with the desired future character of the Ulladulla/Mollymook Gateway Precinct.

Objective (b): to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,

Visual impact: The site is located in a 'dip' along the Princes Highway corridor. This characteristic of the local topography combined with the very wide verge (ranging from 10 to 17 metres) in front of the site and the slim aspect of the front of the building will combine to ensure that the building has a restrained impact on the visual environment of the Princes Highway corridor. The photograph at Figure 4 below shows the area of the site as one approaches Ulladulla from the north. For reference, the site lies just beyond the more distant power pole, and there is a grey car parked on the verge in front of the subject property, with only its rear half visible. The street trees and other plantings on the verge will not be affected by the proposal and will assist in screening the building once erected.

Figure 4: View from the Princes Highway looking south. The site lies just beyond the distant power pole – the rear of a grey car parked on the verge in front of the subject property can just be seen. Note the wide verge and the established street trees in front of the site.

Viewed from the north, in Seaview Street, the proposal will not be intrusive, as shown in the photomontage at Figure 5 below. The proposed height variation will not have any additional adverse impact in terms of the visual quality of the locality.

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Figure 5: View from Seaview Street. Nos. 76 and 74 Seaview Street in the foreground, with the proposed building just visible behind.

Disruption of views: The site is set somewhat below the level of the Princes Highway and between two significant viewpoints from the Highway corridor to the ocean. The topography means that any development on this site will not reduce views from the Highway corridor to the ocean. The proposal will not restrict views of the ocean from the Princes Highway but will help to frame them, adding to the sense of arrival as people enter the Gateway Precinct. In terms of any impact on views from private properties, the properties most likely to be affected are those immediately adjoining the site, 3 Buchan Street and 34 Princes Highway. In both cases, these properties have views to the north-east which will be largely unaffected by the proposal. Mitigating any likely view loss is the existence of extensive screening vegetation along the side property boundaries and the fact that any view loss would occur across these side boundaries. The photomontage at Figure 5 and the photograph at Figure 6 below show the minimal impact that the proposal will have on the views available from those properties. The part of the building exceeding the 11 metre height limit will have no impact on those views. Overall, the proposed variation to building height will not have any significant impact on the views available from either public places or private properties.

Figure 6: Photomontage of view from the rear deck of 34 Princes Highway.

Figure 7: View from the rear deck of No. 3 Buchan Avenue to the north, across the rear of the subject land, showing that any views are constrained by the existing vegetation in the rear yard.

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Loss of privacy: The proposed variation to building height will not have any adverse impact on the privacy of adjoining residential properties. The 0.3 metre encroachment of the lift overrun & 0.1m encroachment by the northern most solar collectors above the 11 metre height plane will not have any effect on privacy.

Loss of solar access: Due to the orientation of the site, the residential property most prone to loss of solar access is No. 3 Buchan Street. The shadow diagrams demonstrate that this property will retain at least 3 hours of solar access between 9am and 3pm at the winter solstice. That property is not affected by shading from the proposal until after 11am and still retains solar access to the north facing outdoor living area at 2pm. The proposed variation to building height will have an imperceptible impact in terms of solar access on the adjoining property and the level of solar access will still meet the accepted standard for solar access of 3 hours between 9am and 3pm at the winter solstice.

Objective (c): to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.

This objective is not relevant as the site is not listed as a heritage item and nor is it within the vicinity of a heritage item or within a heritage conservation area. Consequently, it is submitted that the objectives of the Height of Buildings development standard are achieved notwithstanding the non-compliance with the development standard.

2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

   This aspect does not apply to the proposal.

3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

   This aspect does not apply to the proposal.

4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.*

   This aspect does not apply to the proposal.

5. *Compliance with the development standard is unreasonable or inappropriate due to the existing use of land and the current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone.*

   This aspect does not apply to the proposal.

Summing up, compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

How would strict compliance hinder the attainments of the objects specified in section 5(a)(i) and (ii) (now section 1.3) of the Act?

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The objects set out in sections 5(a) (i) and (ii) of the Act (prior to the 2017 amendments) are:
(a) to encourage:
(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
(ii) the promotion and co-ordination of the orderly and economic use and development of land.
Following the 2017 amendments, the corresponding objects in section 1.3 of the Act are:
(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,

(c) to promote the orderly and economic use and development of land,

It is submitted that strict compliance with the 11 metre height of buildings development standard would hinder the attainment of the above objects of the Act by preventing a proposed development that:

- *involves a very minor variation to the development standard and is otherwise unobjectionable;*
- *will not have any significant adverse impact on the amenity of adjoining residential properties;*
- *will add to the very limited supply of housing in the Mollymook/Ulladulla area;*
- *will add to the range of housing options available in the area, particularly in terms of accessible and adaptable medium density housing options;*
- *responds to Council's objectives for the Milton/Ulladulla Gateway Precinct.*

Clause 4.6(3)(a) Evaluation of the written request relating to Clause 4.6(3)(a)- Compliance with the development standard is unreasonable or unnecessary.

The consent authority must form the opinion of that the applicant's written request(s) have adequately addressed those matters required to be demonstrated by clause 4.6(3)(a). The applicant has applied the first test established in *Wehbe v Pittwater Council* to argue that the development standard is unreasonable or unnecessary in the circumstances of the case because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Discussion

It is accepted that the proposed height exceedance will meet the objectives of the development standard clause 4.3 Height of Building given that the area of the building that exceeds the limit is the lift overrun which is 0.3m above the 11m height limit prescribed in SLEP 2014.The lift overrun is setback from the front roof towards the western end of the top of the roof, is a comparatively smaller structure with a render finish that will not be visually obtrusive.

The 0.3m or 2.7% exceedance is considered to be minor and considering the small size of the structure will not have any adverse impacts on the streetscape character, privacy, views and solar amenity to surrounding residents. The solar collector exceedance of 0.1m is a very small exceedance of

0.9% and it is noted that solar collectors can be installed as exempt development under *State Environment Planning Policy (Transport and Infrastructure) 2021.*

Given the circumstances outlined above, the proposed height exceedance is considered reasonable having regard to the building design, its purpose and site characteristics.

The proposed development will contribute to housing diversity in Mollymook and is suitably located in a highly desirable high amenity location within views towards the ocean and in short walking distance to beaches and parks.

Therefore, compliance with the development standard is considered to be unreasonable and unnecessary in the circumstances of the case.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

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The consent authority must form the positive opinion that the applicant's written request has adequately addressed those matters required to be demonstrated by clause 4.6(3)(b).

To demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard, Preston CJ *in Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, held that the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined but would refer to grounds that relate to the subject matter, scope, and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

In the judgment, Preston CJ outlined the two methods for demonstrating that a Clause 4.6 is "sufficient at paragraph [24] of case as follows:

> *First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15].*

Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].

Applicants Request

The applicant has stated There are a range of environmental planning grounds that justify contravening the development standard, as set out below:

1. Additional housing opportunities: if the development standard was not varied, the opportunity to provide additional housing units would not arise. There is a significant undersupply of housing in the Mollymook and wider Milton/Ulladulla areas and the proposal will assist in satisfying this demand and addressing housing availability.
2. Provision of lift access to all floors of the development: a lift overrun is a practical requirement for the provision of lift access in a multi-storey residential building.
3. Provision of accessible/adaptable housing: four of the eight apartments in the proposal will meet Liveable Housing Australia's (LHA's) Silver Standard for flexibility and adaptability, considerably in excess of the number required by either the Shoalhaven DCP or SEPP 65 / Apartment Design Guide. The proposed variation will assist in enabling the provision of this standard of adaptable accommodation.
4. Fulfilling Council's strategy for the Ulladulla/Mollymook Gateway Precinct: the proposal responds appropriately to Council's plans for the Gateway Precinct, will contribute to the 'sense of arrival' and has a strong street presence, with an appropriate increase in density.

It is submitted that the above environmental planning grounds are sufficient to justify the variation to the development standard.

Discussion

The applicant's written request demonstrates sufficient environmental planning grounds to justify contravening the height development standard for this particular proposal for the following reasons:

- The proposal is consistent with the key objectives of the R1 zone in that it provides for the housing needs of the community, providing a variety of housing types and densities in the form of an 8-unit narrow residential flat building in a desirable location fronting the Princes Highway.
- In considering the objectives of the zone for the provision of medium density residential uses the proposal is considered contextually appropriate.
- The height of the development exceeds the height of existing surrounding development in the vicinity, however it is consistent with the desired future character of the site and its immediate surrounds.
- The proposed building responds to the DCP Ulladulla/Mollymook Gateway Precinct by providing a strong street presence, a sense of arrival and an increase in density.
- Is not inconsistent with the relevant Objectives of the EPA Act, SLEP 2014 including height clause and strategic vision for the locality.

(4) Development consent must not be granted for development that contravenes a development standard unless—

(a) the consent authority is satisfied that—

(i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and

(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

Clause 4.6(4)(a)(i) Have the matters set out in section 4.6(3) been adequately addressed?

Clause 4.6(4)(a)(i) requires the consent authority to be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause 3. *Rebel MH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 per Preston CJ of LEC at [51] makes it clear that *"the consent authority needs to be satisfied that those matters have in fact been demonstrated*". The applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3), because the analysis above has demonstrated that it has.

Clause 4.6(4)(a)(ii) Evaluation – Public Interest

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

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Applicants Response

The proposal will be in the public interest because:
- *it is consistent with the objectives of both the R1 General Residential zone and of the Height of Buildings development standard;*
- *there are ample environmental planning grounds to justify the contravention of the development standard;*
- *the proposed variation is very minor and will have no adverse effects;*
- *the proposal will add to the very limited supply of housing in the Mollymook/Ulladulla area;*
- *the proposal will add to the housing options available in the area, particularly in terms of accessible and adaptable medium density housing options;*
- *the proposal responds to Council's objectives for the Milton/Ulladulla Gateway Precinct.*
- *public infrastructure in the vicinity is capable of adequately servicing the proposal and will be better utilised if the proposal proceeds; and*
- *the proposal is otherwise unobjectionable.*

Discussion

The applicant has provided sufficient justification as outlined above in the summary of their written request that the top of the lift overrun encroachment and solar collectors are consistent with the objectives of Clause 4.3 relating to height of buildings.

Pursuant to the provisions of the SLEP 2014 the land is zoned R1 General Residential, the objectives of which are:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To identify land suitable for future urban expansion.

The proposal, being medium density residential development is consistent with the R1 Zone objectives.

The non-compliance with the maximum height limit has minimal impact and is appropriate in this instance and the proposal is considered to be in the public interest.

(b) the concurrence of the Planning Secretary has been obtained.

The Council assumes the concurrence of the Secretary in this instance, when considering the application.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

The non-compliance with the maximum building height development standard will not raise any matter of significance for State or Regional Planning.

(b) the public benefit of maintaining the development standard, and

In the judgement of *Ex Gratia P/L v Dungog Council* [2015] (NSWLEC 148), Commissioner Brown of the NSW LEC outlined that the question that needs to be answered in relation to the application of clause 4.6(5)(b) is "*whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development*".

It is considered that public advantages of the development will outweigh public disadvantages for reasons outlined in the discussion above.

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

No other matters need to be taken into consideration by the Secretary.

Appendix C – Justification for Performance-Based Solution/s

The proposed development involves a departure from the acceptable solution/s set out in Shoalhaven DCP 2014. Consideration of the performance-based solution is provided below:

Performance-based Solution to Acceptable Solution A4.1 in Chapter V3 of Shoalhaven DCP 2014
Control being "varied" *Insert "snip" of acceptable solution being varied and copy and paste development control from DCP.*

Section 4.15 Assessment Report - DA22/1542 – 1 Buchan St Mollymook

A4.1 With the exception of the Buchan Street Triangle, buildings are sited within a building envelope determined by the following method: planes are projected at 45 degrees from a height of 5m above existing ground level at the front, side and rear boundary as shown in **Figure 4**.

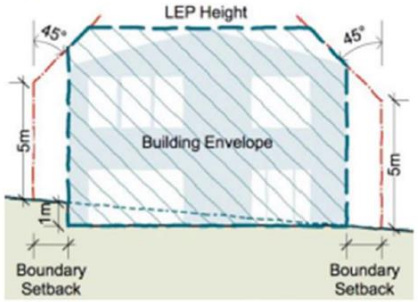


Figure 4: Building envelope

Extent of proposed departure from acceptable solution

Identify the extent of departure. If the application seeks a departure from a numerical standard specify the numerical departure (e.g. metres, m² etc.) and also the percentage (%) departure from the acceptable solution.

Acceptable Solution	***Numerical Standard***	***Proposed Solution***	***Numerical Departure***	***% Departure***

Section 4.15 Assessment Report - DA22/1542 – 1 Buchan St Mollymook

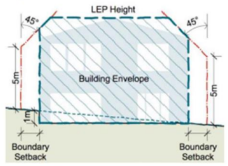
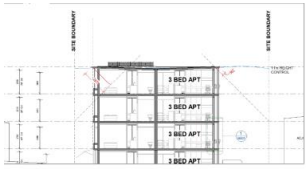
A4.1 With the exception of the Buchan Street Triangle, buildings are sited within a building envelope determined by the following method: planes are projected at 45 degrees from a height of 5m above existing ground level at the front, side and rear boundary as shown in **Figure 4**.  **Figure 4: Building envelope**	5m	2.979m on the north western corner of the building 	2.79m	56%
Unique circumstances as to why a departure from the acceptable solutions is being sought *Describe the unique circumstances why the acceptable solution cannot be complied with and why a performance-based solution is being sought instead.*				
The applicant has provided the following justification for the variation:				

Figure 15 – Extract from Section B showing the extent of the variation to the building envelope.

c. Demonstrate how the relevant objectives and performance criteria (as appropriate) are being met with the proposed variation

The specific objectives of Section 5 (Ulladulla/Mollymook Gateway Precinct) of SDCP Chapter G11 and comments on this proposal are set out in the table below.

Objective	Comment
Ensure that development enhances and makes a positive contribution to the character of the Gateway Precinct as the northern gateway to the Ulladulla Town Centre.	The proposed apartment building will make a positive contribution to the Gateway Precinct, and the proposed building envelope will not detract from that contribution.
Encourage consolidation of the lots within the Buchan Street Triangle.	Not applicable – lot is not within the Triangle.
Ensure that development is sensitive to the landscape, built form and environmental conditions of the locality, including distinctive views of the Ocean.	The overall building form is slim and the site is located such that the building will not affect views of the ocean from the Princes Highway and adjoining properties. The building responds to Council's intent for the Gateway Precinct by providing a strong street presence and thus aims t set the scene for the desired future character of the Gateway Precinct.
Encourage the sharing of views, while not restricting the reasonable development potential of a site.	The proposed building envelope variation will not have any adverse impact on views.

Section 4.15 Assessment Report - DA22/1542 – 1 Buchan St Mollymook

Minimise the amenity impact on adjoining or adjacent properties, especially Seaview Street, Mollymook.	The proposed building envelope variation will not have any impact on the amenity of adjacent properties. The location of the variation is on the north-western corner of the building where it will not have any adverse impact in terms of shading of adjoining properties. The variation will not result in any increased overlooking of adjoining properties and as shown in the rendered image below will have minimal impact on the visual qualities of Seaview Street.
Set appropriate criteria for vehicular access and parking.	Not relevant/no impact.

Section 4.15 Assessment Report - DA22/1542 – 1 Buchan St Mollymook

Figure 16 – Artist's rendering of the proposed apartment building from Seaview Street (the top floor of the building is shown just visible above No. 74 Seaview Street)

Section 4.15 Assessment Report - DA22/1542 – 1 Buchan St Mollymook

The relevant performance criterion is:

P4 The building height, bulk and scale of the development:

- Is compatible with the desired future character of the area.

- Minimises adverse amenity impacts associated with the overshadowing of adjoining properties.
- Relates to the land form, with minimal cut and fill.
- Enables view sharing.

Comment:

The proposal meets the requirements of Performance Criterion P4 as follows:

- the building overall is compatible with the desired future character of the area, and the proposed variation will not be inconsistent with that character;
- the proposed variation to the building envelope will not result in any material additional overshadowing of adjoining properties;
- the proposed variation to the building envelope is not relevant to the extent of cut and fill on the site;
- the proposed variation will not have any impact on existing views.

The variation is therefore considered to be consistent with the specific objectives of Section 5.4, as detailed above.

Section 4.15 Assessment Report - DA22/1542 – 1 Buchan St Mollymook

d. Demonstrate that the development will not have any additional adverse impacts as a result of the variation

The proposed variation relates to a section of the north-western corner of the building that extends 2.979 metres beyond the 45 degree building envelope line. The location and character of this element of the building will not have any adverse impact in terms of overshadowing or loss of privacy to adjoining properties, nor will it result in any loss of views from nearby properties or public places. It will not have any perceptible impact on the quality of the visual environment in the Gateway Precinct.

Rygate and West therefore request Council's support for this variation to the building envelope.

Demonstrate how the relevant objectives and performance criteria are being met with the performance-based solution	
Objective Insert snip of relevant objective from DCP	Commentary
5.3 Objectives The objectives of this Section are to: i. Ensure that development enhances and makes a positive contribution to the character of the Gateway Precinct as the northern gateway to the Ulladulla Town Centre. ii. Encourage consolidation of the lots within the Buchan Street Triangle. iii. Ensure that development is sensitive to the landscape, built form and environmental conditions of the locality, including distinctive views of the Ocean. iv. Encourage the sharing of views, while not restricting the reasonable development potential of a site. v. Minimise the amenity impact on adjoining or adjacent properties, especially Seaview Street, Mollymook. vi. Set appropriate criteria for vehicular access and parking.	The proposed performance-based solution is consistent with the objectives of the development controls.
Performance Criteria Insert snip of relevant performance criteria from DCP	Commentary Detail how the proposed departure from the acceptable solution will still comply with the relevant performance criteria.

Section 4.15 Assessment Report - DA22/1542 – 1 Buchan St Mollymook

Performance Criteria P4 The building height, bulk and scale of the development: • Is compatible with the desired future character of the area. • Minimises adverse amenity impacts associated with the overshadowing of adjoining properties. • Relates to the land form, with minimal cut and fill. • Enables view sharing.	The proposed building is a three-storey narrow residential flat building of modern design with good modulation and articulation that will be sympathetic to the surrounding low density and motel mix in the precinct. The dwellings and motels are aging and ready for redevelopment. The design will be compatible to the desired future character of the area and steps down at the rear to transition into the R2 low density zone. The breach of the building envelope will not have any significant impact in regard to solar access, privacy or views on surrounding properties and is therefore supported.
Demonstrate how the development will not have any adverse impacts as a result of the performance-based solution *Provide commentary demonstrating how the proposed departure from the acceptable solution will not result in an adverse impact.*	
The breach of the building envelope will not have any significant impact in regard to solar access, privacy or views on surrounding properties and is therefore supported.	

Bridge Rd, Nowra NSW 2541 | 02 4429 3111
Deering St, Ulladulla NSW 2539 | 02 4429 8999
Address all correspondence to
The Chief Executive Officer, PO Box 42, Nowra NSW 2541 Australia
council@shoalhaven.nsw.gov.au | DX5323 Nowra | Fax 02 4422 1816
shoalhaven.nsw.gov.au

NOTICE TO APPLICANT OF DETERMINATION OF APPLICATIO
DEVELOPMENT CONSENT

Environmental Planning and Assessment Act, 1979
DA22/1542

TO:

Chris Beasley

being the applicant(s) for DA22/1542 relating to:

1 Buchan St, MOLLYMOOK - Lot 14 - DP 20321

APPROVED USE AND OR DEVELOPMENT:

Demolition of Existing Dwelling and construction of Residential Flat Building Containing 8 Apartments, Basement Parking and Swimming Pool

DETERMINATION DATE: TBA

Pursuant to the Section 4.18 of the Act, notice is hereby given that the above application has been determined by granting consent, subject to the conditions listed below.

CONSENT TO OPERATE FROM: TBA

CONSENT TO LAPSE ON: **TBA**

This consent is valid for five years from the date hereon.

In accordance with Section 4.53 of the Act, development consent for the use of the land or the erection of a building does not lapse if building, engineering or construction work relating to the building or work or the use is physically commenced on the land to which the consent applies before the lapse date.

DETAILS OF CONDITIONS:

The conditions of consent and reasons for such conditions are set out as follows:

PART A: GENERAL CONDITIONS

1. **General**

The consent relates to the demolition of existing dwelling and construction of residential flat building containing 8 apartments, basement parking and swimming pool as documented on the stamped plans/documentation, or as modified by the conditions of this consent. The development must be carried out in accordance with this consent. If there is inconsistency between the stamped plans/documentation and the conditions of consent, the conditions prevail to the extent of that inconsistency.

Stamped plans/documents	Ref/sheet no.	Prepared by	Dated
Site Analysis/Demolition Plan	22001/A0101	Box Architecture Interiors	29/09/2022
Site Plan	22001/A1001	Box Architecture Interiors	29/09/2022
Basement Plan	22001/A1002	Box Architecture Interiors	29/09/2022
Pool Deck Plan	22001/A1003	Box Architecture Interiors	29/09/2022
Ground Floor Plan	22001/A1004	Box Architecture Interiors	29/09/2022
Level 1 Plan	22001/A1005	Box Architecture Interiors	29/09/2022
Level 2 Plan	22001/A1006	Box Architecture Interiors	29/09/2022
Level 3 Plan	22001/A1007	Box Architecture Interiors	29/09/2022
Roof Plan	22001/A1008	Box Architecture Interiors	29/09/2022
South Elevation	22001/A3001	Box Architecture Interiors	29/09/2022
East & North Elevations	22001/A3002	Box Architecture Interiors	29/09/2022
West Elevation	22001/A3003	Box Architecture Interiors	29/09/2022
Section Plan	22001/A4001	Box Architecture Interiors	29/09/2022
Apartment Type 01 Floor Plan	22001/A5001	Box Architecture Interiors	29/09/2022
Apartment Type 02 Floor Plan	22001/A5002	Box Architecture Interiors	29/09/2022

Apartment Type 03 & 04 Floor Plan	22001/A5003	Box Architecture Interiors	29/09/2022
Indicative Façade Detail	22001/A6001	Box Architecture Interiors	29/09/2022
Basix Certificate	Certificate No: 1298069M_02	Certified Energy 1	26/8/2022
Statement of Environmental Effects	Council Ref: D22/355729	Rygate & West	17/8/2022
Geotechnical Report	Council Ref: D22/199664	Terra Insight	8/3/2022
Arborist Report	Council Ref: D22/449597	Patrick Faulconer	30/9/2022

Note: Any alteration to the plans and/or documentation must be submitted for the approval of Council. Such alterations may require the lodgement of an application to amend the consent under section 4.55 of the Environmental Planning and Assessment Act, or a new development application.

2. **Prescribed Conditions**

The development must comply with the Prescribed Conditions of Development Consent, *Environmental Planning and Assessment Regulation 2021*, as applicable.

3. **Occupation / Use**

The development must not be occupied or used before an Occupation Certificate has been issued by the Certifier. If an Occupation Certificate is not required, the use must not commence until all conditions of development consent have been met or other satisfactory agreements have been made with Council (i.e. a security).

4. **Shoalhaven Water - Certificate of Compliance**

A Certificate of Compliance must be obtained to verify that all necessary requirements for matters relating to water supply and sewerage (where applicable) for the development have been made with Shoalhaven Water. A Certificate of Compliance must be obtained from Shoalhaven Water after satisfactory compliance with all conditions as listed on the Notice of Requirements and prior to the issue of an Occupation Certificate, Subdivision Certificate or Caravan Park Approval, as the case may be.

5. **Geotechnical Report**

The development must be designed, constructed and maintained in accordance with the recommendations of the Report on Geotechnical Investigation by Terra Insight dated 8 March 2022.

6. **Arborist Report**

The proposed tree removal and pruning must be undertaken in accordance with the recommendation of the Arborist Report prepared by Patrick Faulconer dated 30 September 2022.

7. **Endeavour Energy**

All conditions as noted in Endeavour Energy Referral response (CNR-39907) form part of this consent.

PART B: INTEGRATED DEVELOPMENT AND CONCURRENCE CONDITIONS

NIL

PART C: PRIOR TO THE COMMENCEMENT OF WORKS

8. **Construction Certificate**

A Construction Certificate must be obtained from either Council or an accredited certifier before any building work can commence.

9. **Appointment of Principal Certifier**

Prior to the commencement of building or subdivision work, a Principal Certifier must be appointed.

10. **Notice of Commencement**

Notice must be given to Council at least two (2) days prior to the commencement of building or subdivision work by completing and returning the form 'Commencement Notice for Building or Subdivision Work and Appointment of Principal Certifying Authority'

11. **Toilet Facilities - Temporary**

Toilet facilities must be available or provided at the work site before works begin and must be maintained until the works are completed at a ratio of one toilet plus one additional toilet for every 20 persons employed at the site. Each toilet must:

a) be a standard flushing toilet connected to a public sewer, or

b) have an onsite effluent disposal system approved under the *Local Government Act 1993,* or

c) be a temporary chemical closet approved under the *Local Government Act 1993*.

12. **Warning Notice - Construction**

In addition to any signage that may be required under the *Environmental Planning and Assessment Act 1979*, or any other Act, the occupier of any premises in or on which a swimming pool (not including a spa pool) is being constructed must ensure that a sign is erected and maintained that:

a) bears a notice containing the words "This swimming pool is not to be occupied or used"
b) is located in a prominent position in the immediate vicinity of that swimming pool
c) continues to be erected and maintained until a relevant occupation certificate or a certificate of compliance has been issued for that swimming pool.

13. **Swimming Pool Barrier**

The swimming pool is to be surrounded by a permanent barrier in accordance with the provisions of the *Swimming Pools A*ct 1992; *Swimming Pools Regulation 2018*; *AS1926.2 Swimming pool safety - Location of safety barriers for swimming pools* and *AS1926.1 Swimming pool safety- Safety barriers for swimming pools.*

14. **Water Diversion from Swimming Pools**
No Water derived from the swimming pool or immediate proximity of the swimming pool (i.e. hard stand areas) shall be diverted onto any adjoining property

15. **Asbestos Removal**

Asbestos removal must be carried out in accordance with *AS2601-2* *SafeWork NSW – Code of Practice, Demolition Work [ISBN 978-0-642-78415-5]* and *SafeWork NSW – Code of Practice, How to Safely Remove Asbestos [ISBN 978-0-642-33317-9]* as applicable, by a person holding the relevant licence issued by SafeWork NSW.

A licence is not required to remove less than 10m^2 of non-friable asbestos, provided that the total amount of non-friable asbestos removed from the lot does not exceed 10m^2.

Asbestos must be taken for disposal to the licensed Waste Management Facility identified in the approved Waste Management Plan.

Post asbestos removal and prior to further work on the site, the following must be submitted to the Certifier:

a) A clearance certificate issued by a licensed asbestos assessor or competent person as required by the *Work, Health and Safety Regulation 2017* for the specific type of asbestos removal work confirming that the area has been cleaned satisfactorily and is safe to be re-occupied for normal use.

b) A clearance certificate is required if the removal work involved any quantity of friable asbestos, or if it involved removal of more than a total of 10 square metres of non-friable asbestos from the lot.

c) Documentary evidence of the legitimate disposal of all asbestos in the form of tip receipts from an approved waste management facility.

16. **Asbestos – Notification of Neighbours**

Seven (7) days prior to the commencement of any demolition works involving asbestos, all immediate neighbours must be notified in writing of the intention to carry out asbestos demolition works. Copies of these written notifications should be retained and submitted to Council

17. **Demolition**

Demolition work must be carried out in accordance with *AS2601-2* *SafeWork NSW – Code of Practice, Demolition Work [ISBN 978-0-642-78415-5]* and SafeWork NSW – Code of Practice, How to Safely Remove Asbestos [ISBN 978-0-642-33317-9] as applicable.

18. **Demolition - Completion of Works**

Demolition work, once commenced, must be completed within three (3) months.

19. **Demolition - Decommissioning of Services**

Prior to the commencement of demolition work:

a) all existing internal sewer drainage pipework must be flushed, disconnected from the existing sewer junction and the sewer junction must be temporarily capped off.

b) internal water lines must be disconnected from the existing water meter currently servicing the property.

c) the capped off sewer junction and disconnected water lines must be inspected by Shoalhaven Water. For all inspections contact Shoalhaven Water on 4429 3547.

d) the developer must provide the Certifier with evidence of compliance with the above requirements.

20. **Run-off and Erosion Controls**

Prior to the commencement of site works, run-off and erosion controls must be implemented to prevent soil erosion, water pollution or the discharge of loose sediment on the surrounding land by:

a) diverting uncontaminated run-off around cleared or disturbed areas.

b) erecting a silt fence and providing any other necessary sediment control measures that will prevent debris escaping into drainage systems, waterways or adjoining properties.

c) preventing the tracking of sediment by vehicles onto roads.

d) stockpiling topsoil, excavated materials, construction and landscaping supplies and debris within the lot.

Note: all implemented measures must not cause water pollution as defined by the Protection of the Environment Operations Act (POEO).

21. **Works within the Road Reserve**

Prior to undertaking any works within an existing road reserve, the developer must obtain the consent of Council under *section 138 of the Roads Act, 1993.*

The following details must be submitted to Council as part of the application:

a) Any civil works design required by this consent.

b) Evidence of the contractor's Public Liability Insurance to an amount of $20 million.

c) Name and contact information of the person responsible for all relevant works.

d) A Traffic Control Plan prepared, signed and certified by a person holding the appropriate Transport for NSW (TfNSW) accreditation.

e) Where the Traffic Control Plan requires a reduction of the speed limit, a 'Application for Speed Zone Authorisation' must be obtained from the relevant road authority.

22. **Shoalhaven Water – Prior to the Commencement of Demolition Works**

Prior to the Commencement of Demolition Works, all conditions listed on the Shoalhaven Water Notice of Requirements under the heading "Prior to the Commencement of Demolition Works" must be complied with. Written notification must be issued by Shoalhaven Water and provided to the Certifier.

23. **Shoalhaven Water – Prior to the Commencement of Any Works**

Prior to the Commencement of any works, all conditions listed on the Shoalhaven Water Notice of Requirements under the heading "Prior to the Commencement of Any Works" must be complied with. Written notification must be issued by Shoalhaven Water and provided to the Certifier.

24. **Dilapidation Report**

Prior to the commencement of work, the developer must engage a competent person to prepare a dilapidation report in respect of the neighbouring premises and adjacent public infrastructure, including adjacent kerbs, gutters, footpaths (formed or unformed), driveways (formed or unformed), carriageway, reserves and the like to document evidence of any existing damage.

The dilapidation report must consider the impact of any excavation work that extends below the level of the base of the footings of any structure within 6.0 metres of the shared boundary.

Before works commence, a copy of the dilapidation report must be provided to the Certifier and Council. The dilapidation report will be the benchmark for necessary repairs to damage caused during the development works. All repairs must be completed by the developer at the developer's cost.

Not less than seven (7) days before works commence, the developer must notify the owner of any affected property of the intention to carry out approved works. The developer must also furnish the owner with details of the approved work.

However, if the occupier or owner of any neighbouring dwelling does not permit reasonable access for the purposes for the preparation of the dilapidation report, written evidence of the efforts taken to secure access may be submitted to the *Principal Certifier* and the *Principal Certifier* may waive the requirement in relation to the relevant property.

Note: A dilapidation report can comprise of video footage and photos of adjacent public infrastructure and relevant structures on adjoining properties.

25. **Construction Traffic Management Plan**

Prior to the commencement of works, a Construction Traffic Management Plan detailing the proposed method of dealing with construction traffic and parking must be approved by Council. Details must include, but are not limited to:

a) Stabilised site construction access location

b) Proposed haulage routes for delivery of materials to the site

c) Proposed haulage routes for spoil disposal from the site

d) Traffic control planning for each of the various phases of construction and/or vehicle movements associated with construction

e) Parking arrangements for construction employees and contractors

f) Proposed maintenance of the haulage routes and the name of the person responsible for such maintenance

g) Loading / unloading areas

h) Requirements for construction or work zones

i) Pedestrian and cyclist safety

j) Speed zone restrictions.

PART D: PRIOR TO THE ISSUE OF A CONSTRUCTION CERTIFICATE

26. **Revised Architectural Plans**

Prior to the issue of a Construction Certificate, the following amendments are to be made to the architectural plans to the satisfaction of Council's Development Engineering Coordinator, with confirmation to be provided to the Certifier in writing:

a) The basement ramp and driveway areas internal to the site which fall away from the Buchan Street road reserve are to be roofed such that drainage can be directed to the Council stormwater network in Buchan Street.

b) The proposed footpath within the Buchan Street road reserve is to be removed such that the footpath terminates at the property boundary. Any connection to the driveway must be made within the property boundary.

c) The proposed OSD is to be split and relocated such that a separate OSD system is provided for the two catchments in accordance with the conditions of consent.

d) The construction plans must be revised to provide a suitable noise attenuation barrier fence between the access driveway for the flat building and the adjoining dwelling at (3) Buchan Street Mollymook. The noise barrier fence is to be designed and certified by a suitably qualified and experienced noise consultant. The design of the barrier must take into account the aesthetics of the development and impact on adjoining development. The noise barrier fence height must not exceed 1.8m above the finished ground level of Number 3 Buchan Street.

   Note: Given that the noise barrier fence is required for the development, all costs associated with the erection and maintenance of the fence are at the developers cost. The notification requirements under the Dividing Fences Act 1991 still applies.

27. **Local Infrastructure Contributions**

This development will generate a need for the additional services and/or facilities described in Shoalhaven Contributions Plan 2019 and itemised in the following table:

Project	Description	Rate	Qty	Total	GST	GST Incl
05 AREC 0005	Planning Area 5 - Active recreation facility upgrades various locations	$1,100.93	7	$7,706.51	$0.00	$7,706.51
05 CFAC 2010	Southern Shoalhaven Branch Library	$553.98	7	$3,877.86	$0.00	$3,877.86
CW AREC 5005	Shoalhaven Community and Recreational Precinct SCaRP Cambewarra Road Bomaderry	$1,153.01	7	$8,071.07	$0.00	$8,071.07
CW CFAC 5002	Shoalhaven Entertainment Centre (Bridge Road Nowra)	$871.44	7	$6,100.08	$0.00	$6,100.08
CW CFAC 5006	Shoalhaven City Library Extensions (Berry Street, Nowra)	$1,348.90	7	$9,442.30	$0.00	$9,442.30
CW CFAC 5007	Shoalhaven Regional Gallery	$74.05	7	$518.35	$0.00	$518.35
CW FIRE 2001	Citywide Fire & Emergency services	$145.50	7	$1,018.50	$0.00	$1,018.50
CW FIRE 2002	Shoalhaven Fire Control Centre	$212.86	7	$1,490.02	$0.00	$1,490.02
CW MGMT 3001	Contributions Management & Administration	$605.06	7	$3,822.47	$0.00	$3,822.47
					Sub Total:	$42,047.16
					GST Total:	$0.00
					Estimate Total:	$42,047.16

The total contribution, identified in the above table or as indexed in future years, must be paid to Council prior to the issue of a Construction Certificate. Evidence of payment must be provided to the Certifying Authority.

Contributions Plan 2019 can be accessed on Councils website www.shoalhaven.nsw.gov.au or may be inspected on the public access computers at the libraries and the Council Administrative Offices, Bridge Road, Nowra and Deering Street, Ulladulla.

28. **Long Service Levy**

Prior to the issue of a Construction Certificate any long service levy payable under the *Building and Construction Industry Long Service Payments Act 1986* and prescribed by the *Building and Construction Industry Long Service Payments Regulation 2022* must be paid or, where such a levy

is payable by instalments, the first instalment of the levy must be paid. Council is authorised to accept payment. Proof of payment must be submitted to the Certifying Authority.

29. **Street Numbering of Dwellings**

Street numbering must comply with the State Governments Comprehensive Property Addressing System (CPAS), and Council's Property Address Numbering Policy.

Street numbering for the development must be as follows:

Primary Address/Common Property Address – 1 Buchan Street Mollymook

Ground Level:

G01/1 Buchan Street Mollymook
G02/1 Buchan Street Mollymook

First Level:

101/1 Buchan Street Mollymook
102/1 Buchan Street Mollymook

Second Level:

201/1 Buchan Street Mollymook
202/1 Buchan Street Mollymook

Third Level:

301/1 Buchan Street Mollymook
302/1 Buchan Street Mollymook

The allocated numbers must be shown on the engineering plans with the Construction Certificate. Where plans and details are provided to service suppliers, numbers must be in accordance with the above.

30. **Design Standards – Works Within Road Reserve**
Prior to the issue of a Construction Certificate, all civil works proposed within road reserves must be approved by Council.

31. **Waste Storage Room**

Prior to the issue of a Construction Certificate, detailed plans must be submitted to the Certifier that demonstrate that the waste storage room has been designed to be constructed in accordance with the Waste Minimisation and Management Guidelines, and that:

a) the floor to be constructed of concrete at least 75mm thick and adequately graded to drain to a Shoalhaven Water approved drainage fitting.

b) the floor to be finished so that it is non-slip and has a smooth and even surface covered at all intersections.

c) the ceilings and walls to be finished with smooth faced non-absorbent material capable of being cleaned.

d) the room to be provided with artificial light controllable within the room and adequate ventilation.

e) the room to be provided with an adequate supply of hot and cold water mixed through a centralised mixing valve with hose cock.

32. **Erosion and Sediment Control Plan (ESCP)**

Prior to the issue of a Construction Certificate, an Erosion and Sediment Control Plan (ESCP) must be prepared by a Professional Engineer, (as defined in the National Construction Code) in accordance with the Landcom Manual – Soils and Construction, Managing Urban Stormwater, Vol 1, 4th Edition March 2004 to the satisfaction of the Certifier.

All implemented measures must:

a) Not cause water pollution as defined by the Protection of the Environment Operations Act (POEO).
b) Be maintained at all times.
c) Not be decommissioned until at least 70% revegetation cover has been established.

33. **Access Driveway Design Standards - Urban**

Prior to the issue of a Construction Certificate, certified engineering design plans must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier. The footpath crossing and layback design within the road reserve must comply with the following:

a) Council's Engineering Design Standard Drawings.

b) Constructed using 20 MPa reinforced concrete, reinforced with SL72 mesh, on a 75mm compacted fine crushed rock base with concrete slab of minimum 3 metres width and minimum 100mm depth.

c) Removal of sufficient width of existing road seal and pavement to allow placing of formwork and laying/compaction of suitable pavement material for the driveway layback with a minimum 300mm offset to the kerb lip line.

34. **Car Parking Design Standards**

Prior to the issue of a Construction Certificate, certified engineering design plans and specifications must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier.
The car parking and access design must comply with the following:

a) The approved architectural drawings.

b) AS2890.1 and AS2890.6 where relevant.

c) A minimum number of 17 spaces must be provided on site.

d) Convex mirrors must be provided either side of the 180-degree bend within the basement carpark due to obstructed driver vision.

e) Constructed in accordance with the following:

   i) for light vehicular loading

   ii) with a flexible pavement, surfaced with 30mm of AC10 asphaltic concrete, or

   iii) to a coloured, patterned or stamped concrete standard.

35. **Hydraulic Engineering Details for Water, Sewer & Drainage**

Prior to the issue of a Construction Certificate, an application to carry out water supply works, sewerage works, and stormwater drainage works must be obtained from Council under Section 68 of the Local Government Act 1993. The application is to include hydraulic designed by a professional engineer (as defined by the National Construction Code) for **water, sewerage and stormwater** drainage for the development. The hydraulic detail must reference, without limitation, the following:

- The relevant National Construction Code such as - NCC 2019 Volume 1, 2 & 3 (as relevant) Amendment 1;
- Relevant Australian Standard/s and correct standard years;
- Must also reference the relevant AS 1170 suit of standards.
- List Signatory Qualification and Accreditation details;
- Must be National Engineers Register (NER) or NSW Fair Trading Registered Engineer

The charged line to the above ground rainwater tank is to have a flush point installed at the lowest reduced level (RL) into a 450mm x 450mm discharge pit connected to an approval disposal point to enable the line to be flushed. This is to prevent the line becoming blocked**.**

36. **Retaining Walls - Design**

Prior to the issue of a Construction Certificate for approved retaining walls exceeding 0.6m in height above ground level (existing) and/or within 1m of a property boundary, detailed design plans must be prepared and submitted to the Certifier for approval. The retaining walls must satisfy the following:

a) For retaining walls exceeding 0.6m in height above natural ground level (existing) a professional engineer has certified the retaining walls as structurally sound, including in relation to (but not limited to) the ability to withstand the forces of lateral soil load; and

b) For retaining walls less than 0.6m in height above natural ground level (existing) the Certifier must be satisfied that the retaining walls are structurally sound, including in relation to (but not limited to) the ability to withstand the forces of lateral soil load.

c) Retaining walls, footings and drainage must be contained wholly within the development site.

Construction within a registered easement is prohibited.

Retaining walls not shown on the approved plan must meet the criteria for Exempt retaining walls and comply with the relevant criteria listed in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*, or be approved by way of Complying Development prior to construction and comply with the relevant criteria listed in *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

37. **Shoalhaven Water – Prior to the Issue of a Construction Certificate**

Prior to the issue of a Construction Certificate, all conditions listed on the Shoalhaven Water Notice of Requirements under the heading “Prior to the Issue of a Construction Certificate” must be complied with and accepted by Shoalhaven Water. Written notification must be issued by Shoalhaven Water and provided to the Certifier.

38. **Rainwater Facility**

Prior to the issue of a Construction Certificate, details of rainwater tanks must be provided to the Certifier.

Water stored in the tank must be plumbed into the dwelling such that it is supplied to each of the fixtures listed in the BASIX Certificate for the property. Plumbing must be in accordance with the current edition of AS 3500.1 Water Services – Section 16.

It will be necessary to install, maintain and repair the facility so that it functions in a safe and efficient manner in accordance with the current editions of AS 3500.1 Water Services, the New South Wales Code of Practice Plumbing and Drainage and in accordance with the following:

a) The tank inlet must be located a minimum of 500mm below the outlet of the eave gutter.

b) The tank is to be installed on a firm flat and stable platform in accordance with manufacturer's recommendations. Tanks located over fill material should be placed on a concrete slab.

c) Pumps must be located and installed to minimize any potential noise nuisance to surrounding residents, and in the case of a permanent electric pump, must be installed by a licensed electrician. Pump performance must achieve a minimum 300 Kpa output.

d) Overflow from the tank must be directed into the approved storm water system.

e) Any town water top-up of the tank must be by indirect connection by means of a visible "air gap", external to the rainwater tank, in accordance with the provisions of the National Plumbing and Drainage Code, AS3500.1 – Minimum air gap requirements.

f) Marking and labelling of rainwater services must be in accordance with AS 3500.1 Section 16.

g) The charged line to the rainwater tank is to have a flush point installed at the lowest reduced level (RL) into a 450mm x 450mm pit to enable the line to be flushed. This is to prevent the line becoming blocked.

h) For partially buried or fully buried rainwater tanks the property owner is required to have a dual check valve with atmospheric port valve installed at the boundary water meter. Zone protection will be required at the tank or cross connection point to be installed in accordance with AS3500.1 – Section 4.

39. **Privacy Screening – Side Elevations**

Prior to the issue of a Construction Certificate the construction plans must be revised as follows:

To provide privacy to adjoining neighbours over the side boundaries:

a) the privacy fins/blades need to cover all windows and extended to the rear corner column of the balconies of all apartments above the ground floor.
b) The balconies on the top floor shall have a privacy screen erected on the side elevations that:
   i) are a minimum of 1.5m in height above floor level, screening
   ii) Screening devices incorporating opaque materials and or,
   iii) Screening that has a maximum area of 25% openings, is permanently fixed and made of durable material.
c) The privacy screen is to be maintained for the life of the development.

40. **Stormwater Drainage Design Standards (Urban)**

Prior to the issue of a Construction Certificate, certified engineering design plans, specifications, and DRAINS model (or approved alternative) must be prepared by a professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier.
The stormwater drainage design must comply with the following:

a) Major and minor drainage systems in accordance with Council's Engineering Design Specifications - Section D5 - Stormwater Drainage Design and utilising Australian Rainfall and Runoff (ARR, 2019) Guidelines.

b) The minor and major systems must be designed for a 18.13% AEP and 1% Annual Exceedance Probability (AEP) rainfall events, respectively.

c) Generally, in accordance with concept stormwater drainage plan, Ref. No. 1001, Rev. C, prepared by Rienco Consulting in August 2022, except that:

i) All roofed and other impervious areas which are able to be drained compliantly must be drained via gravity to the existing Buchan Street road reserve stormwater drainage system.

ii) The proposed OSD is to be split such that a separate OSD system is provided for the two catchments.

iii) A boundary pit is to be provided inside the boundary for access and maintenance purposes. The surcharge flow from this boundary pit is required to drain to the kerb via gravity.

iv) The basement pump must be directly connected to the Buchan Street OSD system.

d) The existing public stormwater drainage system is to be extended and adjusted as required to suit the new works. In this regard the following is required:

v) existing public drainage systems are to be upgraded where necessary to contain flows in accordance with Council's Engineering Design Specifications - Section D5.04.

vi) all relevant calculations are to be noted on the drainage plans to confirm the adequacy of the existing system, or the upgraded design.

41. **On-Site Detention – Infill Subdivision and Development**

Prior to the issue of a Construction Certificate, certified engineering design plans and specifications must be prepared by professional engineer, (as defined in the National Construction Code) or surveyor and approved by the Certifier.
The on-site stormwater detention (OSD) design must comply with the following:

a) Designed such that stormwater runoff from the overall site for design storm events up to and including the 1% AEP does not exceed the pre-developed conditions.

b) Designed such that stormwater runoff from the catchment draining to the north towards the level spreader for design storm events up to and including the 1% AEP does not exceed the pre-developed conditions.

42. **On-site Stormwater Level Spreader Design Standards**

Prior to the issue of a Construction Certificate, on-site stormwater level spreader design plans must be prepared by a Professional Engineer (as defined in the National Construction Code) and approved by the Certifier.

a) The design must be in accordance with:

i) the National Construction Code

ii) Relevant Australian Standard/s

b) Design plans and associated documentation must demonstrate that:

iii) Runoff from all buildings, structures and other impervious areas which cannot achieve fall to Buchan Street will be directed to a level spreader disposal system. The system must be located a minimum distance of 1 metre from the boundary with the neighbouring lot.

iv) Collection, diversion and disposal of stormwater must not result in surface water being concentrated onto adjoining property.

v) The design must not include any surcharge outlet resulting in the concentration of stormwater flows.

vi) The design must include a documented maintenance program, copies of which are to be submitted to Council in PDF format with the design plans for the on-site stormwater level spreader system.

43. **Structural Design – Major Structures**

Prior to the issue of a Construction Certificate, a detailed structural design for the following works must be certified professional engineer, (as defined in the National Construction Code) and approved by the Certifier.

a) Structural basement walls and associated structures.

b) The structural design must comply with relevant Australian Standards.

44. **Maintenance of Stormwater Infrastructure**

The approved stormwater design and any associated on site detention must be maintained for the life of the development in accordance with the approved documents and maintenance programs.

45. **Existing Infrastructure**

Any required alterations or repair of damaged infrastructure will be at the developer's expense.

Note: it is recommended prior to the issue of a Construction Certificate, all infrastructure, existing and proposed, is to be shown accurately on construction plans with clearances clearly labelled confirming that the proposed works do not affect any existing infrastructure this will potentially prevent unexpected costs and expenses.

PART E: PRIOR TO THE ISSUE OF A SUBDIVISION WORKS CERTIFICATE

NIL

PART F: DURING WORKS

46. **Hours for Construction**

Construction may only be carried out between 7.00am and 5.00pm on Monday to Saturday and no construction is to be carried out at any time on a Sunday or a public holiday. Proposed changes to hours of construction must be approved by Council in writing.

47. **Noise**

The noise from all demolition and construction activities associated with the approved development must comply with the work practices as outlined in the NSW Department of Environment & Climate Change Interim Construction Noise Guideline. The LA10 level measured over a period of not less than 15 minutes during works must not exceed the background (LA90) noise level by more than 10dB(A) when assessed at any sensitive noise receiver.

48. **Stormwater Connections in Road Reserve**

Prior to completion of works, the site supervisor must ensure that stormwater connections between the property boundary and the new kerb and gutter are inspected and approved by Council and

backfilled as soon as possible. Kerb connections are only to be made using adaptors/convertors approved by Council.

Note: A section 138 approval under the Roads Act 1993 will be required for any works within the road reserve.

49. **Aboriginal Objects Discovered During Excavation**

If an 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.

b) Additional assessment and approval pursuant to the National Parks and Wildlife Act 1974 may be required prior to works continuing the affected area(s) based on the nature of the discovery.

Work may recommence in the affected area(s) if Heritage NSW advises that additional assessment and/or approval is not required (or once any required assessment has taken place or any required approval has been given).

The Heritage NSW must be advised of the discovery in accordance with section 89A of the National Parks and Wildlife Act 1974.

50. **Archaeology Discovered During Excavation**

If any object having interest due to its age or association with the past is uncovered during the course of the work:

a) All work must stop immediately in that area.

Work may recommence in the affected area(s) if Heritage NSW advises that additional assessment and/or approval is not required (or once any required assessment has taken place or any required approval has been given).

In accordance with the *Heritage Act 1997*, the Heritage NSW must be advised of the discovery.

51. **Survey Report – Height**

In order to ensure compliance with approved plans, a Survey Certificate to Australian Height Datum must be prepared by a Registered Surveyor as follows:

a) At the completion of the first structural floor level indicating the level of that floor and the relationship of the building to the boundaries.

b) At the completed height of the building, prior to the placement of concrete inform work, or the laying of roofing materials.

c) At completion, the relationship of the building and any penetrations thereto, to the boundaries.

d) Progress certificates in response to points (a) through to (c) must be provided to the Certifier at the time of carrying out relevant progress inspections. Under no circumstances will work be allowed to proceed should such survey information be unavailable or reveal discrepancies between the approved plans and the proposed works.

52. **Survey Certification**

A survey must be undertaken by a registered surveyor and provided to the Certifier on completion of the ground floor slab formwork prior to the concrete being poured.

The surveyor must certify all of the following:

a) the distance of the structure to all boundaries of the allotment are in accordance with the approved plans,

b) the height of the floor level/s in relation to ground level (existing) are in accordance with the approved plans.

53. **Tree Removal**

Trees approved for removal must carefully so as not to damage trees to be retained in or beyond the development footprint.

The trees must be removed or pruned in accordance with the submitted Arborist Report prepared by Patrick Faulconer dated 30 September 2022

Any hollow-bearing trees must be felled carefully in sections utilising handheld tools to allow the rescue of native fauna. Hollow-bearing sections must be carefully lowered to the ground so as not to injure native fauna.

54. **Maintenance of Site and Surrounds**

During works, the following maintenance requirements must be complied with:

a) All materials and equipment must be stored wholly within the work site unless an approval to store them elsewhere is held.

b) Waste materials (including excavation, demolition and construction waste materials) must be managed on the site and then disposed of at a waste management facility.

c) Where tree or vegetation protection measures are in place, the protected area must be kept clear of materials and / or machinery.

d) The developer must maintain the approved soil water management / erosion and sediment control measures to the satisfaction of the Certifier for the life of the construction period and until runoff catchments are stabilised.

During construction:

i) all vehicles entering or leaving the site must have their loads covered, and

ii) all vehicles, before leaving the site, must be cleaned of dirt, sand and other materials, to avoid tracking these materials onto public roads.

e) At the completion of the works, the work site must be left clear of waste and debris.

55. **Waste Management Plan**

All waste must be contained within the site during construction and then be recycled in accordance with the approved Waste Management Plan (WMP) or removed to an authorised waste disposal facility. Waste must not be placed in any location or in any manner that would allow it to fall, descend, blow, wash, percolate or otherwise escape from the site. Compliance with the WMP must be demonstrated by the submission of tip receipts to the Certifier.

Note: "Waste" is defined in the Dictionary to the *Protection of the Environment Operations Act 1997* (POEO Act).

56. **Earthworks and Excavation**

a) Approved earthworks (including any structural support or other related structure for the purposes of the development):

i) must not cause a danger to life or property or damage to any adjoining building or structure on the lot or to any building or structure on any adjoining lot.

ii) must not redirect the flow of any surface or ground water or cause sediment to be transported onto an adjoining property.

iii) that is fill brought to the site, must contain only virgin excavated natural material (VENM) or excavated natural material (ENM) as defined in Part 3 of schedule 1 to the *Protection of the Environment Operations Act 1997 (POEO Act).*

Documentation must be provided to the Certifier certifying that imported fill material is not contaminated and does not contain contaminants such as asbestos, chemicals or building waste.

iv) that is excavated soil to be removed from the site, must be disposed of in accordance with any requirements under the *Protection of the Environment Operations (Waste) Regulation 2005.*

b) Any excavation must be carried out in accordance with Excavation Work: Code of Practice *(ISBN 978-0-642-78544-2)* published by Safe Work Australia in October 2018

57. **Swimming Pool Safety During Construction**

a) A child-resistant barrier must be erected during the construction of the swimming pool. The barrier shall comply with the requirements of the Swimming Pools Act 1992; Swimming Pools Regulation 2018; AS1926.2 Swimming pool safety - Location of safety barriers for swimming pools and AS1926.1 Swimming pool safety-Safety barriers for swimming pools.

b) In addition to any signage that may be required under the Environmental Planning and Assessment Act 1979, or any other Act, the occupier of any premises in or on which a swimming pool (not including a spa pool) is being constructed must ensure that a sign is erected and maintained that:

i) bears a notice containing the words “This swimming pool is not to be occupied or used”.
ii) is located in a prominent position in the immediate vicinity of that swimming pool.
iii) continues to be erected and maintained until a relevant occupation certificate or a certificate of compliance has been issued for that swimming pool.

PART G: PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

58. **Compliance**

The Occupation Certificate must not be issued until all relevant conditions of development consent have been met or other satisfactory arrangements have been made with council (i.e. a security).

59. **Works as Executed Plans**

Prior to the issue of an Occupation Certificate, Works as Executed Plans must be prepared by a registered surveyor / professional engineer, (as defined in the National Construction Code) and be submitted to the Certifier and Council (for works in the road reserve) demonstrating compliance with the approved design plans.

The Works as Executed dimensions and levels must be shown in red on a copy of the approved Construction Certificate plans and comply with the following requirements:

a) Council's Development Engineering Construction Specification.

b) Show compliance with the approved design plans of all road and drainage works

c) Certify that all storm water pipes, and other services are wholly within an appropriate easement.

d) Show the extent, depth and final levels of filling.

e) Show any retaining walls including footings and agricultural drainage lines.

f) Show the location of all underground service conduits.

g) Include all deviations from the approved Civil Engineering Plans.

60. **Fire Safety**

Prior to the issue of a partial or whole Occupation Certificate, a final fire safety certificate is to be issued to Council and Fire & Rescue NSW by or on behalf of the owner of a building to the effect that each essential fire safety measure specified in the current fire safety schedule for the building to which the certificate relates has been assessed by a properly qualified person, and was found, when it was assessed, to be capable of performing to at least the standard required by the current fire safety schedule for the building for which the certificate is issued.

61. **Air-Conditioning Systems - Noise Controls**

Prior to the Issue of an Occupation Certificate, air conditioning must be installed in accordance with manufacturer's instructions and operated at all times so as not to cause "Offensive Noise" as defined by the *Protection of the Environment Operations Act 1997 (POEO Act)*

Domestic air conditioners must not emit noise that can be heard within any room in any other residential premises (that is not a garage, storage area, bathroom, laundry, toilet or pantry) whether or not any door or window to that room is open—

a) before 8 am or after 10 pm on any Saturday, Sunday or public holiday, or

b) before 7 am or after 10 pm on any other day.

62. **Works in the Road Reserve - Evidence of Completion**

Prior to the issue of any Occupation Certificate, the developer must provide the Certifier with a Completion of Works in Road Reserve Letter provided by Council, confirming compliance with the requirements of section 138 of the *Roads Act 1993*.

63. **Landscape Privacy Screening**

Prior to the issue of an Occupation Certificate, the landscape screening must be planted in accordance with the approved Landscape Plan adjacent to the northern boundary of the lot. The landscape screen must provide effective screening within 3 years of the date of the Occupation Certificate. The landscaping must be maintained for the life of the development.

64. **Noise Barrier Fence**

Prior to the issue of an Occupation Certificate, the noise barrier fence required by condition (25) must be erected and completed in accordance with the approved design and certified by a suitably qualified and experienced noise consultant.

65. **BASIX**

Prior to the issue of an Occupation Certificate, documentary evidence prepared by a suitably qualified person must be submitted to the Certifier confirming that all commitments listed in the BASIX Certificate(s) are fulfilled in accordance with the *Environmental Planning and Assessment Regulation 2021.*

66. **Colours and Materials**

The development must be constructed in accordance with the approved schedule of colours and building materials and finishes.

67. **Landscaping Compliance**

Prior to the issue of an Occupation Certificate, the developer must provide the Certifier with written evidence from a suitably qualified landscape professional that all landscape works have been completed in accordance with the approved landscape plans.

The Certifier must be satisfied that any required Street trees have been installed in accordance with requirements.

68. **Letter Boxes**

A letterbox structure(s) must be provided and be designed to comply with the requirements of Australia Post, located close to the major pedestrian entry to the site, and built from materials that are non-reflective and blend in with the approved development.

69. **Retaining Walls – Certification**

Prior to the issue of an Occupation Certificate, the Certifier must be satisfied that all retaining walls have been constructed in accordance with the relevant retaining wall plans and specifications, and in accordance with the requirements of any other conditions of this consent.

70. **Shoalhaven Water – Certificate of Compliance**

Prior to the issue of any Occupation Certificate, a Certificate of Compliance under section 307 of the Water Management Act 2000 must be obtained from Shoalhaven Water to verify satisfactory compliance with all conditions for the supply of water and sewerage, as listed on the Notice of Requirements.

If the development is to be completed in approved stages, or application is subsequently made for staging of the development, separate Compliance Certificates must be obtained for each stage of the development.

71. **Works as Executed - Stormwater Drainage**

Prior to the issue of the Occupation Certificate, Works as Executed Plans and certification must be submitted to the Council by a licenced plumber/ registered surveyor / professional engineer (as

defined in the National Construction Code) certifying compliance of all drainage works with the approved design plans and the National Construction Code.

The Works as Executed dimensions and levels must be shown in red on a copy of the approved Construction Certificate plans. This plan must verify surface and invert levels on all pits, invert levels and sizes of all pipelines, and finished surface levels on all paved areas. All levels must relate to Australian Height Datum.

Where the system includes an underground tank, a certificate of structural adequacy must be prepared and provided by a professional engineer (as defined in the National Construction Code).

72. **Section 68 of the Local Government Act**

All the conditions under the approval of Section 68 of the Local Government Act 1993 are to be complied with prior to the issue of an Occupation Certificate.

73. **Registration of Swimming Pool**

The swimming pool must be registered on the NSW Swimming Pool Register when it is capable of holding water and Prior to the issue of an Occupation Certificate, the swimming pool is to be registered at www.swimmingpoolregister.nsw.gov.au

Note: Penalties may apply if a swimming pool is not registered. If you are unable to access the internet, Shoalhaven pool owners can contact Council during business hours on (02) 4429 3111 or alternatively, register in person at Council's Nowra or Ulladulla Office and our Customer Service Officers will assist you to register your pool. There is a fee for this service.

74. **Warning Notice**

Prior to the issue of an Occupation Certificate, a Warning Notice (sign) must be erected in a prominent position in the immediate vicinity of the swimming pool as required by section 17(1) of the S*wimming Pools Act 1992*. The sign must comply with part 3, clauses 10 and 11 of the *Swimming Pools Regulation 2018*. Details must be provided to the Certifier for approval.

75. **Dilapidation Report – Evidence**

Prior to the issue of an Occupation Certificate, the developer must provide the Certifier and Council with evidence that any damage to neighbouring premises or adjacent public infrastructure, not previously identified as existing damage in the Dilapidation Report, has been repaired by the developer to the satisfaction of Council.

PART H: PRIOR TO THE ISSUE OF A SUBDIVISION / STRATA CERTIFICATE

NIL

PART I: ONGOING USE OF THE DEVELOPMENT

76. **Overland Stormwater Flow, Redirecting and/or Concentrating Stormwater**

All excavation, backfilling and landscaping works must not result in:

a) any change to the overland stormwater flow path on your property and or a neighbouring property. If any change to the overland flow path occurs on a property, the stormwater runoff shall be collected and directed to a legal point of discharge.

b) the redirection and/or concentration of stormwater flows onto neighbouring properties.

77. **Fire Safety – Annual Statement**

A building owner must ensure that an annual fire safety statement prepared by a competent fire safety practitioner is issued each year and that a copy of the statement is provided to the Shoalhaven City Council and the Commissioner of Fire and Rescue NSW. An application form is available on Council's website.

Note: An annual fire safety statement is a declaration by, or on behalf of a building owner that an accredited practitioner – fire safety (APFS) has:

a) assessed, inspected and verified the performance of each existing essential fire safety measure that applies to the building

b) inspected the exit systems serving the building and found that the exit systems within the building do not contravene the provisions of Division 7 of Part 9 of the Environmental Planning and Assessment Regulation 2000

c) inspected the exit systems serving the building and found that the exit systems within the building do not contravene the provisions of Division 3 of Part 12 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021

Failure to give Council an annual fire safety statement by the due date constitutes a separate offence for each week beyond that date for which the failure continues. Substantial penalties for non-compliance apply under the Environmental Planning and Assessment Act 1979.

78. **Swimming Pool – Noise Control Requirements**
Pool plant and equipment must not emit 'Offensive Noise' as defined in the *Protection of the Environment Operations Act 1997 (POEO Act).*

79. **Swimming Pool - Ongoing use**

The approved swimming pool and associated structures must be maintained in accordance with:

1. The Building Code of Australia
2. Swimming Pools Act, 1992
3. Swimming Pools Regulation 2018.

80. **Landscaping – Noxious and Environmental Weeds**

The planting of plant species listed in the South East Regional Strategic Weed Management Plan 2017 – 2022 is prohibited for the life of the development. No exotic perennial grasses listed on the 'Final Determination of the NSW Scientific Committee for the key threatening process Invasion of native plant communities by exotic perennial grasses' must be sown within the outer protection area or the asset protection zone for the life of the development. Native grasses must be sown in these areas, as this is the interface between disturbed areas and the remaining native vegetation for the life of the development.

81. **Maintenance of Stormwater Infrastructure**

The approved stormwater design and any associated on site detention must be maintained for the life of the development in accordance with the approved documents and maintenance programs.

82. **Lighting**

To minimise the impact of the development on the adjoining and adjacent properties the use of outdoor lighting must comply with *Australian Standard 4282 – Control of the obtrusive effect of outdoor lighting*. Any outdoor lighting must be installed and orientated so as to minimise impact on adjoining and adjacent properties.

83. **Noise Barrier Fence**

The approved noise barrier fence between the access driveway and the dwelling for (3) Buchan Street is to be maintained in accordance with the noise consultant's recommendations for the life of the development.

PART J: OTHER COUNCIL APPROVALS AND CONSENTS

NIL

PART K: REASONS FOR CONDITIONS

The application has been assessed as required by section 4.15 of the *Environmental Planning and Assessment Act 1979* and has been determined by the granting of conditional development consent.

Statutory requirements

The development proposal, subject to the recommended conditions, is consistent with:

a) the objects of the Environmental Planning and Assessment Act, 1979.

b) the aims, objectives and provisions of the applicable environmental planning instruments,

c) the aims, objectives and provisions of Shoalhaven Development Control Plan 2014 (SDCP 2014).

d) the aims, objectives and provisions of relevant Council policies.

Public notification

The application was publicly notified in accordance with the *Environmental Planning and Assessment Regulation 2021* and Council's Community Consultation Policy for Development Applications (Including Subdivision) and the Formulation of Development Guidelines and Policies (POL 16/230).

Submissions

Any submissions received during the public notification period are available on DA Tracking

Community views

Issues and concerns raised by the community in submissions have been considered in the assessment of the application and, where appropriate, conditions have been included in the determination to mitigate any impacts.

Suitability of the Site

The application has been approved because the development proposal is considered to be suitable for the site.

The relevant public authorities and the water supply authority have been consulted and their requirements met, or arrangements made for the provision of services to the satisfaction of those authorities.

The increased demand for public amenities and services attributable to the development has been addressed by the requirement to pay contributions in accordance with section 7.11 of the *Environmental Planning and Assessment Act 1979* and Council's Contribution Plan 2019. Contributions under Section 307 of the Water Management Act 2000 have been applied as required.

Impacts of the Development

The application was considered to be suitable for approval. Conditions have been imposed to ensure that:

a) the development will not result in unacceptable adverse impacts on the natural and built environments.

b) the amenity and character of land adjoining and in the locality of the development is protected.

c) any potential adverse environmental, social or economic impacts of the development are minimised.

d) all traffic, car parking and access arrangements for the development will be satisfactory.

e) the development does not conflict with the public interest.

PART L: RIGHTS OF REVIEW AND APPEAL

Determination under Environmental Planning and Assessment Act, 1979

Division 8.2 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination a right to request the council to review its determination. The request and determination of the review must be undertaken within the prescribed period.

Division 8.3 of the EP&A Act, 1979 confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court which can be exercised within the prescribed period.

An appeal under Division 8.3 of the EP&A Act, 1979 by an objector may be made only within the prescribed period.

Approvals under Local Government Act, 1993

Section 100 of the Local Government Act, 1993 provides that an applicant may request Council to review its determination of an application.

Section 176 of the Local Government Act, 1993 provides that an applicant who is dissatisfied with the determination of the Council may appeal to the Land and Environment Court. The appeal must be made within the prescribed period.

PART M: GENERAL ADVICE

In this consent the term developer means any person or corporation who carries out the development pursuant to that consent.

Disability Discrimination Act 1992

This application has been assessed in accordance with the *Environmental Planning & Assessment Act, 1979*. No guarantee is given that the proposal complies with the *Disability Discrimination Act 1992.*

The applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation.

The *Disability Discrimination Act 1992* covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references *Australian Standard AS1428.1 - "Design for Access and Mobility"*.

Disclaimer –Conveyancing Act 1919 – Division 4 – Restrictions on the Use of Land

The applicant should note that there could be covenants in favour of persons other than Council restricting what may be built or done upon the subject land. The applicant is advised to check the position before commencing any work.

Under Clause 1.9A of *Shoalhaven Local Environmental Plan 2014* agreements, covenants or instruments that restrict the carrying out of the proposed development do not apply to the extent necessary to enable the carrying out of that development, other than where the interests of a public authority is involved.

DBYD Enquiry - 'Dial Before You Dig'

In order to avoid risk to life and property it is advisable that an enquiry be made with "Dial Before You Dig" on 1100 or www.dialbeforeyoudig.com.au prior to any excavation works taking place to ascertain the location of underground services. You must also contact your Local Authority for locations of Water and Sewer Mains.

Existing and proposed Swimming Pool/ Spa Barrier

Existing and proposed swimming pools or spas on the premises must comply with the provisions of the *Swimming Pools Act 1992, Swimming Pools Regulation 2018* and comply with all the relevant Australian Standards.

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Environmental Planning & Assessment Act 1979

Conflict of interest declaration

I have considered the potential for a conflict of interest under the Code of Conduct and to the best of my knowledge no pecuniary and/or significant non-pecuniary conflict of interest exists.

Note: If you determine that a non-pecuniary conflict of interest is less than significant and does not require further action, you must provide a written explanation of why you consider that the conflict does not require further action in the circumstances. This statement should then be countersigned by the Manager.

Assessing Officer	**Senior Development Planner**		**8/02/2023**
Variations Proposed	Yes		
Councillor Representations	*Councilor*	*Date*	*TRIM Reference*
	N/A		
Report Recommendation	**Refusal**		

DA Number	SF10933
PAN	PAN-201423
Property Address	41 Gordon St, MILTON - Lot 1 DP 781355
Proposal	Two (2) Lot Torrens Title Subdivision
Applicant(s)	Wallace Bruderlin
Owner(s)	R S & S M Bruderlin
Owner's consent provided?	Yes
Date Lodged	30-Mar-2022
Date of site inspection	7/12/2022
Date clock stopped	N/A
Date clock started	N/A
Related Application in NSW Planning Portal?	☐ Concurrence and/or external agency referral ☐ Section 68 ☐ Section 138 ☐ Construction Certificate *Note: s138 and CC applications will not be incorporated into the Development Consent and will be determined separately.*
Number of submissions	One (1) *Note: where submissions are received Council must give notice of the determination decision to all submitters.*

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1. Detailed Proposal

Two (2) Lot Torrens Title Subdivision

As indicated in the submitted Statement of Environmental Effects, the proposal is to subdivide the subject site into two (2) residential allotments as follows:

Proposed Lot 11 (506.7sqm)

- Corner allotment with frontage to Gordon Street and Gumley Lane;
- Regularly shaped;
- Direct access to Gordon Street;
- Contains existing dwelling with attached carport and detached metal shed.

Proposed Lot 12 (506.7sqm)

- Regularly shaped;
- Direct frontage to Gumley Lane;
- Contains existing metal sheds.

It is proposed to impose the following restrictions on the title of proposed Lot 12 to mitigate the impact of the proposed subdivision:

- no dwelling unless a maximum roof area of 250sqm and a minimum of 2000L onsite detention;
- no dwelling unless set back a minimum of 3m from Gumley Lane, and any covered car accommodation being set back a minimum of 5.5m from Gumley Lane.

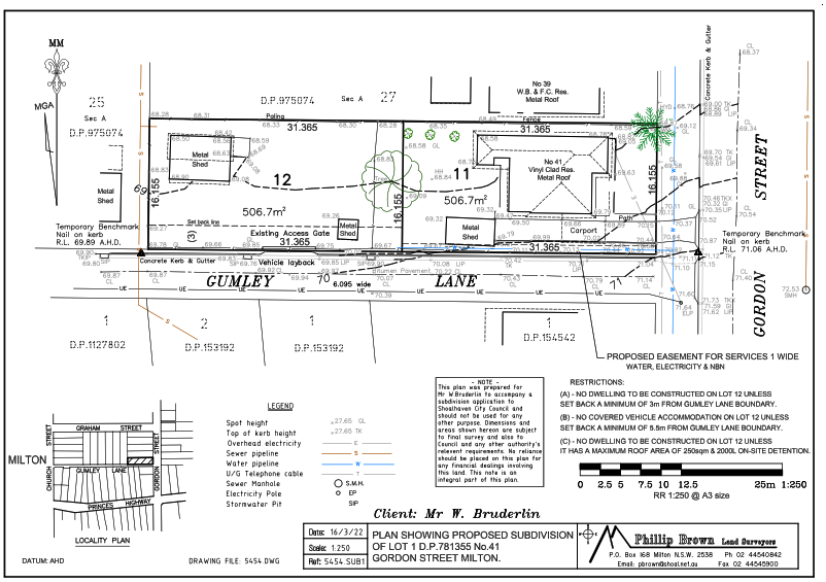

Figure 1 – Subdivision Plan

2. Subject Site and Surrounds

Site Description

Figure 2 – Aerial imagery of subject site

The subject site:

- Contains a single storey dwelling and a number of detached metal sheds.
- Is zoned R2 Low Density Residential.
- Has frontage to Gordon Street and Gumley Lane.
- Adjoins land zoned R2 Low Density Residential and SP2 Infrastructure (Health Services Facility to the southwest).

Site Inspection Observations

Refer to site inspection report.

Deposited Plan and 88B Instrument

No easements are in the vicinity of the proposed development.

3. Background

Pre-Lodgement Information

N/A

Post-Lodgement Information

- This application was lodged on 30 March 2022.
- As a result of detailed assessment of the application, additional information was requested from the applicant on 20 July 2022 in relation to the inconsistency with Council's 'Development Adjoining Narrow Laneways – Interim Policy'.

The applicant was advised that in light of the inconsistency, Council staff are not in a position to support the development as currently proposed, and that should they seek to continue with the application, it was required to be amended to comply with the Policy. A copy of the Policy was provided to them for reference.

It was noted to the applicant that it may be advisable to withdraw the application and explore avenues for redesign, as this can be a lengthy process.

- No formal response has been made by the applicant via the Planning Portal.

However, the applicant has suggested informally the provision of an easement for waste access through proposed Lot 11 to Gordon Street to allow direct waste access to the street from the proposed Lot 12, in order to address the comments raised by Council's Waste Services. This could be in the form of a 1m wide easement for waste access.

The applicant has also advised they believe a clear precedence is set in Gumley Lane for dwellings to use the lane for a primary vehicle access, noting Lot 15 DP 1064376 (known as 2 Gumley Lane, Milton) and Lot 91 DP 1286488 (known as 96 Princes Highway, Milton).

Further to this, they have also noted there is an existing approved layback to Gumley Lane which provides access to the existing site. They believe this is a clear indication that Council has approved access to the site for vehicle access from the lane. Given this, there would be no net increase in potential traffic flow to this driveway access point as it would continue to service one lot.

Site History and Previous Approvals

Old Applications prior to 2nd Sept 1996

Application	Proposal	Decision	Owner	Original Lot
BA74/0827	Dwelling Additions	Approved	Higgins TG&B	Lot 26 DP 975074 Sec A
SD8199		Approved	Higgins TG&B	

4. Consultation and Referrals

Internal Referrals	
Referral	**Comments**
Development Engineer	Raised concerns with the proposed development. The Engineer requested the applicant submit amended plans demonstrating compliant access to Gordon Street can be provided since access to Gumley Lane is prohibited by Council's 'Development Adjoining Narrow Laneways – Interim Policy'.
Waste Services	No objection subject to recommended conditions. However, the submitted Waste Minimisation and Management Plan does not outline any ongoing waste servicing for the subject site once the property is developed. Should the developed property choose to participate in Council's Kerbside Collection service the applicant needs to consider that Gumley Lane is currently not serviced by a kerbside collection vehicle and there is no kerbside space for waste bin collection near the proposed site entry. It is not suitable to wheel bins down to Gordon Street for kerbside placement due to Gumley Lane not

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	having a designated pedestrian pathway and the possible impacts on traffic flow.
GIS Unit House Numbering	No objection.
Shoalhaven Water Group	No objection subject to recommended conditions.

5. Other Approvals

Not applicable.

6. Statutory Considerations

Biodiversity Conservation Act 1979

Does the application include works or vegetation removal within the Biodiversity Values mapped area?	No
Does the application involve clearing of native vegetation above the area clearing threshold? **Area clearing threshold** The area threshold varies depending on the minimum lot size (shown in the Lot Size Maps made under the relevant Local Environmental Plan (LEP)), or actual lot size (where there is no minimum lot size provided for the relevant land under the LEP). **Minimum lot size associated with the property** / **Threshold for clearing, above which the BAM and offsets scheme apply** Less than 1 ha — 0.25 ha or more 1 ha to less than 40 ha — 0.5 ha or more 40 ha to less than 1000 ha — 1 ha or more 1000 ha or more — 2 ha or more The area threshold applies to all proposed native vegetation clearing associated with a proposal, regardless of whether this clearing is across multiple lots. In the case of a subdivision, the proposed clearing must include all future clearing likely to be required for the intended use of the land after it is subdivided. If the land on which the proposed development is located has different minimum lot sizes the smaller or smallest of those minimum lot sizes is used to determine the area clearing threshold.	No
Will the proposed development have a significant impact on threatened species or ecological communities, or their habitats, according to the test in section 7.3 of the Biodiversity Conservation Act 2016 (i.e. 'test of significance)? *Note: Consideration should be given to the site's proximity to NPWS land (see guidelines) and other natural areas, as well as any area that may contain threatened species, vulnerable or endangered ecological communities or other vulnerable habitats.*	No
*If the application exceeds the Biodiversity Offsets Scheme Threshold (i.e. if yes to **any** of the above), has the application been supported by a Biodiversity Development Assessment Report (BDAR)?*	N/A

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Local Government Act 1993

Do the proposed works require approval under Section 68 of the Local Government Act 1993?	No

7. Statement of Compliance/Assessment

The following provides an assessment of the submitted application against the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

(a) Any planning instrument, draft instrument, DCP and regulations that apply to the land

i) Environmental planning instrument

This report assesses the proposed development/use against relevant State, Regional and Local Environmental Planning Instruments and policies in accordance with Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*. The following planning instruments and controls apply to the proposed development:

Environmental Planning Instrument
Shoalhaven Local Environmental Plan 2014
State Environmental Planning Policy (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 Remediation of land

Question	**Yes**		**No**	
1. Does the proposal result in a new land use being a residential, educational, recreational, hospital, childcare or other use that may result in exposure to contaminated land?	☐	Proceed to Question 2	☒	Assessment under SEPP and DCP not required.

Shoalhaven Local Environmental Plan Local Environmental Plan 2014

Land Zoning

The land is zoned R2 Low Density Residential under the *Shoalhaven Local Environmental Plan 2014*.

Characterisation and Permissibility

The proposal is best characterised as *subdivision of land* under *Shoalhaven Local Environmental Plan 2014*. The proposal is permitted within the zone with the consent of Council.

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Zone objectives

Objective	Comment
• *To provide for the housing needs of the community within a low density residential environment.* • *To enable other land uses that provide facilities or services to meet the day to day needs of residents.* • *To provide an environment primarily for detached housing and to ensure that other development is compatible with that environment.*	The proposal is consistent with the objectives of the zone as new residential lots will be created in line with the strategic intent to enable additional housing supply.

Applicable Sections

Section	Comments	Complies/ Consistent
Part 4 Principal development standards		
4.1 Minimum subdivision lot size	Each proposed allotment meets the minimum lot size of 500sqm.	Yes
Part 7 Additional local provisions		
7.1 Acid sulfate soils	The subject site is identified as Class 5 land. The works proposed to facilitate the development are not likely to lower the watertable below 1m AHD on any adjacent Class 1-4 land. Acid sulfate soils management plan not required.	Yes
7.2 Earthworks	The provisions of sub-section (3) have been considered. The proposed earthworks will have no detrimental effect on use of the subject site or the existing and likely amenity of adjoining properties, subject to recommended conditions of consent should the application be determined by approval.	Yes
7.11 Essential services	Services are available.	Yes

ii) Draft Environmental Planning Instrument

The proposal is not inconsistent with any draft environmental planning instruments.

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iii) Any Development Control Plan

Shoalhaven Development Control Plan 2014

Generic DCP Chapter	***Relevant***
G2: Sustainable Stormwater Management and Erosion/Sediment Control	
The provisions of this chapter have been considered and Council's Development Engineer has raised no objections subject to conditions of consent being imposed.	
G7: Waste Minimisation and Management Controls	
The provisions of this chapter have been considered and Council's Waste Services has raised no objections subject to conditions of consent being imposed (as detailed under the 'Referrals' section of this report). However, the submitted Waste Minimisation and Management Plan does not outline any ongoing waste servicing for the subject site once the property is developed. Should the developed property choose to participate in Council's Kerbside Collection service the applicant needs to consider that Gumley Lane is currently not serviced by a kerbside collection vehicle and there is no kerbside space for waste bin collection near the proposed site entry. It is not suitable to wheel bins down to Gordon Street for kerbside placement due to Gumley Lane not having a designated pedestrian pathway and the possible impacts on traffic flow.	
G11: Subdivision of Land	
The provisions of this chapter have been considered and the development generally complies with the provisions of this chapter (refer to Appendix A).	
G21: Car Parking and Traffic	
The provisions of this chapter have been considered and the development generally complies with the provisions of this chapter. However, Council's Development Engineer has raised concern in relation to the provisions of Control 6.2 Access, in relation to access off Gumley Lane for proposed Lot 12, which is prohibited by Council's 'Development Adjoining Narrow Laneways – Interim Policy'. Performance Criteria P10.3 and Acceptable Solution A10.5 permits access to be provided to a lower order, lower traffic volume road where development has frontage to more than one road, so as to 'protect the integrity and efficiency of the local and main road networks'. As per Council's 'Development Adjoining Narrow Laneways – Interim Policy', laneways are not to be used as primary frontages, except in cases where the laneway is the only legal and practical access. Additionally, the Policy states that development proposals to increase vehicular access and servicing along narrow laneways that have a road reserve width of less than 10m, are generally not supported. The road reserve width of Gumley Lane is approximately 5.6m wide. Therefore, access off Gumley Lane for proposed Lot 12 cannot be supported in this regard.	

Area specific Chapters
S6: Town of Milton
The provisions of this chapter are not relevant to the proposed development.

iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There are no planning agreements applying to this application.

iv) Environmental Planning and Assessment Regulation 2021

The proposal ensures compliance with the applicable requirements within the Regulations subject to recommended conditions of consent.

Other Shoalhaven Council Policies

Development Adjoining Narrow Laneways – Interim Policy (POL 22/33)

This Policy was adopted by Council on 6 January 2018 and seeks to ensure that the use of laneways by new developments does not cause adverse effects, for example, traffic and amenity impacts.

The provisions of this Policy include:

a. ***Laneways are not to be used as primary frontages, except in cases where the laneway is the only legal and practical access.***
b. ***Development proposals to increase vehicular access and servicing along narrow laneways that have a road reserve width of less than 10m, are generally not supported. Intensification of lots with rear lane access would need to propose access and servicing from the primary street.***
c. *Development proposals to increase vehicular access and servicing along laneways that have a road reserve width of 10m or greater may be supported where Council can be satisfied that:*
    i. *The development results in minimal impact on existing residential amenity and*
    ii. *Provision of infrastructure, car parking and waste collection is adequate to facilitate the development.*
d. *Where Area Specific Development Control Plan Chapter exists, it prevails over the interim policy position, to the extent of the inconsistency.*
e. *That this policy apply until suitable development controls are in place in Shoalhaven DCP 2014.*

As identified in Council's Development Engineer comments, the access arrangement proposed for this development is inconsistent with the Policy and does not support access via Gumley Lane.

Council requested the applicant submit amended plans demonstrating compliant access to Gordon Street can be provided, however this was not provided by the applicant.

It is noted that providing compliant access to Gordon Street for proposed Lot 12 would result in the size of proposed Lot 11 being well under the minimum lot size requirement of SLEP 2014 and the size of proposed Lot 12 being under the minimum lot size requirement of SDCP 2014 for a battle-axe lot. This would also potentially result in numerous non-compliances with the provisions of SDCP 2014 (i.e. private open space, landscaping etc.). The existing carport and garage would need to be demolished to allow for the access and car parking required to be offset within proposed Lot 11.

The applicant has advised Council informally they believe a clear precedence is set in Gumley Lane for dwellings to use the lane for a primary vehicle access, noting Lot 15 DP 1064376 (known as 2 Gumley Lane, Milton) and Lot 91 DP 1286488 (known as 96 Princes Highway, Milton).

Further to this, they have also noted there is an existing approved layback to Gumley Lane which provides access to the existing site. They believe this is a clear indication that Council has approved

access to the site for vehicle access from the lane. Given this, there would be no net increase in potential traffic flow to this driveway access point as it would continue to service one lot.

Again, it was noted to the applicant that it may be advisable to withdraw the application and explore avenues for redesign, as this can be a lengthy process.

Shoalhaven Contribution Plan 2019 & Section 64 Contributions

Is the development site an "old subdivision property" identified in Shoalhaven Contributions Plan 2019?	No
Is the proposed development considered to increase the demand for community facilities in accordance with the Shoalhaven Contributions Plan 2019?	Yes - s7.11 contributions are applicable.
Is the proposed development considered to increase the demand for on water and sewer services (i.e. s64 Contributions)	May apply.

The development is most aptly characterised as a 'Subdivision' development for the purpose of calculating contributions under the Plan.

Subdivision

	Existing	Proposed
Lots	1	2
Total ET		1
		0

Project	Description	Rate	Qty	Total	GST	GST Incl
05AREC0005	Planning Area 5 - Active recreation facility upgrades various locations	$1,100.93	1	$1,100.93	$0.00	$1,100.93
05CFAC2010	Southern Shoalhaven Branch Library	$553.98	1	$553.98	$0.00	$553.98
CWAREC5005	Shoalhaven Community and Recreational Precinct SCaRP Cambewarra Road Bomaderry	$1,153.01	1	$1,153.01	$0.00	$1,153.01
CWCFAC5002	Shoalhaven Entertainment Centre (Bridge Road Nowra)	$871.44	1	$871.44	$0.00	$871.44
CWCFAC5006	Shoalhaven City Library Extensions (Berry Street, Nowra)	$1,348.90	1	$1,348.90	$0.00	$1,348.90
CWCFAC5007	Shoalhaven Regional Gallery	$74.05	1	$74.05	$0.00	$74.05
CWFIRE2001	Citywide Fire & Emergency services	$145.50	1	$145.50	$0.00	$145.50
CWFIRE2002	Shoalhaven Fire Control Centre	$212.86	1	$212.86	$0.00	$212.86
CWMGMT3001	Contributions Management & Administration	$605.06	1	$546.07	$0.00	$546.07
					Sub Total:	$6,006.74
					GST Total:	$0.00
					Estimate Total:	$6,006.74

Illawarra Shoalhaven Plan

The Illawarra Shoalhaven Regional Plan 2041 does not raise any additional matters for consideration as part of the assessment of this application.

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(b) The Likely impacts of that development, including environmental impacts on the natural and built environments, and social and economic impacts in the locality

Head of Consideration	Comment
Natural Environment	The proposed development will not have a significant adverse impact on the natural environment.
Built Environment	The proposed development will not have a significant adverse impact on the built environment.
Social Impacts	The proposed development will not have a negative social impact in the locality.
Economic Impacts	The proposed development will not have a negative economic impact in the locality.

(c) Suitability of the site for the development

Whilst the site is suitable for this *type* of development, the vehicular access for proposed Lot 12 via Gumley Lane, means that the design as presented to Council is not suitable for the subject site.

(d) Submissions made in accordance with the Act or the regulations

The DA was notified in accordance with Council's Community Consultation Policy for Development Applications. One (1) submission was received by Council objecting to the proposal. The concerns raised are outlined below:

Summary of Public Submissions	
Objection Raised	**Comment**
Laneway access Some time ago a ruling was implemented covering all laneways in the Shoalhaven which stated that primary access was no longer to be allowed.	As detailed earlier in this report, Council's Development Engineer has raised concern in this regard in relation to access off Gumley Lane for proposed Lot 12, which is prohibited by Council's 'Development Adjoining Narrow Laneways – Interim Policy'. As per the Policy, laneways are not to be used as primary frontages, except in cases where the laneway is the only legal and practical access. Additionally, the Policy states that development proposals to increase vehicular access and servicing along narrow laneways that have a road reserve width of less than 10m, are generally not supported. The road reserve width of Gumley Lane is approximately 5.6m wide. Therefore, access off Gumley Lane for proposed Lot 12 cannot be supported in this regard.

(e) The Public Interest

The public interest has been taken into consideration, including assessment of the application with consideration of relevant policies and process.

The assessment identified the development is inconsistent with Council's 'Development Adjoining Narrow Laneways – Interim Policy' as access is proposed via Gumley Lane.
As Gumley Lane is under 10m in width, any development proposals to increase vehicular access and servicing along narrow laneways are generally not supported as per b) of the Policy. Intensification of lots with rear lane access would need to propose access and servicing from the primary street.

Accordingly, the proposal is not considered to be in the public interest.

Delegations

Are any clause 4.6 exceptions proposed?	**No**
Are any DCP performance-based solutions proposed?	**No**

Guidelines for use of Delegated Authority

The Guidelines for use of Delegated Authority have been reviewed and the assessing officer has the Delegated Authority to determine the Development Application.

However, in light of the requirements of Council's 'Development Adjoining Narrow Laneways – Interim Policy' and previous Council resolutions and historic approvals for development in Gumley Lane, the application should be determined by the elected Council.

Recommendation

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the *Environmental Planning and Assessment Act 1979*. As such, it is recommended that SF10933 be refused.

Appendix A – Assessment Checklist: Chapter G11 - Subdivision of Land

5.9 – Utility Services
A66.1 Design and provision of utility services, including broadband, conforms to the requirements of the relevant service authorities. Comment: Subject to recommended conditions of consent. A67.2 Compatible services are located in common trenching. Comment: Noted. A67.3 Subdivisions are located where there is adequate water for domestic and fire-fighting purposes. Comment: Satisfied. A67.4 Subdivision is staged to ensure that each stage is fully serviced before a new area is released.

Comment: Noted.

A67.5 Water supply and sewerage networks are accessible, easy to maintain and cost effective based on life cycle costs.

Comment: Satisfied.

A67.6 Adequate buffers between utilities and houses are provided, to protect residential amenity and health.

Comment: Satisfied.

A67.7 Underground electricity supply is provided to residential areas, except where major technical difficulties are encountered, such as the presence of significant rock.

Comment: Noted.

A67.8 Provision of reticulated gas is subject to requirements of the service provider.

Comment: Noted. This matter would be determined through discussions between the developer and service provider.

A67.9 Underground telecommunications service, including NBN, is to be installed where underground electricity is to be provided.

Comment: Noted.

A67.1 Where required, the subdivider is to provide, at no cost to Council:

- Suitable easements for water and sewer rising main;
- An agreed area of land for pumping stations;
- Easements or land for access to pumping stations;

Comment: Subject to the requirements of Shoalhaven Water and their Notice.

5.10 – Stormwater Drainage

A68.1 Design and construction of systems is in accordance with the requirements of this Section and Council's *Engineering Design Specifications - D5 Stormwater Drainage Design.*

Comment: Subject to recommended conditions of consent.

A69.2 Detention basins may be considered/required where downstream systems are inadequate. Design is to be based on the 1% AEP storm event.

Comment: Not applicable.

A69.1 Provide an overland flow path capable of containing the 1% AEP rainfall event and/or provide adequate detention storage.

Comment: Not applicable.

A70.2 Connection of a new system to an existing system with capacity less than 1% AEP:

- Satisfies the requirement of the 1% AEP event; and

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- Provides a suitable transition between the systems.

Comment: Not applicable.

A70.1 Habitable floor levels are consistent with the requirement in Chapter G9: Development on Flood Prone Land of this DCP.

Comment: Not applicable.

A71.2 Subdivision and engineering plans show minimum floor levels adjacent to drainage paths, including roads where they are used as overland flow paths in the design concept.

Comment: Not applicable. No buildings are proposed as part of this application.

A71.1 Waterways and riparian/wetland vegetation, where they exist, are incorporated into the drainage design, with respect to threatened species and their habitats.

Comment: Not applicable.

A72.2 Sports grounds and other less flood sensitive land uses are incorporated into the local drainage corridor.

Comment: Not applicable.

A72.3 Detention basins, where necessary, are located to control stormwater subject to preserving and/or enhancing the natural integrity of the stream.

Comment: Not applicable.

A72.4 System design ensures there are no flow paths that increase the risk to public safety and property.

Comment: Satisfied following consideration by Council's Development Engineer.

A72.1 Design and construction of minor storm drainage systems is in accordance with this Section and *Engineering Design Specifications Section D5 Stormwater Drainage Design.*

Comment: Subject to Council's Development Engineer recommended conditions of consent.

A73.2 Drainage networks are well defined to ensure there are no hidden flow paths that could reduce their capacity to convey design flows.

Comment: Satisfied following consideration by Council's Development Engineer.

A73.3 Design of minor systems takes full account of existing downstream systems.

Comment: Satisfied following consideration by Council's Development Engineer.

A73.1 Minor road drainage systems are designed for the 20% AEP event.

Comment: Not applicable.

A74.2 Low flow pipes within public reserves contain 25% of the 10% AEP flow.

Comment: Not applicable.

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A74.1 Design and construction of minor storm drainage systems is in accordance with this Section and Engineering Design Specifications Section D5 Stormwater Drainage Design.

Comment: Subject to recommended conditions of consent.

A75.2 Access for maintenance is available where a portion of the minor system lies within a site.

Comment: Satisfied.

A75.3 Selection of materials is based on their suitability, durability, maintainability and cost effectiveness.

Comment: Noted.

A76.1 Where site topography prevents the discharge of stormwater directly to the street gutter or a Council controlled piped system, inter-allotment drainage is provided to accept runoff from all existing or future impervious areas that are likely to be directly connected.

Comment: Not applicable.

A77.2 Easements favouring the benefiting allotments are created over inter-allotment drainage.

Comment: Not applicable.

A77.3 Stormwater discharge from a development site, including inter-allotment drainage, is in accordance with *Engineering Design Specifications Section D5 Stormwater Drainage Design.*

Comment: Subject to recommended conditions of consent.

5.11 – Stormwater Quality Management

Comment: The proposal is considered to satisfy the requirements of Chapter G2.

5.12 – Residential Streetscape

Comment: A landscape plan is not required for the proposed development.

5.13 – Residential Allotment Layout

General

A78.1 Minimum standard residential lot size in any residential subdivision is 500m2.

Comment: Satisfied.

A79.2 Lot shape and dimension:

Rectangular non-corner lots
16m square width minimum
30m minimum depth

Rectangular corner lots
Square width 20 metres
Depth 30 metres

Irregular shaped lots

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Square width 12m
Width at building line 16m
Mean width 18 m
Depth 30m

Corner Splays 4m minimum

Comment: Satisfied.

A79.3 Small scale infill subdivision on flood prone land – For small scale infill subdivisions a nominal building envelope of approximately 15m wide and 21m deep, sited in accordance with the requirements of Chapter G12: Dwelling Houses, Rural Worker's Dwellings, Additions and Ancillary Structures be provided above the 1% flood level on each proposed lot in the subdivision.

Comment: Not applicable.

A79.1 The subdivision lot design positively responds to:

- Slope and desirability of minimising earthworks/retaining walls associated with dwelling construction.
- Natural or cultural features;
- Soil erosion and bushfire risk;
- Special features such as trees and views, including identification of mature stands of trees to be retained and supplementary planting.

Comment: Satisfied. The proposed lot areas and dimensions have taken into account the subject site's natural opportunities and constraints.

A80.1 Each lot is to have coincidental legal and practical access in a rural and/or residential subdivision.

Comment: Satisfied.

Battle-axe lots

A81.1 Battle-axe lots to have a minimum lot size of 650m2, excluding access handle.

Comment: Not applicable.

A82.1 Multiple use access corridor as follows:

Access Minimum	No. of Lots	Pavement Width
4.0m	1 to 2	3.0m
6.0m	3 to 6	5.0m

Comment: Not applicable.

A83.2 The right of way pavement to be of reinforced concrete for 3 or more lots as detailed in Council's *Engineering Design Specification*, chapter D1.

Comment: Not applicable.

A83.1 Rectangular building envelope with minimum dimensions of 15m x 15m is available.

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Comment: Not applicable.

A84.1 Side boundary building setbacks of 5m to adjoining property boundaries, except where a lesser dimension is provided.

Comment: Noted.

Tomerong Community Forum

Tomerong Community Connectivity

Proposed Tomerong Pathway Network

CONTENT

Tomerong Community Forum

BACKGROUND

PROPOSED PATHWAY NETWORK TO PROIVDE CONNECTIVTY OF SHARED USER PATHWAYS IN TOMERONG VILLAGE AND TO LOCAL TOWNS

There has been an inconsistent approach to the development of pathways within the village of Tomerong. A network needs to be competed to provide safety for children and adults. This is now more important as the upgrades to the Princes Highway, including Jervis Bay Rd intersection, Hawken Rd intersection and the duplication of the Princes highway will result in a substantial increase of traffic through Tomerong and on the associated local roads. These roads were not planned to cope with the increase in traffic expected from these road works..
There is a need to:

- Improve safety on the roads for walkers, mobility scooters and cyclists within Tomerong and associated local roads
- Improve community health benefits from walking and cycling
- Provide safety for children walking and cycling to and from school
- Provide a broad pathway network to encourage less reliance on motorized transport
- Provide links to local villages and attractions

Tomerong Community Forum

PRIORITIES

PRIORITY 1:

Completion of pathways on Hawken Rd and Pine Forest Rd within Tomerong village

PRIORITY 2:

Pathway from Tomerong village to Jerberra Estate, including the bridge near the Tomerong Signpost

PRIORITY 3:

Extend pathway to Yerunda Rd and to Princes Highway

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PRIORITIES CONTINUED

- PRIORITY 4

Pathway connecting Tomerong to Vincentia

- PRIORITY 5

Pathway connecting Tomerong to Huskisson

- PRIORITY 6

Pathway connecting Hawken Road to Nowra.

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PRIORITY 1:

COMPLETE PATHWAYS WITHIN TOMERONG VILLAGE ON HAWKEN RD AND PINE FOREST RD

BACKGROUND

There has been an inconsistent approach to the development of pathways within the main roads of the village. A network needs to be completed to provide safety for children and adults as well as motorists. This is now more important as the upgrades to the Princes Highway, including Jervis bay Rd intersection, Hawken Rd intersection and the duplication of the Princes highway will result in a substantial increase of traffic through Tomerong.

THE PROPOSAL

Stage 1: complete this section shown in

BENEFITS

Improved safety on roads and pathways, community health benefits from walking and cycling, helps towards less reliance on motorized vehicles.

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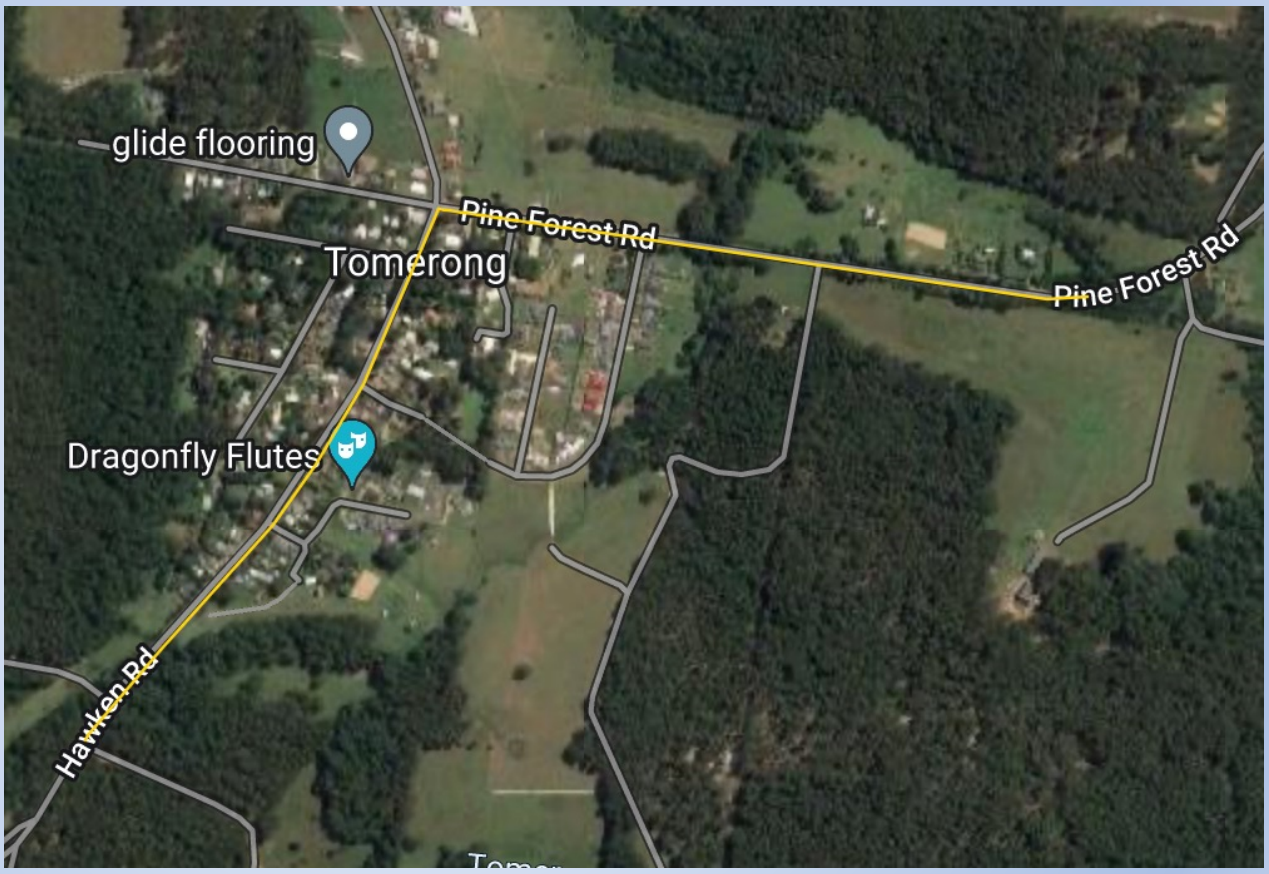

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Priority 1

CL23.86 - Attachment 2

PRIORITY 2:

EXTEND PATHWAY ON PINE FOREST RD TO JERBERRA ESTATE

BACKGROUND

There has been an inconsistent approach to the development of pathways within the main roads of the village. A network needs to be completed to provide safety to children and adults. This is now more important as the upgrades to the Princes Highway, including Jervis bay Rd intersection, Hawken Rd intersection and the duplication of the Princes highway will result in a substantial increase of traffic through Tomerong.

THE PROPOSAL

Stage 2: Extend as shown in —

BENEFITS

Improved safety on roads and pathway, community health benefits from walking and cycling, helps towards less reliance on motorized vehicles. Provides access to and from Jerberra Estate which is rapidly expanding.

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Tomerong Community Forum

Priority 2

CL23.86 - Attachment 2

PRIORITY 3:

EXTEND PATHWAY TO YERUNDA RD AND TO THE PRINCES HIGHWAY

BACKGROUND

There has been an inconsistent approach to the development of pathways within the main roads of the village. A network needs to be competed to provide safety to children and adults. This is now more important as the upgrades to the Princes Highway, including Jervis bay Rd intersection, Hawken Rd intersection and the duplication of the Princes highway will result in a substantial increase of traffic through Tomerong.

THE PROPOSAL

As shown on the next slide

BENEFITS

Improved safety on roads and pathway, community health benefits from walking and cycling, helps towards less reliance on motorized vehicles. Provides more access to the surrounding and links to the upgrade of Princes Highway and Hawken Rd intersection

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PRIORITY 3:

EXTEND PATHWAY WITHIN TOMERONG TO YERUNDA RD AND LINKS TO PRINCES HWY

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Priority 3

PROPOSAL TO JOIN TOMERONG VILLAGE TO VINCENTIA

BACKGROUND

Currently there is no pedestrian or cycling link between Tomerong and Vincentia. Whereas Vincentia has a proposal to radically improve it pathway network. With the increased traffic flow through Tomerong and along these associated roads due to the upgrade of Jervis Bay Rd and the Hawken Rd intersection it will be necessary to improve safety for these users and to provide safe passage off the main roadway..

THE PROPOSAL

Prior to the commencement of major road works for the Jervis Bay Rd intersection, it is proposed that a walking/cycle track be built to accommodate these activities and provide additional safety for these users as well as vehicles.

BENEFITS

Improved safety on roads for walkers and cyclists.
Community health benefits from walking and cycling exercise
Helps towards longer term objective of lee reliance on motorized transport
Provides links to shopping and sporting facilities of Vincentia

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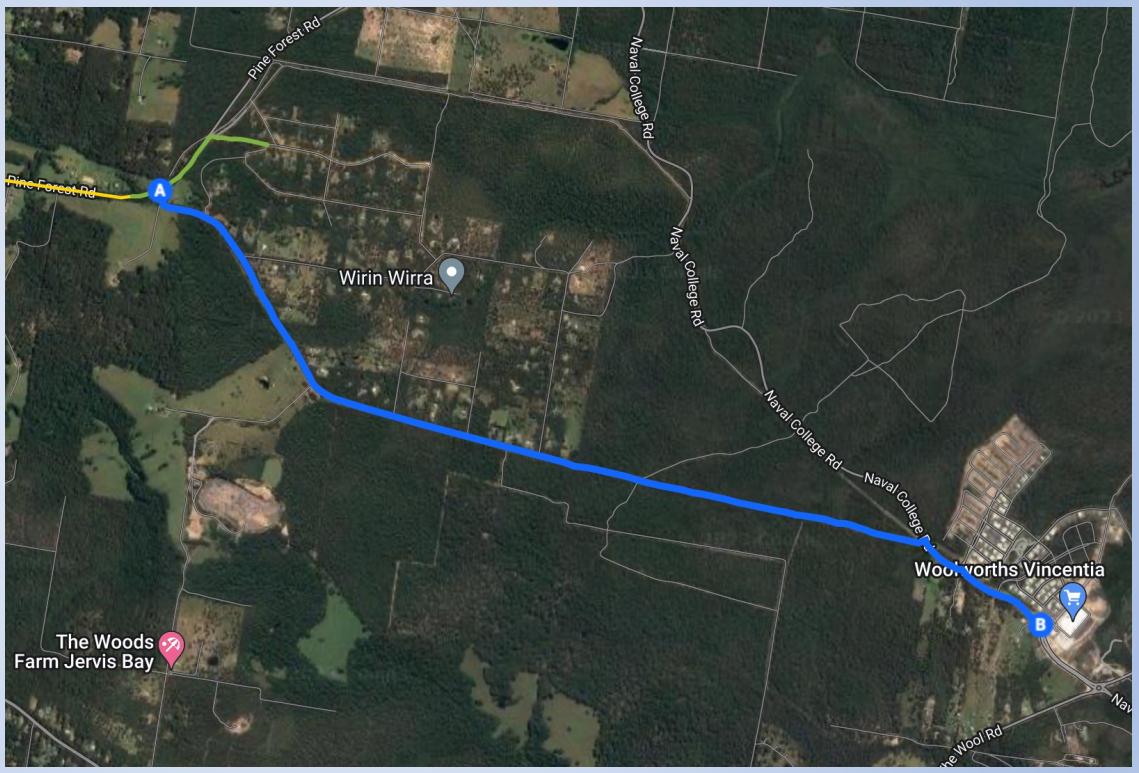

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Priority 4

CL23.86 - Attachment 2

PROPOSAL TO JOIN TOMERONG VILLAGE TO HUSKISSON

BACKGROUND

Currently there is no pedestrian or cycling link between Tomerong and Huskisson. Whereas Huskisson has a very mature pedestrian and cycle network. With the increased traffic flow through Tomerong and along these associated roads initially due to the upgrade of Jervis Bay Rd it will be necessary to improve safety for these users and to provide safe passage off the main roadway.

THE PROPOSAL

Prior to the commencement of major road works for the Jervis Bay Rd intersection, it is proposed that a walking/cycle track be built to accommodate these activities and provide additional safety for these users as well as vehicles.

BENEFITS

Improved safety on roads for walkers and cyclists.
Community health benefits from walking and cycling exercise
Helps towards longer term objective of less reliance on motorized transport
Provides access to Huskisson facilities and beaches

Tomerong Community Forum

Tomerong Community Forum

Priority 5

CL23.86 - Attachment 2

PROPOSAL TO JOIN TOMERONG VILLAGE TO NOWRA

BACKGROUND

Currently there is no pedestrian or cycling link between Tomerong and Nowra. Whereas Nowra has a good pathway network. With the increased traffic flow through Tomerong and along these associated roads due to the upgrade of Jervis Bay Rd and the Hawken Rd intersection it will be necessary to improve safety for these users and to provide safe passage off the main roadway..

THE PROPOSAL

As the highway is being duplicated between Jervis Bay Rd and Hawken Rd, this provides an ideal opportunity to improve the pathway connection to Nowra. This is similar to pathways being provided in other Council areas and communities for the benefits of all users. It is proposed that a walking/cycle track be built to accommodate these activities and provide additional safety for these users as well as vehicles.

BENEFITS

Improved safety on roads for walkers and cyclists.
Community health benefits from walking and cycling exercise
Helps towards longer term objective of lee reliance on motorized transport
Provides links to shopping and sporting facilities of Nowra.

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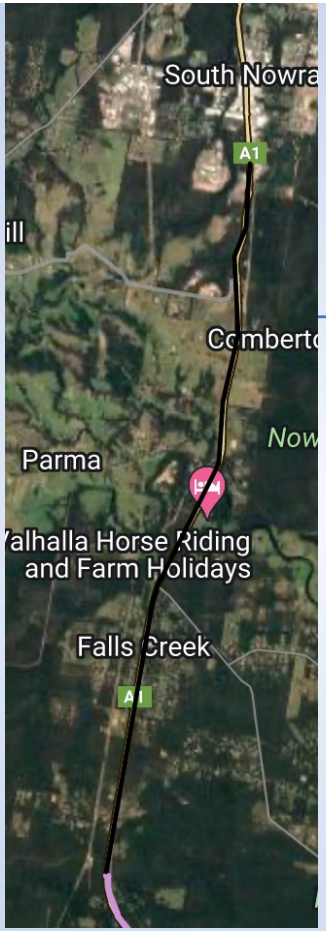

- **PATHWAY TO JOIN TOMERONG TO NOWRA**

Tomerong Community Forum

Priority 6

CL23.86 - Attachment 2

SUMMARY

- Increased traffic flows through Tomerong and surrounding roads is likely to have a major safety impact on local residents. Improved road safety through the construction of pathways will provide benefits to residents and motorists.
- Proposed network of pathways providing safe connectivity for residents and visitors in the Tomerong community
- Prioritizing completion of pathways within Tomerong village, particularly for the safe passage of children walking or cycling to and from school.
- Provide connectivity for Tomerong residents and visitors to the nearby coastal towns of Huskisson and Vincentia
- Provides additional access for Tomerong residents and visitors to coastal pathways, parks, beaches, shops and schools.

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