

## Development & Environment Committee

**Meeting Date:** Tuesday, 01 June, 2021

**Location:** Council Chambers, City Administrative Building, Bridge Road, Nowra

## Attachments (Under Separate Cover)

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Submissions from Public Authorities - Natural Resources Access Regulator (NRAR)



Natural Resources  
Access Regulator

28<sup>th</sup> October 2020

Contact: David Zerafa  
Email: [david.zerafa@dpie.nsw.gov.au](mailto:david.zerafa@dpie.nsw.gov.au)  
Council ref: 60737E (D20/349186)  
File No: V15/2812-4#87

Mr Stephen Dunshea  
Chief Executive Officer  
Shoalhaven City Council  
PO Box 42  
Nowra NSW 2541

Attention: Ryan Jameson  
Coordinator - Local Planning Team

Dear Ryan,

**Re: Planning Proposal PP054 - Rezoning of Riparian Land at Lot 1 DP 949932, Taylors Lane, Cambewarra**

I refer to your request of 4 August 2020 seeking comments from the Natural Resources Access Regulator (NRAR) regarding the abovementioned Planning Proposal (PP) PP054. NRAR apologies for the delay in responding to your enquiry.

NRAR has considered the PP and provides the following comments for your attention and consideration. Of interest to NRAR is the proposal to:

- a. *Rezone part of an existing riparian area from E2 Environmental Conservation to R1 General Residential; and*
- b. *Amend the classification and extent of the watercourse on the Riparian Lands and Watercourses Map.*

NRAR concurs with the assessment of the watercourse by Niche Environment and Heritage (2020) that the subject watercourse and its associated riparian zone play an important function in conveyance of flows from higher up in the catchment on the subject lot and in the maintenance of water quality flowing downstream. Further, the existing vegetation in the subject watercourse plays a key role in soil stabilisation of the bed and banks.

The study recommends:

- Retaining land within 10m of the watercourse centreline as a minimum riparian corridor/zone will maintain the conveyance and water quality functions of the watercourse.
- Retaining the native vegetation in the vicinity of the watercourse within a wider riparian corridor will enhance the ecological function of the watercourse and provide the opportunity to improve vegetation condition and habitat quality.

NRAR does not concur with the recommendation to:

- Apply the principles of the “averaging rule” described in NRAR Guidelines for riparian corridors to reduce the width of the minimum recommended riparian corridor in several unvegetated places.

In this regard, NRAR reiterates previous advice provided by email on 25 May 2020 as follows.

Submissions from Public Authorities - Natural Resources Access Regulator (NRAR)

2

NRAR concurs that the watercourse upstream of the existing vegetation is relatively minor and that the extent of E2 zoned area could be considered for rezoning if there are no other objectives/requirements such as for connectivity along the watercourse to the vegetation on the ridge upstream.

Given the substantial change proposed between the current and proposed E2/riparian areas, NRAR does not consider that offering additional flexibility for the development footprint in applying the averaging rule for such a small remaining area is justified. Reducing the corridor width is unnecessary and can be avoided.

Development encroachments into the outer riparian corridor as suggested in the PP by applying the NRAR guideline averaging rule/matrix can be avoided. The guideline matrix is intended to provide for some flexibility and not to be applied as a general rule. Reducing the width of the corridors will increase edge effects and reduce riparian values/functions of the affected corridors.

In consideration of site merits, NRAR concurs with the proposal to retain the existing vegetation but that the riparian corridor be kept at a uniform width to encapsulate the existing vegetation and enhance the viability of both the existing vegetation and the connection in between and to the main corridor. Reducing the corridor width to a total width of 10 metres is not supported.

In addition, the PP has measured the corridor width from the centreline of the watercourse which is not correct. The width of the corridor should be measured from the bank of the watercourse or edge of the depression not the centreline. The minimum total corridor width should be 20 metres plus the channel width.

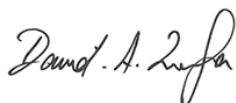
If rezoned, the conceptual subdivision and road layout should also be reconsidered so as to provide for physical separation of the riparian area from the residential zone as opposed to having lots backing onto the riparian corridor as currently illustrated.

It is also important that the corridor is not reduced in width where proposed Lot 315 is indicated in the vicinity of the existing dam by wash channel to ensure the integrity of the dam and by-wash is preserved. Both the road layout and lot layout where Lot 315 is presently indicated should be given due consideration in this regard.

Whilst the future subdivision layout including water cycle management, grading and road geometry are all to be considered in more detail at DA stage, it is appropriate for the PP to give conceptual consideration to these aspects particularly offline stormwater quality treatment and management to be sure that infrastructure/work for these purposes do not result in encroachments into the riparian corridors.

Any questions regarding this correspondence should be directed to David Zerafa on email [david.zerafa@dpie.nsw.gov.au](mailto:david.zerafa@dpie.nsw.gov.au)

Yours sincerely



David Zerafa  
Senior Water Regulation Officer  
Water Regulation Operations  
Natural Resources Access Regulator



Submissions from Public Authorities - Natural Resources Access Regulator (NRAR)

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](http://shoalhaven.nsw.gov.au)     

Council Reference: 60737E (D20/528356)  
Your reference: V15/2812-4#87

27/11/2020

Natural Resources Access Regulator ( NRAR )  
Locked Bag 5022  
PARRAMATTA NSW 2124

Attn: David Zerafa - Senior Water Regulation Officer

By email only: [david.zerafa@dpie.nsw.gov.au](mailto:david.zerafa@dpie.nsw.gov.au)

**Planning Proposal PP054 - Rezoning of Riparian Land at Lot 1 DP 949932,  
Taylors Lane, Cambewarra**

I refer to your letter dated 28 October 2020 providing comments on behalf of the Natural Resources Access Regulator (NRAR) regarding the above planning proposal (PP). I appreciate the time you have taken to review and provide comment on the PP.


NRAR has raised concerns with several aspects of the PP which are summarised in the table below. Responses from Council are provided next to each concern/issue for NRAR's consideration. We would be grateful if NRAR would advise specifically whether it supports or objects to the progression of the PP, having regard for Council's responses below.

We would appreciate the opportunity to meet to discuss and work through these matters further and will be in contact to seek a suitable time/date.

Issue/concern	Response
NRAR concurs with the retention of the existing vegetation in the proposed riparian corridor but does not support the use of the averaging rule to reduce part of the corridor width to 10m.	Noted. It is proposed to remove the use of the averaging rule from the proposal so that the riparian corridor has a uniform width of 20m in between the vegetated areas to be incorporated in the riparian corridor. The amended proposal will correspond with the 'ultimate riparian corridor' suggested in the study by Niche Environment & Heritage (copied below).



Submissions from Public Authorities - Natural Resources Access Regulator (NRAR)

	 <p>Ultimate riparian corridor (blue and green highlighted areas), Niche 2020.</p>
<p>The PP has measured the corridor width from the centreline of the watercourse which is not correct. The width of the corridor should be measured from the bank of the watercourse or edge of the depression not the centreline. The minimum total corridor width should be 20 metres plus the channel width.</p>	<p>Noted. The riparian corridor recommended in the Niche study and on which the PP is based was informed by detailed site analysis including field survey. While it concluded that there is a 1<sup>st</sup> order stream present, it was observed to have no clearly defined bed, banks or channel. Hence the study concluded that the corridor width could be measured from the centreline and that this would be sufficient to maintain the watercourse's conveyance and water quality objectives. The proposed riparian corridor also incorporates the additional vegetated areas which will further assist to maintain bank stability and water quality functions. On this basis it is suggested that the proposed riparian corridor (without the averaging rule) is acceptable in this case and we respectfully ask that NRAR reconsider its position in this regard.</p>
<p>If rezoned, the conceptual subdivision and road layout should be reconsidered so as to provide for physical separation of the riparian area from the residential zone as opposed to having lots backing onto the riparian corridor as currently illustrated.</p>	<p>Noted. Further consideration will be given to the layout as part of the assessment of any development application by Council, if the land is rezoned.</p>
<p>The corridor should not be reduced in width where proposed</p>	<p>Noted. Further consideration will be given to the layout as part of the assessment of</p>

Submissions from Public Authorities - Natural Resources Access Regulator (NRAR)

Lot 315 is indicated in the vicinity of the existing dam by-wash channel. Both the road layout and lot layout in this area should be given due consideration in this regard.	any development application by Council, if the land is rezoned.
The PP should give conceptual consideration to grading, road geometry and particularly offline stormwater quality treatment / management to ensure that associated infrastructure/works do not encroach into the riparian corridors.	Noted. These matters have been considered at a conceptual level and further consideration will be given as part of the assessment of any development application, if the land is rezoned. Based on the assessment undertaken as part of the PP, Council is satisfied that the proposal can accommodate offline stormwater quality treatment / management without encroachments into the riparian corridor.

In the meantime, should you have any questions or require any further information please contact me on 0407856422 or [ryan.jameson@shoalhaven.nsw.gov.au](mailto:ryan.jameson@shoalhaven.nsw.gov.au). Please quote Council's reference 60737E (D20/528356).

Yours faithfully



**Ryan Jameson**  
Coordinator - Local Planning Team

Submissions from Public Authorities - Natural Resources Access Regulator (NRAR)

**Ryan Jameson**

---

**From:** David Zerafa <david.zerafa@dpie.nsw.gov.au>  
**Sent:** Tuesday, 8 December 2020 1:18 PM  
**To:** Ryan Jameson  
**Cc:** NRAR ServiceDesk  
**Subject:** HPECM: RE: HPECM: NRAR response to Planning Proposal 0054 - Taylors Lane Cambewarra

Hi again Ryan.

Seems fine and establishes a more uniform width corridor.

For on-ground practical purposes can I just suggest that you apply a "smooth" edge to the zone boundary. Not one that goes around individual trees with little indentations.

Call me on my mobile if you need to discuss.

Regards David

David Zerafa  
Senior Water Regulation Officer  
Natural Resources Access Regulator  
Department of Planning, Industry & Environment

NSW Government Offices  
5 O'Keefe Avenue, Nowra  
PO Box 309 Nowra 2541  
Phone (02) 4428 9142 / Mobile 0427 663187  
Email: [david.zerafa@dpie.nsw.gov.au](mailto:david.zerafa@dpie.nsw.gov.au)  
Website: <http://www.industry.nsw.gov.au/water>

---

**From:** Ryan Jameson <Ryan.Jameson@shoalhaven.nsw.gov.au>  
**Sent:** Monday, 7 December 2020 1:03 PM  
**To:** David Zerafa <david.zerafa@dpie.nsw.gov.au>  
**Cc:** NRAR ServiceDesk <nrar.servicedesk@industry.nsw.gov.au>  
**Subject:** RE: HPECM: NRAR response to Planning Proposal 0054 - Taylors Lane Cambewarra

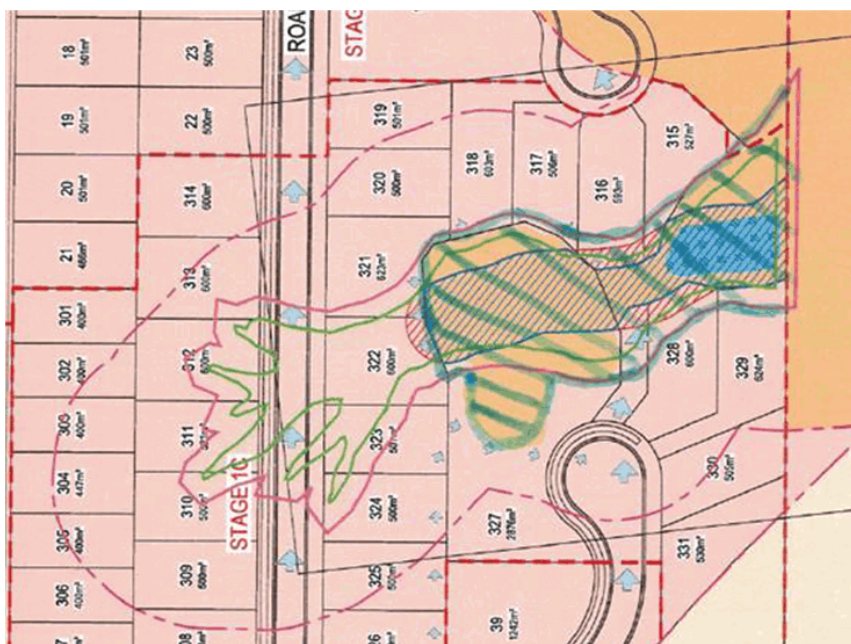
Hello David,

Thanks again for your additional comments. Can you advise if NRAR would be supportive of a revised proposal based on the draft mark-up attached (and shown below)?

It shows a revised riparian corridor (proposed E2 zone) in green hatching, with the western extent of the corridor located at the trees proposed to be retained, and incorporating a 5m buffer measured from the 'bank' (blue line) shown in Figure 6 of the Niche study.

We will produce an accurate revised rezoning plan prior to public exhibition but could provide this to you now if that would assist.

Submissions from Public Authorities - Natural Resources Access Regulator (NRAR)



Many thanks  
Ryan

**From:** David Zerafa <[david.zerafa@dpie.nsw.gov.au](mailto:david.zerafa@dpie.nsw.gov.au)>

**Sent:** Tuesday, 1 December 2020 2:17 PM

**To:** Ryan Jameson <[Ryan.Jameson@shoalhaven.nsw.gov.au](mailto:Ryan.Jameson@shoalhaven.nsw.gov.au)>

**Cc:** NRAR ServiceDesk <[nrar.servicedesk@industry.nsw.gov.au](mailto:nrar.servicedesk@industry.nsw.gov.au)>

**Subject:** FW: HPECM: NRAR response to Planning Proposal 0054 - Taylors Lane Cambewarra

Hi again Ryan.

No need for a meeting from my perspective.

I am mostly comfortable with your consideration and responses to NRARs concerns.

Only exception is in relation to the measuring of the riparian corridor from the centre of the watercourse rather than the bank. I was referring to Figure 6 and Table 3 of the Niche report which defines a bank as illustrated below.

DE21.57 - Attachment 1







Submissions from Public Authorities - Natural Resources Access Regulator (NRAR)

Please find attached Council's response to NRAR's comments for your consideration.

We would appreciate the opportunity to meet to discuss NRAR's concerns and our responses further, either face to face or tele/video conference. Could you kindly advise of date/time suitable to you?

Kind regards  
Ryan

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**From:** David Zerafa <[david.zerafa@dpie.nsw.gov.au](mailto:david.zerafa@dpie.nsw.gov.au)>  
**Sent:** Wednesday, 28 October 2020 10:51 AM  
**To:** Council Email <[Council@shoalhaven.nsw.gov.au](mailto:Council@shoalhaven.nsw.gov.au)>  
**Cc:** Ryan Jameson <[Ryan.Jameson@shoalhaven.nsw.gov.au](mailto:Ryan.Jameson@shoalhaven.nsw.gov.au)>; Lisa Kennedy <[Lisa.Kennedy@planning.nsw.gov.au](mailto:Lisa.Kennedy@planning.nsw.gov.au)>  
**Subject:** HPECM: NRAR response to Planning Proposal 0054 - Taylors Lane Cambewarra

Dear Ryan.

My apologies for the delay in responding to your request.

Please find NRAR comments attached.

Regards David

David Zerafa  
Senior Water Regulation Officer  
Natural Resources Access Regulator  
Department of Planning, Industry & Environment

NSW Government Offices  
5 O'Keefe Avenue, Nowra  
PO Box 309 Nowra 2541  
Phone (02) 4428 9142 / Mobile 0427 663187  
Email: [david.zerafa@dpie.nsw.gov.au](mailto:david.zerafa@dpie.nsw.gov.au)  
Website: <http://www.industry.nsw.gov.au/water>

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Submissions from Public Authorities - Transport for NSW (TfNSW)



Transport  
for NSW

Our ref: STH17/00220/18  
Contact: Andrew Lissenden 0418 962 703  
Your ref: 60737E (D20/349186)

10 August 2020

Ryan Jameson  
Shoalhaven City Council  
BY EMAIL: council@shoalhaven.nsw.gov.au

**PLANNING PROPOSAL (PP054) – LOTS 1 DP 949932 TAYLORS LANE, CAMBEWARRA – REZONING OF RIPARIAN LAND – AGENCY CONSULTATION**

Dear Ryan

Transport for New South Wales (TfNSW) refers to Council's correspondence dated 4 August 2020 regarding the above planning proposal (PP).

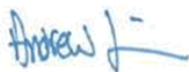
TfNSW has reviewed the information provided focusing on the impact to the state road network. TfNSW notes:

- The key state road is Moss Vale Road;
- The PP seeks to amend the Shoalhaven Local Environmental Plan (SLEP) 2014 to rezone part of an existing riparian area within Lot 1 DP 949932 from Zone E2 Environmental Conservation to Zone R1 General Residential (refer to **Attachment 1**) with associated amendments to the urban release area (URA) boundary, minimum lot size maps, etc. This enabling approximately 31 additional residential allotments within the subject lot/URA;
- All access to the PP site will be via the access arrangements and associated connection with Moss Vale Road as approved under SF10632 (i.e. provision of a roundabout at the access point/connection with Moss Vale Road that will service both the southern and northern URA areas); and
- Council is seeking comments from TfNSW as per the requirements of the PP's Gateway determination.

Having regard for the above, TfNSW does not object to the PP in principle as it is unlikely to have a significant impact on the state road network. This being due to the intersection works on Moss Vale Road that are required as part of the subdivision approved under SF10632.

If you have any questions please contact Andrew Lissenden on 0418 962 703. Please ensure that any further email correspondence is sent to development.southern@rms.nsw.gov.au.

Yours faithfully



Andrew Lissenden  
Development Assessment Officer  
Community and Place | South Region  
Cc: ryan.jameson@shoalhaven.nsw.gov.au

Transport for NSW

Level 4, 90 Crown St, Wollongong NSW 2500 | PO Box 477, Wollongong NSW 2520 | ABN 18 804 239 602

1 of 2

DE21.57 - Attachment 1

Submissions from Public Authorities - Transport for NSW (TfNSW)

**Attachment 1**



DE21.57 - Attachment 1

Submissions from Public Authorities - Shoalhaven Water

**Ryan Jameson**

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**From:** Ljupco Lazarevski  
**Sent:** Monday, 31 August 2020 12:45 PM  
**To:** Kerrie Mackey; Ryan Jameson; Abrar Ahmed  
**Cc:** Matthew Kidd; Ivan Wady; Anthony Galea  
**Subject:** FW: Planning Proposal PP054 – Comments by Shoalhaven Water

**Kerrie/Ryan,**

I refer to the application to change much of the land zoned E2 to Residential R1 and reduce considerably that which was zoned E2. Shoalhaven Water does not object to the planning proposal to change much of the E2 zone land to R1.

Any approved development of this new R1 zoned land will be required to:

- Pay Section 64 Charges for water supply and sewerage services, and
- Extend the water supply reticulation to serve all new lots, and
- Provide an appropriate sewerage system to serve each new lot and extend and connect to the existing sewerage system, and
- Pay a contribution towards the metered service to each new lot, and
- Provide appropriate easements over all sewerage system/s where it is not located in public roads.

It is noted that the reduction of the land zoned E2 may cause the need to consider alternative sewer servicing option/s (eg, pressure sewer) as the land closer to the centreline of the water course is more likely to more often have ground water and hence impact on a gravity sewer system by way of infiltration.

**Abrar,**

I have copied you in so that you may check the sewer strategy for Moss Vale Rd – South and confirm if there is any impact on the proposed sewer infrastructure to serve MVR-South and this proposed change to the E2 zoned land.

DE21.57 - Attachment 1

## Submissions from Public Authorities - Shoalhaven Water

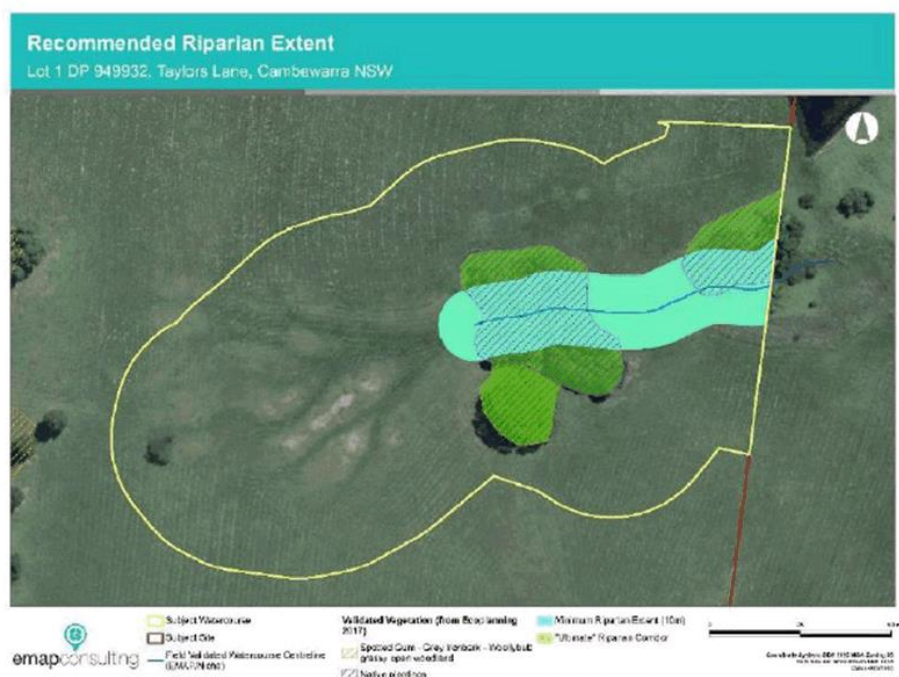


Figure 4: Recommended riparian extent (Niche Environment & Heritage, 2020)



Submissions from Public Authorities - Shoalhaven Water

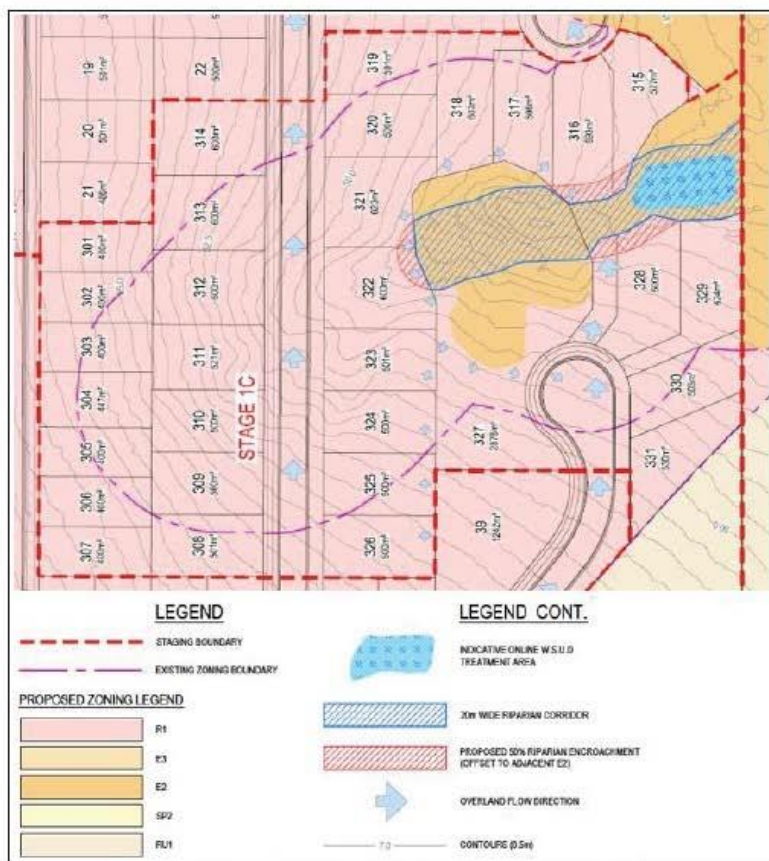


Figure 5: Proponent's revised rezoning proposal

Regards

**Ljupčo Lazarevski**

**Unit Manager – Project/Development**

Shoalhaven Water – Shoalhaven City Council

02 4429 3255

Bridge Rd (PO Box 42) Nowra NSW 2541

[Ljupco.Lazarevski@shoalhaven.nsw.gov.au](mailto:Ljupco.Lazarevski@shoalhaven.nsw.gov.au)

[www.shoalwater.nsw.gov.au](http://www.shoalwater.nsw.gov.au)



**From:** Kerrie Mackey <[Kerrie.Mackey@shoalhaven.nsw.gov.au](mailto:Kerrie.Mackey@shoalhaven.nsw.gov.au)>

**Sent:** Wednesday, 5 August 2020 10:53 AM

**To:** Ljupco Lazarevski <[Ljupco.Lazarevski@shoalhaven.nsw.gov.au](mailto:Ljupco.Lazarevski@shoalhaven.nsw.gov.au)>

## Submissions from Public Authorities - Shoalhaven Water

Cc: Matthew Kidd <[Matthew.Kidd@shoalhaven.nsw.gov.au](mailto:Matthew.Kidd@shoalhaven.nsw.gov.au)>; Ryan Jameson  
<[Ryan.Jameson@shoalhaven.nsw.gov.au](mailto:Ryan.Jameson@shoalhaven.nsw.gov.au)>

**Subject:** Letter - Agency Consultation – Planning Proposal PP054 – Rezoning of Riparian Land at Taylors Lane,  
Cambewarra - Shoalhaven Water

Dear Ljupco,

Please find attached a letter and associated attachments seeking comments on Agency  
Consultation – Planning Proposal PP054 – Rezoning of Riparian Land at Taylors Lane,  
Cambewarra for your information.

If you have any questions relating to this matter, please contact Council's Strategic Planner Ryan  
Jameson on 0407 856 422 or via email [ryan.jameson@shoalhaven.nsw.gov.au](mailto:ryan.jameson@shoalhaven.nsw.gov.au).

Regards

**Kerrie Mackey**

**Senior Administration Officer – Strategic Planning**  
Shoalhaven City Council

02 4429 3426  
Bridge Rd (PO Box 42) Nowra NSW 2541  
[Kerrie.Mackey@shoalhaven.nsw.gov.au](mailto:Kerrie.Mackey@shoalhaven.nsw.gov.au)

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RESPECT | INTEGRITY | ADAPTABILITY | COLLABORATION

DE21.57 - Attachment 1

Submissions from Public Authorities Endeavour Energy

**Ryan Jameson**

**From:** Cornelis Duba <Cornelis.Duba@endeavourenergy.com.au>  
**Sent:** Tuesday, 25 August 2020 8:04 AM  
**To:** Council Email  
**Cc:** Ryan Jameson  
**Subject:** Shoalhaven City Council Planning Proposal PP054 Rezoning of Riparian Land at Taylors Lane, Cambewarra  
**Attachments:** EE FPJ 6007 Technical Review Request Aug 2019.pdf; SW08773 Work near underground assets.pdf; SW Work near overhead power lines.pdf; ENA EMF What We Know.pdf; EE Safety Plumbing.pdf; EE Safety on the job.pdf; EE MDI0044 Easements and Property Tenure.pdf; EE Guide for Padmount Substations.pdf

The General Manager  
Shoalhaven City Council

**ATTENTION: Ryan Jameson, Strategic Planner**

Dear Sir or Madam

I refer to Council's letter of 4 August 2020 regarding Planning Proposal PP054 at Taylors Lane, CAMBEWARRA (Lot 1 DP 949932) to amend Shoalhaven Local Environment Plan 2014 to:

- a. Rezone part of an existing riparian area from E2 Environmental Conservation to R1 General Residential;
- b. Amend the classification and extent of the watercourse on the Riparian Lands and Watercourses Map;
- c. Apply a 500m2 minimum lot size and the provisions of Clause 4.1H to the rezoned land. Clause 4.1H permits subdivision to create lots down to 300m2 in certain circumstances;
- d. Extend the Moss Vale Road South URA boundary to include the rezoned land.

Submissions need to be made to Council by 25 August 2020.

Please refer to Endeavour Energy's previous submissions made to Council on

- 19 February 2018 regarding Subdivision Application SF10632 at Taylors Lane, CAMBEWARRA (Lot 1 DP 949932, Lot 3 DP 851823) for 'Staged residential subdivision to create 79 Torrens Title allotments, including: 74 residential allotments; One (1) drainage lot containing water detention and treatment infrastructure; One (1) residue lot containing open space, an area proposed for future development in the centre of the site and a riparian corridor in the northern portion of the site; One (1) open space lot in the north western portion of the site to integrate with the identified open space to the west; and Provision of roads, drainage and utility infrastructure along with associated landscaping works'.
- 15 April 2019 regarding Subdivision Application SF10632 at Lot 1 & 104 Taylors Lane, CAMBEWARRA (Lot 1 DP 949932, Lot 3 DP 851823) for 'Staged residential subdivision to create 55 Torrens Title allotments, including: 52 residential allotments; One (1) open space lot to the west of Road 01 and south of Road 05 providing a connection to the open space to the west; One (1) open space lot to the north of Road 02 in the north west corner of the site; One (1) residue lot located in the central and eastern portion of the site; and Provision of roads, drainage and utility infrastructure along with associated landscaping works'.

As shown in the below site plan from Endeavour Energy's G/Net master facility model there are:

- No easements over the site benefitting Endeavour Energy (active easements are indicated by red hatching).
- 11,000 volt / 11 kV high voltage overhead power lines to opposite side of Taylors Lane.

Please note the location, extent and type of any electricity infrastructure, boundaries etc. shown on the plan is indicative only. In addition it must be recognised that the electricity network is constantly extended, augmented and

#### Submissions from Public Authorities Endeavour Energy

modified and there is a delay from the completion and commissioning of these works until their capture in the model. Generally (depending on the scale and/or features selected), low voltage (normally not exceeding 1,000 volts) is indicated by blue lines and high voltage (normally exceeding 1,000 volts but for Endeavour Energy's network not exceeding 132,000 volts / 132 kV) by red lines (these lines can appear as solid or dashed and where there are multiple lines / cables only the higher voltage may be shown). This plan only shows the Endeavour Energy network and does not show electricity infrastructure belonging to other authorities or customers owned electrical equipment beyond the customer connection point / point of supply to the property. This plan is not a 'Dial Before You Dig' plan under the provisions of Part 5E 'Protection of underground electricity power lines' of the Electricity Supply Act 1995 (NSW).

Subject to the foregoing and the following recommendations and comments Endeavour Energy has no objection to the Planning Proposal.

- Network Capacity / Connection

Endeavour Energy has noted the following in the Planning Proposal:

#### 4.4 State and Commonwealth Interests (Section D)

##### 4.4.1 Is there adequate public infrastructure for the Planning Proposal?

It is proposed to include the subject land in the Moss Vale Road South URA which will make it subject to the requirements of Part 6 of Shoalhaven LEP 2014. This requires satisfactory arrangements to be in place for the provision of State, local and public utility infrastructure before consent can be granted to the subdivision of the land.

The essential infrastructure required to service Moss Vale Road South URA (road upgrades, water and sewer trunk infrastructure, electricity, gas, telecommunications) is currently being planned and delivered by the responsible authorities as land in the initial stages is released. It is anticipated that planned infrastructure will have the capacity to service the subject land as the PP will not generate significant additional demand for infrastructure and services. The indicative yield of the subject land is 31 additional lots versus 950 lots for the overall URA.

Endeavour Energy's Asset Planning & Performance Branch whilst not having undertaken a detailed assessment of the Planning Proposal have provided the following advice:

*The additional 31 lots versus the 950 lots for the overall Moss Vale Road South Urban Release Area (URA) is not significant. It is even less significant given the additional URA's which Endeavour Energy is planning to supply from a future new zone substation.*

*Endeavour Energy has a draft network supply strategy for the greater Shoalhaven area. The draft strategic area plan sets out the preferred ultimate long-term network configuration. Within the strategic area plan staging scenarios include immediate short-term through to the ultimate long-term requirements. Ultimately, the mature load in the larger greenfield development area of Cambewarra will require the establishment of a new zone substation along with upstream transmission assets and downstream distribution feeders. To achieve this Endeavour Energy will need to acquire a suitable parcel of land for a network substation. (approximately 100m x 130m with road frontage).*

*Overall, an evidence-based approach on actual and forecast demand along with network constraints will ultimately determine the need date for each stage of network investment. The development of individual projects will be based on principles outlined in the strategic area plan when required.*

*Endeavour Energy is committed to making provisions for customers to connect to its network in a fair and equitable manner. This is in line with reasonable legislated user pays principles for connection works and in a manner, which will ensure an acceptable quality of supply for all existing and future customers.*



### Submissions from Public Authorities Endeavour Energy

Accordingly the future urban residential subdivision will be subject to Endeavour Energy's usual customer connection process. In due course the applicant for the future proposed development of the site will need to submit an application for connection of load via Endeavour Energy's Network Connections Branch to carry out the final load assessment and the method of supply will be determined. Depending on the outcome of the assessment, any required padmount substation/s will need to be located within the property (in a suitable and accessible location) and be protected (including any associated cabling) by an easement and associated restrictions benefiting and gifted to Endeavour Energy. Please find attached a copy of Endeavour Energy's Mains Design Instruction MDI 0044 'Easements and Property Tenure Rights'. Further details are available by contacting Endeavour Energy's Network Connections Branch via Head Office enquiries on telephone: 133 718 or (02) 9853 6666 from 9am - 4:30pm or on Endeavour Energy's website under 'Home > Residential and business > Connecting to our network' via the following link:

<http://www.endeavourenergy.com.au/>

Advice on the electricity infrastructure required to facilitate the proposed development can be obtained by submitting a Technical Review Request to Endeavour Energy's Network Connections Branch, the form for which FPJ6007 is attached and further details (including the applicable charges) are available from Endeavour Energy's website under 'Our connection services'. The response to these enquiries is based upon a desktop review of corporate information systems, and as such does not involve the engagement of various internal stakeholders in order to develop a 'Connection Offer'. It does provide details of preliminary connection requirements which can be considered by the applicant prior to lodging a formal application for connection of load.

Alternatively the applicant should engage a Level 3 Accredited Service Provider (ASP) approved to design distribution network assets, including underground or overhead. The ASP scheme is administered by NSW Trade & Investment and details are available on their website via the following link or telephone 13 77 88:

<http://www.resourcesandenergy.nsw.gov.au/energy-supply-industry/pipelines-electricity-gas-networks/network-connections/contestable-works>

- Network Asset Design

Endeavour Energy's Company Policy 9.2.5 'Network Asset Design', includes the following requirements for electricity connections to new urban subdivision / development:

#### **5.11 Reticulation policy**

##### *5.11.1 Distribution reticulation*

In order to improve the reliability performance of and to reduce the operating expenditure on the network over the long term the company has adopted the strategy of requiring new lines to be either underground cables or where overhead is permitted, to be predominantly of covered or insulated construction. Notwithstanding this strategy, bare wire overhead construction is appropriate and permitted in some situations as detailed below.

In areas with the potential for significant overhanging foliage, CCT is used to provide increased reliability as it is less susceptible to outages from wind-blown branches and debris than bare conductors. CCT must only be used in treed<sup>2</sup> areas as the probability of a direct lightning strike is low. In open areas where the line is not shielded from a direct lightning strike, bare conductors must generally be used for 11kV and 22kV reticulation.

Non-metallic Screened High Voltage Aerial Bundled Cable (NMSHVABC) must be used in areas which are heavily treed and where it is not practicable to maintain a tree clearing envelope around the conductors.

<sup>2</sup> A "treed" area is one with a substantial number of trees adjacent to the line, in each span. In these situations CCT is used to provide increased reliability as it is less susceptible to outages from wind-blown



Submissions from Public Authorities Endeavour Energy

5.11.1.1 Urban areas

Reticulation of new residential subdivisions will be underground. In areas of low bushfire consequence, new lines within existing overhead areas can be overhead, unless underground lines are cost justified or required by either environmental or local council requirements.

Where underground reticulation is required on a feeder that supplies a mixture of industrial, commercial and/or residential loads, the standard of underground construction will apply to all types of load within that development.

Where ducting is used, adequate spare ducts and easements must be provided at the outset to cover the final load requirements of the entire development plan.

Extensions to the existing overhead 11kV/22kV network must generally be underground. Bare wire will be used for conductor replacements and augmentations except in treed areas where CCT or NMSHVABC must be used.

Extensions to the existing overhead LV network and augmentations must either be underground or ABC. Conductor replacements greater than 100m in route length must utilise aerial bundled cable.

Flooding and Drainage

Endeavour Energy requires the electricity network needed to service an area / development to be fit for purpose and meet the technical specifications, design, construction and commissioning standards based on Endeavour Energy's risk assessment associated with the implementation and use of the network construction / infrastructure for a flood prone site. Risk control has focused typically on avoiding the threat, but where this is not possible, reducing the negative effect or probability of flood damage to assets by implementing good design and maintenance practices.

Distribution substations should not be subject to flood inundation or stormwater runoff ie. the padmount substation cubicles are weatherproof not flood proof and the cable pits whilst designed to be self-draining should not be subject to excessive ingress of water. Section 7 Substation and switching stations of Endeavour Energy Mains Construction Instruction MCI 0006 underground distribution construction standards manual provide the following details of the requirements for flooding and drainage in new padmount substation locations.

## Submissions from Public Authorities Endeavour Energy

### 7.1.6 Flooding and drainage

Substations are to be located such that the risk of flooding or stormwater damage is minimal.

As a minimum the level at the top of the transformer footing, HV and LV switchgear, shall not be lower than the 1:100 year flood level.

All drains within the substation site area or in the vicinity shall be properly maintained to avoid the possibility of water damage to Endeavour Energy's equipment.

In areas where, as determined by the Network Substation Manager, there is a high water table or a heightened risk of flooding, indoor substations will not be permitted.

All materials used in the construction below the substation (ground level) shall be capable of withstanding prolonged immersion in water without swelling or deterioration.



**Figure 51 - Example substation raised above 1:100 flood level**

### Earthing

The construction of any building or structure (including fencing, signage, flag poles, hoardings etc.) whether temporary or permanent that is connected to or in close proximity to Endeavour Energy's electrical network required to comply with Australian/New Zealand Standard AS/NZS 3000:2018 Electrical installations as updated from time to time. This Standard sets out requirements for the design, construction and verification of electrical installations, including ensuring there is adequate connection to the earth. It applies to all electrical installations including temporary buildings supply / connections.

Inadequate connection to the earth to allow a leaking / fault current to flow into the grounding system and be properly dissipated places persons, equipment connected to the network and the electricity network itself at risk from electric shock, fire and physical injury. The earthing system is usually in the form of an earth electrode consisting of earth rods or mats buried in the ground. It should be designed by a suitably qualified electrical engineer / ASP following a site-specific risk assessment having regard to the potential number of people could be simultaneously exposed, ground resistivity etc.

For details of the ASP scheme please refer to the above point Network Capacity / Connection .

### Location of Electricity Easements / Prudent Avoidance

#### Submissions from Public Authorities Endeavour Energy

The incorporation of electricity easements into privately owned lots is generally problematic for both Endeavour Energy and the future landowners and requires additional easement management to ensure no uncontrolled activities / encroachments occur within the easement area.

Accordingly Endeavour Energy's recommendation is that whenever reasonably possible, easements be entirely incorporated into public reserves and not burden private lots. Endeavour Energy's preference is to have continuity of its easements over the most direct and practicable route affecting the least number of lots as possible.

This is also in keeping with a policy of prudent avoidance. In practical terms this means that when designing new transmission and distribution facilities, consideration is given to reducing exposure and increasing separation distances to more sensitive uses such as residential or schools, pre-schools, day care centres or where potentially a greater number of people are regularly exposed for extended periods of time.

These emissions are usually not an issue but with Council's permitting or encouraging development with high density, reduced setbacks and increased building heights, but as the electricity network operates 24/7/365 (all day, every day of the year), the level of exposure can increase.

Endeavour Energy believes that irrespective of the zoning or land use, applicants (and Council) should also adopt a policy of prudent avoidance by the siting of more sensitive uses eg. the office component of an industrial building, away from and less susceptible uses such as garages, non-habitable or rooms not regularly occupied eg. storage areas in a commercial building, towards any electricity infrastructure including any possible future electricity infrastructure required to facilitate the proposed development.

Where development is proposed in the vicinity of electricity infrastructure, Endeavour Energy is not responsible for any amelioration measures for such emissions that may impact on the nearby proposed development.

Please find attached a copy of Energy Networks Association's Electric & Magnetic Fields What We Know which can also be accessed via their website at <https://www.energynetworks.com.au/electric-and-magnetic-fields> and provides the following advice:

*Electric fields are strongest closest to their source, and their strength diminishes rapidly as we move away from the source.*

*The level of a magnetic field depends on the amount of the current (measured in amps), and decreases rapidly once we move away from the source.*

Typical magnetic field measurements associated with Endeavour Energy's activities and assets given the required easement widths, safety clearances etc. and having a maximum voltage of 132,000 volt / 132 kV, will with the observance of these separation distances not exceed the recommended magnetic field public exposure limits.

#### Vegetation Management

The planting of large trees in the vicinity of electricity infrastructure is not supported by Endeavour Energy. Suitable planting needs to be undertaken in proximity of electricity infrastructure (including any new electricity infrastructure required to facilitate the proposed development). Larger trees should be planted well away from electricity infrastructure and even with underground cables, be installed with a root barrier around the root ball of the plant.

Landscaping that interferes with electricity infrastructure could become a potential safety risk, restrict access, reduce light levels from streetlights or result in the interruption of supply may become subject to Endeavour Energy's Vegetation Management program and/or the provisions of the *Electricity Supply Act 1995* (NSW) Section 48 Interference with electricity works by trees by which under certain circumstances the cost of carrying such work may be recovered.

Submissions from Public Authorities Endeavour Energy

Dial Before You Dig

Before commencing any underground activity the applicant is required to obtain advice from the **Dial Before You Dig** service in accordance with the requirements of the Electricity Supply Act 1995 (NSW) and associated Regulations. This should be obtained by the applicant not only to identify the location of any underground electrical and other utility infrastructure across the site, but also to identify them as a hazard and to properly assess the risk.

Public Safety

Workers involved in work near electricity infrastructure run the risk of receiving an electric shock and causing substantial damage to plant and equipment. I have attached Endeavour Energy's public safety training resource which were developed to help general public / workers to understand why you may be at risk and what you can do to work safely. The public safety training resources are also available via Endeavour Energy's website via the following link:

[http://www.endeavourenergy.com.au/wps/wcm/connect/ee/nsw/nsw\\_homepage/communitynav/safety/safety\\_brochures](http://www.endeavourenergy.com.au/wps/wcm/connect/ee/nsw/nsw_homepage/communitynav/safety/safety_brochures)

If the applicant has any concerns over the proposed works in proximity of the Endeavour Energy's electricity infrastructure to the road verge / roadway, as part of a public safety initiative Endeavour Energy has set up an email account that is accessible by a range of stakeholders across the company in order to provide more effective lines of communication with the general public who may be undertaking construction activities in proximity of electricity infrastructure such as builders, construction industry workers etc. The email address is [Construction.Works@endeavourenergy.com.au](mailto:Construction.Works@endeavourenergy.com.au).

Emergency Contact

In case of an emergency relating to Endeavour Energy's electrical network, the applicant should note that Emergencies Telephone is 131 003 which can be contacted 24 hours/7 days. Endeavour Energy's contact details should be included in the any risk or safety management plan.

I appreciate that not all the foregoing issues may be directly or immediately relevant or significant to the Planning Proposal. However, Endeavour Energy's preference is to alert proponents / applicants of the potential matters that may arise should development within closer proximity of the existing and/or required electricity infrastructure needed to facilitate the proposed development on or in the vicinity of the site occur.

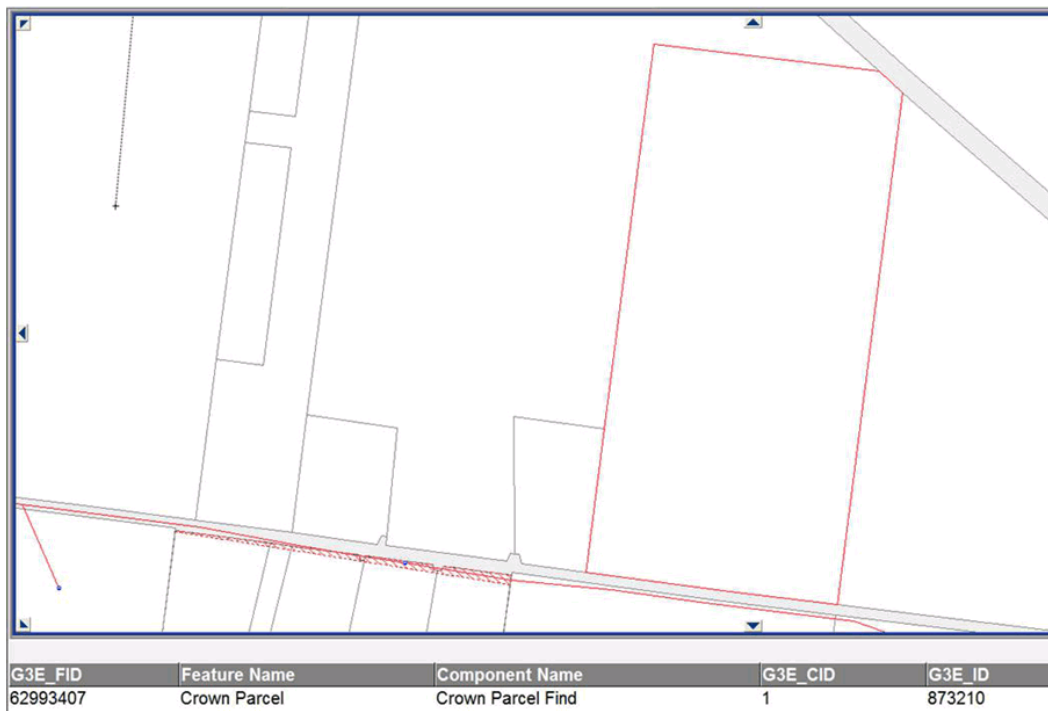
Could you please pass on a copy of this submission and the attached resources to the applicant? Should you wish to discuss this matter, or have any questions, please do not hesitate to contact me or the contacts identified above in relation to the various matters. Due to the high number of development application / planning proposal notifications submitted to Endeavour Energy, to ensure a response contact by email to [property.development@endeavourenergy.com.au](mailto:property.development@endeavourenergy.com.au) is preferred.

With the current COVID-19 health risk, as many as possible of Endeavour Energy staff are working from home. As a result there is only a small contingent located at the Huntingwood head office for essential operations. Although working from home, access to emails and other internal stakeholders is now somewhat limited and as a result it may take longer than usual to respond to enquiries. Thank you for your understanding during this time.

Yours faithfully  
Cornelis Duba  
Development Application Specialist  
Network Environment & Assessment  
M: 0455 250 981  
E: [cornelis.duba@endeavourenergy.com.au](mailto:cornelis.duba@endeavourenergy.com.au)  
51 Huntingwood Drive, Huntingwood NSW 2148

Submissions from Public Authorities Endeavour Energy

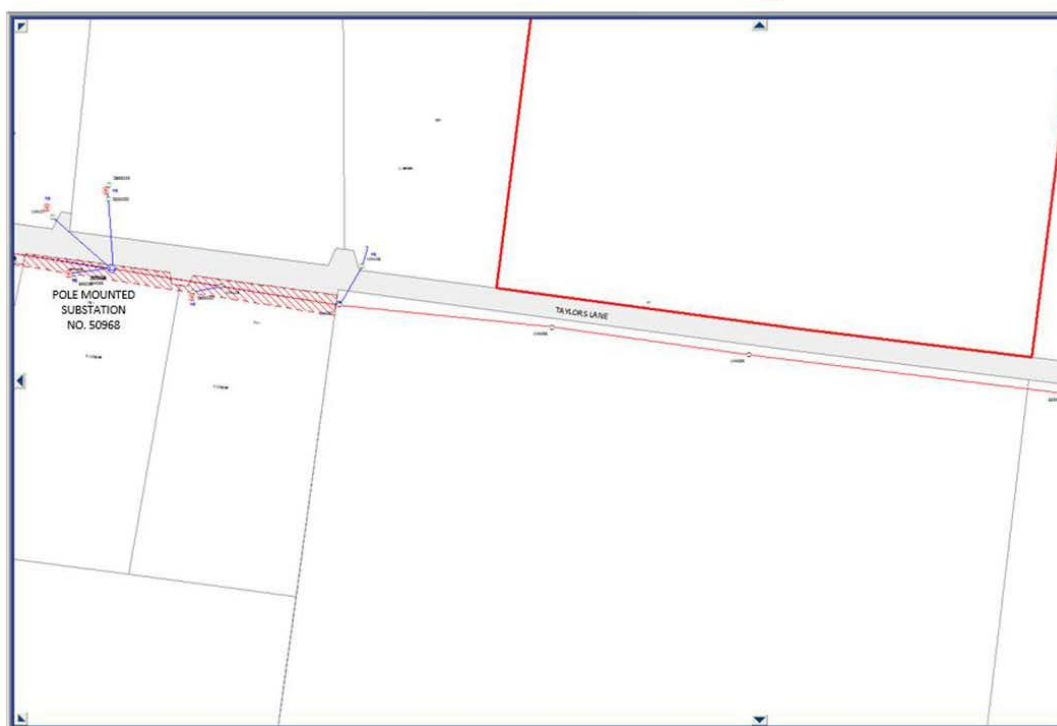
end e ourener com u



DE21.57 - Attachment 1



Submissions from Public Authorities Endeavour Energy



**From:** Kerrie Mackey <Kerrie.Mackey@shoalhaven.nsw.gov.au>

**Sent:** Wednesday, 5 August 2020 9:39 AM

**To:** Property Development <Property.Development@endeavourenergy.com.au>

**Subject:** Letter - Agency Consultation – Planning Proposal PP054 – Rezoning of Riparian Land at Taylors Lane, Cambewarra

Dear Sir/Madam,

Please find attached a letter and associated attachments seeking comments on Agency Consultation – Planning Proposal PP054 – Rezoning of Riparian Land at Taylors Lane, Cambewarra for your information.

If you have any questions relating to this matter, please contact Council's Strategic Planner Ryan Jameson on 0407 856 422 or via email [ryan.jameson@shoalhaven.nsw.gov.au](mailto:ryan.jameson@shoalhaven.nsw.gov.au).

Regards


**Kerrie Mackey**

**Senior Administration Officer – Strategic Planning**  
Shoalhaven City Council

02 4429 3426  
Bridge Rd (PO Box 42) Nowra NSW 2541  
[Kerrie.Mackey@shoalhaven.nsw.gov.au](mailto:Kerrie.Mackey@shoalhaven.nsw.gov.au)

**RESPECT | INTEGRITY | ADAPTABILITY | COLLABORATION**

Planning Report – S4.55 Assessment – DS20/1397 – 408 Bunkers Hill Rd, BARRENGARRY - Lot 144 DP 751262 (Por 144)

	Planning Report – S4.55 – Environmental Planning & Assessment Act 1979
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Parent Consent	DA17/1157
DS Number	DS20/1397
Property	408 Bunkers Hill Rd, BARRENGARRY - Lot 144 DP 751262 (Por 144)
Applicant(s)	Allen Price & Scarratts Pty Ltd
Owner(s)	GC Scarf

#### **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 section manager.

Name

**Senior Development Planner 14/05/2021**

#### **Detailed Proposal**

DA17/1157 – Consent was issued on 14/11/2017 for Animal Boarding and Training Establishment (equine education centre) and the temporary use of the building as a Function Centre

**Consent Trim Reference:** D17/376747

**Current Application:** DS20/1397

An application to modify the consent has been submitted, in accordance with the provisions of Section 4.55(1A).

#### *a) Proposed modification*

The subject Section 4.55 application proposes to modify the approved Equine Education Centre (rural shed) with regard to the layout and design of the approved building. Minor changes are also proposed to the approved stormwater plans, car parking arrangement and access driveway.

The applicant's submitted cover letter (D20/387819, dated 24 August 2020) outlines the proposed amendments to the building as follows:

- "Removal of the elevated raised floor area of the building and an increase in excavation to lower the building in the landscape thereby further reducing the visual impact of the development;*
- Removal of louvres on the western façade diminishing any acoustic impacts the building might have had on Bunkers Hill Road;*
- Closing off the majority of the northern façade thereby reducing any impacts, acoustic or otherwise on the neighbouring property that is in different ownership;*
- Relocation of the bathroom to the north western corner thereby separating it from the catering area and facilitating the location of the stables to a central location on the western side of the building. This layout increases the flexibility of the open area which will now be uninterrupted by stables and ancillary accommodation areas.*

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- e) *The focus of the building will now be to the east where it will overlook land in the ownership of the developer;*
- f) *The number of openings in the external façade of the building will be reduced – the increased insulation inherent in this change will improve the acoustic qualities of the completed building;*
- g) *The construction standard of the building will now be BAL29 – increasing the safety of the building in regard to managing the risk of bushfire.*
- h) *To modify Condition 1 of the development consent to reference updated plans submitted with this application, as follows:"*

STAMPED DOCUMENTS / PLANS	REF / SHEET NO.	PREPARED BY	DATED
<b>Landscape Site Plan</b>	<b>DA 01-Rev B</b>	<b>Grove Architects</b>	<b>19/10/2017</b>
		<b>Realm Studios</b>	<b>08/05/2020</b>
<b>Sections</b>		<b>Realm Studios</b>	<b>08/05/2020</b>
<b>Floor Plan</b>	<b>DA 02, Rev C</b>	<b>Grove Architects</b>	<b>18/10/2017</b>
	<b>DA 10 Rev A</b>		<b>06/07/2020</b>
<b>Roof Plan</b>	<b>DA11</b>	<b>Grove Architects</b>	<b>06/07/2020</b>
<b>Long Elevations</b>	<b>DA 03, Rev B</b>	<b>Grove Architects</b>	<b>19/10/2017</b>
	<b>DA12</b>		<b>06/07/2020</b>
<b>Short Elevations &amp; Section</b>	<b>DA04</b>	<b>Grove Architects</b>	<b>30/01/2017</b>
	<b>DA13</b>		<b>06/07/2020</b>

Numerically and materially, the proposed changes to the approved building are as follows:

<b>Building:</b>	<b>Approved (DA17/1157)</b>	<b>Proposed modification (DS20/1397)</b>
GFA	340sqm (approx.)	463sqm (approx.)
Roof area	520sqm (approx.)	666sqm (approx.)
Maximum Height	8.525m (approx.)	7.1m
Building width	14.85m	15.5m
Building length	33.9m	36m
Façade materials	Vertical hardwood cladding with tree trunk columns	Vertical and horizontal timber cladding
Roof materials	Recycled corrugated iron	Corrugated roof
Gable ends	One Bay open entry canopy with truss exposed. Ampelite panel infill back at wall line.	Fixed toughened glass set into minimal aluminium channel
Car parking spaces	30	34

It is noted no other modifications to the consent are proposed in relation to the operations or use of the premises including the approved number of guests, number of days the approved temporary use can operate or the functioning of the equine education centre.

**b) Retrospective approval**

The building subject to this application is already partially constructed contrary to the approved plans under DA17/1157. Accordingly, the subject Section 4.55 application is for partial retrospective approval of existing works.

Decisions in the Land and Environment Court have consistently held that the provisions of Section 4.55 (previously Section 96) can be used to modify a development consent where the works subject to the modification have already been carried out (*Windy Dropdown Pty Ltd v Warringah Council* [2000] NSWLEC 240 and *Willoughby City Council v Dasco Design and Construction Pty Ltd and Another* [2000] 111 LGERA 422).

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These two cases considered the power of Section 4.55 to retrospectively approve development that has already been carried out, concluding that it can be used, and subsequently the development can be considered on its merits. Consequently, for the purpose of this application, the power under Section 4.55 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) to modify an approved development is capable of being used to approve the development works, even in the case where the relevant works have already been carried out. With that power established, the application can then be considered on its merits.

c) *Reason for proposed modification*

The cover letter indicates that the applicant's clients in conjunction with their architect have decided to make these amendments in order to improve the efficiency and functionality of the development.

Further to this, the applicant has provided the following justification for the proposed amendments in their letter dated 23 December 2020 (D21/12505):

- *"The approved design contains a 'corridor' type area albeit 4m wide that is wasted space and could only function as access to the main open area of the building. It also provided minimal privacy to the bathroom area and obstructed the outlook to the eastern views.*
- *The redesign locates all the ancillary services to one side and faces the main area east downhill away from neighbouring properties and towards the predominant view which as noted above is in the ownership of the applicant.*
- *The comparison between the approved building and the modified proposal demonstrates that the latter provides a more efficient open space that offers a much more flexible floor plan with a superior outlook.*
- *The modification provides a better solution for acoustics in particular in protecting the neighbouring properties and Bunkers Hill Road which is outlined in the acoustic report that accompanies this submission.*
- *The moderate increase in building length allows us the flexibility to provide a wet weather solution for the practical demonstrations of the equine program and a more versatile layout for (secondary) temporary use functions.*
- *As per the 'WTV Letter' and 'WTV Layout' from White Top Venues, the moderate increase in building width is crucial for 3 rows of tables to comply with staff safety standards.*
- *The proposed modification is far more sympathetic to the recent restrictions imposed by NSW government in response to social distancing as a result of Covid-19.*
- *Regarding the increased size of the bathroom, we have not increased the number of toilet cubicles, urinals or basins. The new design allows for more privacy to the main area, is more efficient for queuing and promotes social distancing.*
- *Regarding the "reduced door dimension" – there is no intent in any changes, other than replacing the 'sun tuff' ampelite panel material with 8mm thick toughened glass to comply with BAL 29. The large sliding doors similar to the approved plans are still a feature."*
- *The glazing of both Gables consist of 10mm toughened glass with aluminium frames to comply with BAL 29. The development approval included the installation of 'suntuff' ampelite panels. The proposed change involves considerable additional expense but will provide superior acoustics, aesthetics and bushfire protection.*
- *Overall the focus of the building has changed from north to east where the building overlooks land in the ownership of the developer.*
- *Council has correctly noted that there is no intent to increase the maximum number of guests allowed to attend the property so there will be no net increase in impacts associated with the modified development."*



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The applicant has confirmed that the modified proposal will not compromise the intent of the initial approval for the development. The primary purpose of the approved building is to facilitate the use of the property as an 'animal boarding or training establishment', described as an equine education centre. The temporary function use is secondary to this, and on completion of each function, the building will revert to its primary use. Per the requirements of clause 2.8 of *Shoalhaven Local Environmental Plan 2014* (SLEP 2014), the temporary use of land must not prejudice the subsequent carrying out of development on the land in accordance with the provisions of SLEP 2014 or any other environmental planning instrument.

#### Background

- DA17/1157 – Animal Boarding and Training Establishment (equine education centre) and the temporary use of the building as a Function Centre – Approved: 14/11/2017

Development Consent DA17/1157 approved the construction of a rural shed and its use as an Equine Education Centre. A small herd of Shire horses will be utilised in the proposed use, skilled trainers and animal welfare specialists will provide tuition concerning the training and husbandry of horses.

Practical classes are to be held in the 'round yards' on the property. It is envisaged that programs will run for 2-3 days either during the week or on the weekend.

Approval was also granted for use of the facility as a temporary function venue for weddings and the like. The operating restrictions on the temporary use of the building include a limitation to 26 days in any period of 12 months and for a maximum capacity of 120 guests.

- DS19/1196 – Modification to DA17/1157 – Modifying Condition 4 – Approved: 19/08/2019

This modification to Development Consent DA17/1157 permitted the temporary use of the building as a function centre for a period of three (3) years as measured from the issue of an Occupation Certificate rather than the determination date of the consent, being 14 November 2017. It is noted that this only modified the commencement date of the temporary use of the building. It is further noted that an Occupation Certificate is yet to be issued.

#### Post-Lodgement

- Councillors called in the modification application due to the community interest on 23 February 2021 (MIN21.95).

#### Consultation and Referrals

Internal Referrals			
Referral	Required	Recommendation	Comment
Development Engineer	<input checked="" type="checkbox"/>	No objections (dated 24/11/2020).	Noted.
Environmental Health Officer	<input checked="" type="checkbox"/>	No objections subject to recommended conditions of consent (dated 01/02/2021).	Modified Conditions 42 and 58 to be imposed should the application be determined by approval.

Planning Report – S4.55 Assessment – DS20/1397 – 408 Bunkers Hill Rd, BARRENGARRY - Lot 144 DP 751262 (Por 144)

		Conditions 59 and 60 in relation to food premises are to remain unaltered.
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External Referrals			
Agency	Required	Recommendation	Comment
Rural Fire Service	<input checked="" type="checkbox"/>	<p>General Terms of Approval and Bush Fire Safety Authority (dated 18/12/2020).</p> <p>Conditions 1-5 and 7 of the General Terms of Approval issued with DA17/1157 (dated 11/10/2017) are to remain unaltered.</p> <p>New construction must now comply with section 3 and section 7 (BAL 29) Australian Standard AS3959-2018 Construction of buildings in bush fire-prone areas or NASH Standard (1.7.14 updated) National Standard Steel Framed Construction in Bushfire Areas – 2014 as appropriate and Section 7.5 of Planning for Bush Fire Protection 2019 as recommended in the correspondence from Allen Price &amp; Scarratts Pty Ltd (dated 24/08/2020, Reference No. N26939TF).</p>	Modified Condition 6 to be imposed should the application be determined by approval.
Water NSW	<input checked="" type="checkbox"/>	<p>Concurrence advice (dated 25/11/2020) with recommended conditions of consent.</p> <p>Conditions are to be modified to reference updated plans and to require a Soil &amp; Water Management Plan. An additional condition is to be inserted to ensure the development is monitored, maintained and managed as per the Operational Environmental Management Plan.</p>	Modified Conditions 7, 20, 24 and 25 and additional Condition 23A to be imposed should the application be determined by approval.

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#### **Section 4.55(1A) Modification of Consent - Considerations**

This application is seeking to modify Development Consent No. **DA17/1157** and is classified as **S4.55(1A) – Modifications involving minimal environmental impact** under the EP&A Act.

The following provides an assessment of the submitted application against the matters for consideration under Sections 4.55(1A) & 4.15(1) of the EP&A Act.

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

**a) it is satisfied that the proposed modification is of minimal environmental impact**

Council is satisfied that the proposed modification is of minimal environmental impact.

The proposed amendments to the layout and design of the approved building would actually reduce impact and according to Council's Environmental Services, the acoustic report dated 28/01/2021 is acceptable. The report proposes a number of controls to minimise disturbance to neighbouring properties similar to the previous report for the site. Modified conditions of consent are recommended to control any impact.

**b) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)**

Council is satisfied that the proposed modification would be substantially the same as the development which was originally approved.

The modified development will result in no significant changes and the proposal is considered to be quantitatively and qualitatively the same as the development as originally approved.

Commissioner Dixon of the Land and Environment Court of NSW in the case of *DL Newport Pty Ltd v Northern Beaches Council* [2017] NSWLEC 1661 has provided a summary of the applicable legal principles applying to the "substantially the same development" test at [44] of her judgment. These principles govern the exercise of the power contained in s4.55(2) of the *Environmental Planning and Assessment Act 1979* as follows:

1. "First, the power contained in the provision is to "modify the consent". Originally the power was restricted to modifying the details of the consent but the power was enlarged in 1985 (*North Sydney Council v Michael Standley & Associates Pty Ltd* (1998) 43 NSWLR 468 at 475 and *Scrap Realty Pty Ltd v Botany Bay City Council* [2008] NSWLEC 333; (2008) 166 LGERA 342 at [13]). Parliament has therefore "chosen to facilitate the modification of consents, conscious that such modifications may involve beneficial cost savings and/or improvements to amenity" (*Michael Standley* at 440);
2. the modification power is beneficial and facultative (*Michael Standley* at 440);
3. the condition precedent to the exercise of the power to modify consents is directed to "the development", making the comparison between the development as modified and the development as originally consented to (*Scrap Realty* at [16]);
4. the applicant for the modification bears the onus of showing that the modified development is substantially the same as the original development (*Vacik Pty Ltd v Penrith City Council* [1992] NSWLEC 8);

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5. the term “substantially” means “essentially or materially having the same essence” (Vacik endorsed in Michael Standley at 440 and Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280; (1999) 106 LGERA 298 at [30]);
6. the formation of the requisite mental state by the consent authority will involve questions of fact and degree which will reasonably admit of different conclusions (Scrap Realty at [19]);
7. the term “modify” means “to alter without radical transformation” (Sydney City Council v Ilene Pty Ltd [1984] 3 NSWLR 414 at 42, Michael Standley at 474, Scrap Realty at [13] and Moto Projects at [27]);
8. in approaching the comparison exercise “one should not fall into the trap” of stating that because the development was for a certain use and that as amended it will be for precisely the same use, it is substantially the same development. But the use of land will be relevant to the assessment made under s 96(2)(a) (Vacik);
9. the comparative task involves more than a comparison of the physical features or components of the development as currently approved and modified. The comparison should involve a qualitative and quantitative appreciation of the developments in their “proper contexts (including the circumstances in which the development consent was granted)” (Moto Projects at [56]); and
10. a numeric or quantitative evaluation of the modification when compared to the original consent absent any qualitative assessment will be “legally flawed” (Moto Projects at [52]).”

Comment:

1. The modification is likely to result in cost savings and improvements to amenity.
2. Noted.
3. The development as modified and the development as originally consented to has been duly considered.
4. The applicant has provided sufficient information and plans to enable the Council to consider that the modified development is substantially the same as the original development.
5. The development application as modified will “essentially or materially have the same essence”.
6. It is noted that the formation of the requisite mental state by the consent authority will involve questions of fact and degree which will reasonably admit different conclusions.
7. The modification will involve minor changes (as described above) that will “alter without radical transformation”.
8. Council has not limited their assessment of the modification application to a comparison of stating that because the development was for *Animal Boarding and Training Establishment (equine education centre) and the temporary use of the building as a Function Centre* and that as amended it will be for precisely the same use, it is substantially the same development.
9. The comparison of the development as approved and proposed to be modified includes a comparison of the qualitative and quantitative elements of the developments in their “proper contexts (including the circumstances in which the development consent was granted)”.
10. Noted.

**c) it has notified the application in accordance with the regulations or a DCP**

The application was notified as per the original development application in accordance with Council's Community Consultation Policy from 21 January 2021 to 8 February 2021.

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- d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan

Eleven (11) submissions were received by Council objecting to the proposal.

(a) Submissions relating to the existing approval or generally in relation to the use

Submissions raised the following concerns:

- Impacts on the rural character of the area.
- Characterisation of the development and use for functions, not weddings and the need for conditions of consent to reflect this.
- Time limitation on the consent – a 12 month trial should be imposed.
- The need for visual screening of the development to surrounding properties.
- Safety of the road accessing the site, including:
  - o Wildlife.
  - o The need for a mini-bus to transport patrons.
  - o The need for upgrades to bridge(s) on the access road.
  - o Risk to pedestrians on Bunkers Hill Road from increased traffic.
- Inaccurate description of the development under the original application and notification procedures.
- Risk of bush fires and safety of patrons.
- Concerns of increased traffic to the site and potential degradation of Bunkers Hill Road.
- Impacts of flooding on the access road and the risk this could leave patrons stranded.
- Lack of consistency in the assessment of past similar applications which have been refused, while the DA for this site was approved despite having similar issues.
- Suggestion that Council implement a policy/DCP with regard to rural functions.
- Conditions should be imposed in response to this modification application to further limit the existing use in relation to examples (such as); fireworks; reduced hours of operation to original approval; no amplified music with doors open; additional acoustic treatment to the façade of the building; limiting functions to once a month; policy with regard to compliance and implementing a trial period.

#### Assessment:

The matters raised in these objections relate to the existing approval which is not proposed to be modified with the exception of the building design, stormwater and parking. The ability for temporary functions to be undertaken at the site, the frequency, number of patrons, access and conditions relating to Bunkers Hill Road, consideration of flooding, bush fire and characterisation of the use are all matters that were assessed under the original approval and are not proposed or able to be modified as a result of this subject application. Council is limited to only amend existing conditions or impose new conditions that relate to the specific subject-matter and nature of the modification sought.

Further to this, the existing consent is a valid consent, with any appeal or review period having lapsed. *Swadling v Sutherland Shire Council* (1994) 82 LGERA 431 established that a consent is valid until it is declared invalid by an order of the Court. Accordingly, despite any proposed modifications sought under this application, the existing consent remains valid and operative, and the conditions and uses approved under that consent remain even if this application is refused.

In relation to bush fire and road flood risks, these were assessed under the original application under which NSW Rural Fire Service and Council's engineers issued their approval. Accordingly, the question of whether the use should exist at the site for bush fire or flooding reasons, is not a matter that can be amended under this application. With regard to the fire safety of the proposed building



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as modified, General Terms of Approval and a Bush Fire Safety Authority were issued by NSW Rural Fire Service (dated 18/12/2020).

Concerning road safety and upgrades, the original development application did not consider the upgrading of Bunkers Hill Road was warranted. No intensification of the approved use is proposed under this application, and Council's Development Engineer is satisfied that the proposed modification, including an increase in four (4) car parking spaces, does not trigger the need for upgrading of Bunkers Hill Road nor a mini bus to transport guests to and from the venue.

With this in mind, the above-mentioned submissions are noted, however Council is limited in its ability to amend or assess these matters as they are beyond the scope of the subject-matter of the Section 4.55 modifications under assessment.

*(b) Submissions relating to the proposed modification*

Submissions raised the following concerns with regard to the proposed modifications which are further addressed below:

- i. Change to the characterisation of the use and reason for increase in the size of the building.
- ii. Dominance of wedding functions at the site as opposed to equine centre use.
- iii. Consideration of breaches of the development consent or advertisement of the premises contrary to the development consent in the assessment of the subject Section 4.55 application.
- iv. Concern that the building is already constructed.
- v. Validity of the consent - the proposed modification relates to a consent which is unlawful and therefore should not be able to be modified.
- vi. Minimal environmental impact – assessment under Section 4.55(1A).
- vii. Substantially the same – assessment under Section 4.55(1A).
- viii. Impacts on amenity, clause 2.8 of SLEP 2014 and a requirement to have 'no adverse impact' with regard to acoustic, noise and dust impacts.
- ix. Health and safety concerns.
- x. Lack of Neighbour Notification.

These are further addressed in detail below:

i. Change to the characterisation of the use and reason for increase in the size of the building.

Submissions raise the following concerns:

- *The current proposal is significantly different from the original approval as demonstrated by anomalies between the approved statement of environmental effects and the proposed modifications.*
- *The focus now appears to be primarily a wedding and function venue and not an animal boarding and training facility operating out of a farm machinery shed.*
- *The building shown in the modification application plans is plainly purpose-built as a 'function centre' and not an equine boarding and training facility for Shire horses as per the consent. The suggestion that the function centre use is "temporary" is not supported.*
- *Is the use for which development consent was granted permissible in the zone?*

Assessment:

The application proposes to modify the consent relating to amendments to the layout and design of the approved building, stormwater and parking areas only. There is no change proposed to the approved use of the development proposed as part of this application.

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- *Animal boarding or training establishment*

The development remains best characterised as an 'animal boarding or training establishment' (definition outlined below) under SLEP 2014 as approved under the original application, and which is not sought for amendment under this application. The proposal is permitted within the zone with the consent of Council.

*"animal boarding or training establishment means a building or place used for the breeding, boarding, training, keeping or caring of animals for commercial purposes (other than for the agistment of horses), and includes any associated riding school or ancillary veterinary hospital."*

The Equine Education Program approved with Development Consent No. DA17/1157 is not impacted by this proposal.

The submission to Council that includes the supporting legal advice questions the approved definition of the "animal boarding or training establishment" use based upon the advertising material that has been obtained on the internet for the premises. The consideration of this material in the assessment of the application is further addressed below, however it is noted that the approved use is not proposed to be modified under this application.

The applicant has also provided supporting information explaining the operation of the development, including a letter from Scott Brodie, Facilitator, Thoroughbred and Veterans Welfare Alliance who is involved in equine activities at Barrengarry (D21/98533). The program outlines that 7 x 2-hour sessions are provided over 5 days, Monday to Friday. This includes the following training/activities:

- Hoof trimming, shoeing and hoof care demonstrations in free time.
- Introduction to your horse and to equipment identifying basic horse anatomy.
- How does a horse tick - the horses mind and how the horse relates to man.
- Group Behaviour - The similarity between group behaviour in humans and horses.
- Join up in practice (essentially a trust exercise between the trainer and horse). Apply and relieve pressure. Target work. Positive re-enforcement.
- Consolidate join up. Lunge in halter, voice aids.
- Intro to work in hand.
- Consolidate work in hand. Principals of classical horsemanship.
- Practical application classical principals.
- Intro to lunging in side reigns. Problem solving.

The activity of breeding and training Shire horses on the development site is well-established having been undertaken by the owner for a number of years.

The information provided in support of the proposed activity and structure is thorough and gives Council a degree of certainty regarding its bona fide nature.

- *Function centre*

No change is sought to change the current uses approved under the existing consent which approves to utilise the facility for weddings and the like. This use would be best defined as a 'function centre' under SLEP 2014 as follows:

*"function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility."*

It is acknowledged that within the RU1 Primary Production zone this use is prohibited. However, approval was granted as part of Development Consent DA17/1157 via the 'temporary use of land'

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provisions of clause 2.8, SLEP 2014. The objective of this clause is to permit the temporary use of land where the use does not compromise future development of the land, or have detrimental economic, social, amenity or environmental effects on the land. The matters for consideration under clause 2.8 have been considered as part of the assessment of this application in so far as the proposed modifications relate to this clause. However, it is noted that development consent has already been granted for this temporary use which is not proposed to be changed by this application.

The applicant has provided Council with a letter (D21/12516, dated 8 December 2020) from the owners/managers of the development site, explaining the purpose of this application. They state:

*"...Having an architectural designed permanent structure to host our equine events and occasional use functions will be a huge benefit not only to us but also to the neighbouring accommodation providers and local businesses.*

*We have employed White Top Venues who are a professional event coordinator and are very experienced in the Shoalhaven Region. White Top advised us of the best design layout possible while having regard to the recent implications of COVID-19. We will also require additional full-time employees to assist in the running of our Equine Centre.*

*We have a passion for horses, and The Equine Program is our primary initiative. We will however rely on funds derived from the temporary use functions to subsidise the work we do with the likes of the Returned Soldiers League, The Rural Fire Service and various other organisations. We have partnered with the right people who are not only professionals in their respective fields, but who are accountable to ensure the smooth running of all events.*

*Barranca currently supports 35 local Shoalhaven businesses all of which have suffered significantly because of bushfires and COVID. Once Archies is open we will be supporting these businesses and will need support from many others to ensure the successful running of our family business."*

Council is satisfied that the proposed modifications are for the purpose of the equine centre component of the approval as a dominant primary use, with functions a secondary temporary use. While the proposed physical layout of the building may more comfortably accommodate functions, the plans clearly show stables, tack rooms and space for demountable stables as required. Supporting information by the applicant has also been considered. The submissions raise that the stables would be used as a bar, evidenced by photomontages obtained online. Further assessment of the consideration of this information in the DA assessment process is discussed below further in this section.

ii. Dominance of wedding functions at the site as opposed to equine centre use.

Submissions raise the following concerns:

- *It would appear that the requested "Occasional Use of Land for Functions associated with Primary Use" has morphed into a very regular use of the building 26pa (52pa requested) where the applicants "rely on funds derived from the temporary use functions to subsidise the work we do". It would appear that the function centre has become the dominant use of the subject land.*
- *Why did Council ratify the fundamental change of the function centre land use from an ancillary 'occasional' use to the dominant use, as proposed in DS19/1196?*
- *Given that Council was aware of the outcome of the LEC Marshall 2015 case in October 2018, on what legal basis was approval given to an extension of the temporary use of land for a prohibited function centre (DS19/1196), in spite of receiving objections referring to the Marshall case?*
- *It is considered that the building cannot practically be converted from the primary use to the temporary use.*

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Assessment:

The temporary use of the building as a function centre is restricted to 26 days in any period of 12 months under the existing Development Consent which is not proposed to be amended by this modification.

It is noted that the provisions of clause 2.8(2), SLEP 2014 allow development consent to be granted for “development on land in any zone for a temporary use for a maximum period of 52 days (whether or not consecutive days) in any period of 12 months”. The existing conditions of consent reflect this requirement.

Although the applicant sought to increase the number of days from 26 to 52 days as part of modification application DS19/1196, this request was not pursued, and the number of days remains restricted to 26.

Modification Application No. DS19/1196 only approved modification to the wording of Condition 4 of the consent to read:

***“The temporary use of the building as a Function Centre is limited for a period of three years as measured from the issue of an Occupation Certificate.”***

This modified the commencement date of the temporary use of the building as a function centre from the date of determination of Development Consent DA17/1157 to the issue of an Occupation Certificate.

In short, the time commences when the construction etc. is complete as opposed to the issue of the consent, when the development cannot be used. The reason for this is to allow for a “...reasonable time to become established...” (as stated by the applicant).

This was not considered an extension of the temporary use of land as the approval remains for three (3) years from the Occupation Certificate (i.e. when use of the development is to commence), meaning the operation is limited to three years.

Again, it is noted that development consent was already granted for this temporary use following consideration of the provisions of clause 2.8, SLEP 2014 under the original consent. Accordingly, Council has not approved any change of the function centre land use from an ancillary ‘occasional’ use to dominant use as implied.

Council considers that the building can be converted from the primary use to allow for the temporary use. This is a matter that was considered as part of the assessment of DA17/1157, as required under clause 2.8.

iii. Consideration of breaches of the development consent or advertisement of the premises contrary to the development consent in the assessment of the subject Section 4.55 application.

Submissions raise the following concerns:

- *How is the Council to consider the clear breaches of the development consent when determining the modification application?*
- *The venue has advertised online with plans showing a different layout to that sought under the application, and third party sites have advertised for more than the approved number of patrons for weddings.*
- *The advertising material by the venue suggests that wedding functions are a dominant use, not a secondary use.*
- *The premises’ website for the proposed ‘equine’ activities does not include riding lessons which would be essential to the characterisation of the approved use.*

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Assessment:

*Jonah Pty Limited v Pittwater Council* [2006] NSWLEC 99 related to the modification of a Court-granted development consent for a restaurant. The restaurant had a history of operating in breach of the conditions of consent and Council contended the application to modify the application with regard to the proposed layout should be refused stating:

*“The past non-compliance may be a predictor of future non-compliance. If the current owner/operator of the restaurant facility has not felt “hamstrung” by conditions of consents in the past, the Council submits that it is more likely that the owner/operator would not feel hamstrung to so comply in the future.”* [17]

Preston CJ held however that:

*“The issue of the relevance of past unlawful use to determining whether a consent should be granted or modified has been considered by courts in the past. The courts have consistently held that past unlawful use is not a relevant factor”* [19].

Paragraphs 20 to 31 detail further caselaw with respect to consideration of the issue of the relevance of an applicant's past unlawful conduct in the consideration of an application. At [23] it details that *“in Windy Dropdown Pty Ltd v Warringah Council (2000) 111 LGERA 299, Talbot J noted on the hearing of the appeal that:*

*“The carrying out of illegal works generally is not an impediment to the consideration of an application on the merits ( Kouflidis v City of Salisbury (1982) 29 SASR 321; 49 LGERA 17; Longa v Blacktown City Council (1985) 54 LGERA 422; Ireland v Cessnock City Council (1999) 103 LGERA 285)”*: at 301 [4].

The judgement further states however:

*“[37] The above conclusion that mere unlawfulness of past use is not a relevant factor does not mean, however, that past use – without any consideration of its unlawfulness – cannot ever be relevant.*

*[38] For instance, past conduct (regardless of whether it is unlawful) may have given rise to unacceptable impacts, such as unacceptable acoustic impacts on adjoining properties. The experience of impacts of the past use could be relevant in evaluating, first, the likely impacts of a prospective use for which consent is sought of the same or similar character, extent, intensity and other features as the past use, secondly, the acceptability of the likely impacts and thirdly, if likely impacts are considered to be unacceptable, the appropriate measures that ought to be adopted to mitigate the likely impacts to an acceptable level. Past use would, therefore, be of relevance but it is for proper planning reasons, not because the past use happened to be unlawful. The unlawfulness of the past use is not relevant”.*

The proposed uses have not commenced, with no Occupation Certificate having been issued. Accordingly, ‘past conduct’ cannot be considered. With regard to the advertisement of the premises to operate contrary to the development approval, Council cannot and should not consider this in the merit assessment of this application, particularly with regard to the design of the building proposed to be modified.

Existing conditions of consent outline the approved uses and manage the manner in which the equine centre and temporary function centre is to operate. *The likely impacts of the prospective use for which consent is sought* does not change, with only the building envelope in which the approved uses are to occur changing. In this manner, the assessment has considered the “character, extent,



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intensity and other features” of the use as approved, and how it will operate in the proposed building envelope. Appropriate modifications to conditions related to potential acoustic impacts are recommended at modified Conditions 42 and 58.

*Ireland v Cessnock City Council* (1999) 110 LGERA 311 is also noteworthy, mentioned at [27] of *Jonah Pty limited v Pittwater Council*:

*“[27] In a subsequent judgment in Ireland v Cessnock City Council (1999) 110 LGERA 311 dealing with the issue of whether a building certificate should be issued, Bignold J stated at 316 [38]:*

*“The proper approach to be taken to the available discretion will generally be that outlined in the judgment of King CJ of the South Australia Supreme Court in Kouflidis v Salisbury City Corporation (1982) 29 SASR 321; 49 LGERA 17, namely to leave to the criminal law, the punishment of the unlawful conduct involved in the erection of the building and to determine the present application on the merits, but **taking care not to allow the wrongdoer to benefit from his wrongdoing**”.* (emphasis added)

It is not considered the existing unauthorised construction of the building predicates the recommendation of approval of this application. The application has been assessed on its merits, and it is not considered the applicant will benefit from the wrongdoing of undertaking the works contrary to the existing approval, in that the works as proposed as considered satisfactory and genuine for the proposed uses already approved.

The submissions have highlighted correspondence from past Council employees on this matter, where the scale of the building was discussed with regard to the categorisation of the equine centre and function centre uses. Council’s assessment is satisfied that the primary use of the building will be for the equine centre and that the building is worthy of support on the merits of the proposal.

iv. Concern that the building is already constructed.

Submissions raise the following concerns:

- *This application is for a building that has already been illegally built*
- *How is the Council to consider the clear breaches of the development consent when determining this application?*

Assessment:

As detailed earlier in this report, the Land and Environment Court has consistently held that an application to modify a development consent (via s4.55 or former s96) has the power to grant retrospective approval with regard to unauthorised works.

A full consideration under Section 4.55(1A) of ‘minimal environmental impact’ and ‘substantially the same development’ is still necessary, and this assessment has concluded that the proposal meets these tests and is recommended for approval.

Whilst there may be compliance issues, Council cannot take these alleged breaches into account in the assessment of an application. There are separate compliance provisions in the legislation to deal with breaches. Additionally, it is not unusual if there has been a breach to await the outcome of an application to see if the application provides the remedy to a situation.

As detailed in this report, Council is satisfied with the information provided and that it justifies the development in its current form, demonstrating it is bona fide.

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- v. Validity of the consent - the proposed modification relates to a consent which is unlawful and therefore should not be able to be modified.

Submissions raise the following concerns:

- *The numerous anomalies and design changes between the current proposal and the original approval must surely call into question the bona fide nature of the original application.*
- *A new statement of environmental effects and DA would be appropriate so the development can be properly assessed by the community.*

Assessment:

Council is satisfied that the proposed modifications proposed as part of this application can be considered under the provisions of Section 4.55 of the EP&A Act 1979. In undertaking this assessment, Council refers to *D L Newport Pty Ltd v Northern Beaches Council [2017] NSWLEC 1661* in which 'Legal Principles Governing the Power to Modify in s 96(2) (now 4.55(2) of the EPAA' outline that "modify" means "to alter without radical transformation". The proposed modifications under this application are not 'a radical transformation', but a redesign of the existing approved building, stormwater and car park layout, with no proposed modifications to the way in which the building and uses will operate.

Given consent was granted for the development on 14 November 2017, the period within which an appeal may be made to the Court has expired in accordance with the provisions of the EP&A Act 1979.

- vi. Minimal environmental impact – assessment under Section 4.55(1A)

Submissions raise the following concerns:

- *Section 4.55 (1A) permits the council to approve the modification only if: (a) It is satisfied that the proposed modification is of minimal impact*
- *The suggestion in the original DA (now notably abandoned) that the function use was solely intended to fund "psychotherapy" is not supported. The website advertising for the "wedding functions" with the benefit of a "bar" and commercial kitchen gives a more accurate picture. In any event, providing "psychotherapy" to humans is not "breeding, boarding, training or caring of animals for commercial purposes" which the nominated proposed use requires as the permissible use. Both functions and a psychotherapy facility are prohibited.*
- *Will the changes proposed in the present modification result in "minimal environmental impact", as that phrase has been understood by the relevant judicial authorities?*

Assessment:

Council is satisfied that the proposed modification, being the amendments to the proposed design and layout of the approved building, stormwater and car park layout is of minimal environmental impact.

The proposed amendments to the layout and design of the approved building will reduce impacts of the development and according to Council's Environmental Services, the acoustic report dated 28/01/2021 is acceptable. The report proposes a number of mitigation measures to minimise disturbance to neighbouring properties similar to the previous report for the site. Modified conditions of consent are recommended to ensure these measures are undertaken and control any impact arising from the amendments to the design of the building.

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There is no change to the approved use of the development proposed as part of this application. Accordingly, the operational restrictions imposed with the consent remain unaltered. It is particularly noted that the use of the building as a function centre remains approved for a maximum 120 guests.

It is noted for clarity that Council can only modify the existing development consent to the extent that is requested or agreed to by the applicant, or where there is a direct nexus between the proposed modifications and a need to impose new or alter existing conditions of consent. The proposed modifications sought under this application do not seek to amend the operations of the approved development, nor is there a nexus to amend any existing conditions of consent and they therefore must remain as approved.

The matter of characterisation has already been addressed in this report.

vii. Substantially the same – assessment under Section 4.55(1A)

Submissions raise the following concerns:

- *The change in focus of the application and its 20% internal increase in size means that it is not "substantially the same" as the DA use, and cannot therefore be approved as a modification application.*
- *Hatziaandreu Holdings Pty Ltd v Bayside Council [2020] NSWLEC 1191 is a more recent example than the Trinvas v City of Sydney cited recently by Council officers.*

Assessment:

A full assessment against the principles governing the exercise of power under s4.55 established under *DL Newport Pty Ltd v Northern Beaches Council [2017] NSWLEC 1661* is addressed earlier in this report.

Council is satisfied that the proposed modification would be substantially the same as the development which was originally approved, that is the proposal is considered to be "essentially or materially having the same essence" as the original approved building (*Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280*).

The only proposed modification under the application is design changes to the approved building, with all other aspects of the approval remaining unchanged.

viii. Impacts on amenity, Clause 2.8 of SLEP 2014 and a requirement to have 'no adverse impact' with regard to acoustic, noise and dust impacts

Submissions raise the following concerns:

- *No adverse impact" and not "acceptable impact" should apply.*
- *In accordance with the provisions of clause 2.8, SLEP 2014, it is incumbent on the applicant to demonstrate, and for Council to assess, that the proposed modification does not merely have acceptable impacts but has no adverse impacts to the amenity of the neighbourhood.*
- *Prohibited developments operating under the temporary use clause 2.8 are required to demonstrate no adverse impact. This is a much higher standard than an "acceptable impact".*
- *Previous applications and approvals have not properly addressed the "no adverse impact" requirements.*
- *Noise impacts: The modification application does not adequately demonstrate that the development will have no adverse impact on the amenity of the neighbourhood, particularly in relation to noise.*

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- *The noise impacts from the current proposal have not been properly assessed and do not provide basis to demonstrate there will be no adverse impact. Further to this, the increased traffic to and from the venue will result in adverse impacts.*
- *Acoustic impacts of the development and the validity of the acoustic assessment submitted with the application, including:*
  - a. *Flawed modelling and inaccurate distances in the submitted acoustic report.*
  - b. *Location of the stage in the acoustic assessment.*
  - c. *Design of the building and acoustic modelling being undertaken with doors open.*
  - d. *Consideration of acoustic impacts and reverberation of noise from cliffs surrounding the site.*
  - e. *Impacts of noise on the east of the site and future development potential.*

*Note that several similar applications where developers have proposed temporary wedding venues in rural zones have been refused outright (see DA18/2094 for 2819A Moss Vale Road Barrengarry; DA18/2115/4 for 171B Strongs Rd Jaspers Brush; and DA19/1133 for 29 Tindalls Lane, Broughton).*

*The modification application does not adequately demonstrate that the development will have no adverse impact on the amenity of the neighbourhood, particularly in relation to noise.*

*The large escarpment surfaces ensure that sound generated in the valley resonates and transmits readily (as has been demonstrated to us during the building phases of developments nearby). The thought of regular evening events with function-level music exiting a building through open doors is fairly concerning. It is hoped that Council takes appropriate steps to investigate and regulate impacts.*

#### Assessment:

The matters for consideration under clause 2.8 have been considered as part of the assessment of this application. However, it is noted that development consent has already been granted for this temporary use.

It is noted that the development approval for the use has already been approved. Any assessment is to be based on the proposed modification and impacts associated with the changes proposed.

The Noise Impact Assessment (Reference No. 1703010e-l.docx, dated 25/02/2021) prepared by Harwood Acoustics and submitted by the applicant, has specifically addressed the issues raised in this submission, particularly the requirements of Clause 2.8. This report is read in conjunction with the Revised Environmental Noise Impact Assessment report (Reference No. 1703010E-R, Revision A, dated 28/01/2021) prepared by Harwood Acoustics.

With regard to clause 2.8, it is considered the interpretation of "not adversely impact ... the amenity of the neighbourhood", is to be consistent with the judgement of the Land and Environment Court in *Marshall Rural Pty Ltd v Hawkesbury City Council*, being that **the noise level emitted from the subject function or event should not exceed the background noise level at any point within 30m of an affected residence**. Accordingly, this would not adversely impact the amenity of the neighbourhood.

An objector has submitted a draft Noise Impact Assessment prepared by Koikas Acoustics (dated 03/02/2021) to peer review the Harwood Acoustic report (dated 22/12/2020). This peer review concludes the following:

*"In light of the findings of a review conducted into the acoustic report prepared in support of the proposed temporary use of the equine training facility for use as a function centre, Koikas Acoustics Pty Ltd has formed the opinion that:*

Planning Report – S4.55 Assessment – DS20/1397 – 408 Bunkers Hill Rd, BARRENGARRY - Lot 144 DP 751262 (Por 144)

1. *The proposed use as indicated in the acoustic report would not meet the required threshold for compliance under c12.8 (3) (b) of the LEP and that noise levels would adversely impact adjoining land and the amenity of the neighbourhood.*
2. *The acoustic consultant has not conducted adequate surveys of existing environmental noise levels.*
3. *The acoustic report does not include sufficient detail to allow the consent authority to be confident in its findings”.*

In summary, the submitted Harwood Noise Impact Assessment (25/02/2021) states the following:

*“15. To that end, the predicted level of noise emission from this proposal is no more than 23 to 24 dBA (Leq, 15 minute) from guest noise and up to 30 dBA (Leq, 15 minute) with the inclusion of a reasonably high level of amplified music.”*

The submitted Environmental Noise Impact Assessment (28/02/2021) identifies the following background noise levels:

*“In this instance, short-term background noise measurements were taken near to the boundary of receptor location R1 on Wednesday 5 April 2015 at approximately 11.30 am. The measured background noise level at this time, at this location was 31 dBA L90, 15 minute. It is reasonable to assume that the background noise level in the vicinity of the nearest receptors will drop to 30 dBA (L90, 15 minute) or below, at least on some occasion during the evening and early night.”*

The predicted level of noise emission from this proposal, based on the submitted information, is identified to be no more than the background rating levels in accordance with the standard set by *Marshall Rural Pty Ltd v Hawkesbury City Council*.

Council's Environmental Health Officer has reviewed all the submitted information from the applicant and objectors, and concluded the proposal and acoustic reports are acceptable with regard to clause 2.8. Council's Environmental Services have concluded that the proposed amended design of the building and use of the building will not adversely impact on any adjoining land or the amenity of the neighbourhood. The report proposes a number of mitigation measures and controls to minimise disturbance to neighbouring properties similar to the previous report for the site.

The development will continue to operate under the terms of clause 2.8 for temporary use of land as approved under the original consent (as modified) and remains consistent with the RU1 Primary Production zone objectives.

The modified design will particularly remain consistent with clause 2.8(3)(c), with the temporary use and location of any structures related to the use not to adversely impact on environmental attributes or features of the land or increase the risk of natural hazards that may affect the land.

Modified Conditions 42 and 58 are recommended to reflect the proposed mitigation measures proposed in the submitted Acoustic Report.

It is noted that submissions discussed the concerns of noise to the east and future developments; however, Council can only consider what is approved at this time and there are currently no residential properties to the east approved.

ix. Health and safety concerns

Submissions raise the following concerns:

- *The applicant is proposing to house and demonstrate Shire horses in unsafe conditions (owing to the low ceiling height).*



Planning Report – S4.55 Assessment – DS20/1397 – 408 Bunkers Hill Rd, BARRENGARRY - Lot 144 DP 751262 (Por 144)

- *It is also very doubtful that the health of users of the facility can be guaranteed if manure and urine producing animals are housed directly adjacent to a commercial kitchen (-50kg of raw waste per horse per day).*

Assessment:

Council's Environmental Services has reviewed the submitted information and have found this, including the revised plans for the proposed kitchen/catering facility within the building, to be satisfactory and that compliance with the relevant legislation will be achieved.

Council is satisfied that existing conditions of consent will address the health and safety concerns raised.

x. Lack of Neighbour Notification

Submissions raise the following concerns:

- *The original application and subsequent variations have not been properly described or widely advertised to allow proper community consultation and consideration of whether the development results in adverse impacts.*

Assessment:

The application was notified to previous submitters only, noting the submissions on the previous modification application DS19/1196.

It is noted that the original development application was notified to surrounding residents in accordance with Council's Community Consultation Policy up to a buffer of 500m. No submissions were received.

The above process was consistent with the Community Consultation Policy and the requirements of the EP&A Act 1979.

**Section 4.55(3) – Matters Relevant to the Application**

In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.

The reasons for approval of the Development Application are extracted from the consent as follows:

1. *Ensure the proposed development:*
  - a) *achieves the objects of the Environmental Planning and Assessment Act, 1979;*
  - b) *complies with the provisions of all relevant environmental planning instruments;*
  - c) *is consistent with the aims and objectives of Council's Development Control Plans, Codes and Policies.*
2. *Ensure that 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.*
3. *Meet the increased demand for public amenities and services attributable to the development in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979.*

Planning Report – S4.55 Assessment – DS20/1397 – 408 Bunkers Hill Rd, BARRENGARRY - Lot 144 DP 751262 (Por 144)

4. *Ensure the protection of the amenity and character of land adjoining and in the locality of the proposed development.*
5. *Minimise any potential adverse environmental, social or economic impacts of the proposed development.*
6. *Ensure that all traffic, carparking and access requirements arising from the development are addressed.*
7. *Ensure the development does not conflict with the public interest.*

The modified development remains consistent with the above reasons for granting consent.

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

Environmental Planning and Assessment Act 1979

Section 4.46 – Integrated Development			
Act	Provision	Approval	Relevant
Rural Fires Act 1997	100B	Authorisation under section 100B in respect of bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	<input checked="" type="checkbox"/>

**i) Environmental Planning Instruments**

SEPP (Sydney Drinking Water Catchment) 2011

Water NSW advised in correspondence dated 25 November 2020 of the following:

*“Based on the site inspection and the information provided, Water NSW is satisfied that the proposed development can achieve a neutral or beneficial effect on water quality provided appropriate conditions are included in any development consent and are subsequently implemented.*

*Water NSW therefore does not object to the modification subject to the following conditions. This advice replaces Water NSW's previous advices to Council (dated 7 June 2019, 9 November and 14 September 2017).”*

Conditions are to be modified to reference updated plans and to require a Soil & Water Management Plan. An additional condition is to be inserted to ensure the development is monitored, maintained and managed as per the Operational Environmental Management Plan.

Accordingly, modified Conditions 7, 20, 24 and 25 and additional Condition 23A are to be imposed should the application be determined by approval.

SEPP (Rural Lands) 2008

No additional matters are raised for consideration under this Policy as a result of the modification application. This Policy has been repealed.

Planning Report – S4.55 Assessment – DS20/1397 – 408 Bunkers Hill Rd, BARRENGARRY - Lot 144 DP 751262 (Por 144)

SEPP 55 Remediation of Land

No additional matters are raised for consideration under this Policy as a result of the modification application.

Shoalhaven LEP 2014

The modification application raises no additional matters for consideration under SLEP 2014 as the it only proposes to make amendments to the layout and design of the approved building.

It is noted that development consent has already been granted for the temporary use of land under clause 2.8. The development will continue to operate under the terms of clause 2.8 for temporary use of land and remains consistent with the RU1 Primary Production zone objectives.

The modified design will particularly remain consistent with clause 2.8(3)(c), with the temporary use and location of any structures related to the use not to adversely impact on environmental attributes or features of the land or increase the risk of natural hazards that may affect the land.

**ii) Draft Environmental Planning Instrument**

The Draft Illawarra Shoalhaven Regional Plan 2041 does not raise any additional matters for consideration as part of the assessment of this application.

**iii) Any Development Control Plan**

Shoalhaven DCP 2014

The provisions of Chapters G1, G2, G7, G8 and G21 (addressed as part of the original DA) have been considered and no concerns are raised, particularly by Council's Development Engineer.

It is noted that there are no operational changes proposed as part of this application.

Accordingly, the development as approved caters for 30 car parking spaces constructed from all-weather gravel. This is considered to be sufficient for the purposes of the modified development, noting that there is sufficient level land to the west of the proposed car parking area to cater for any overflow.

**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**

Nil

**iv) Environmental Planning and Assessment Regulation 2000**

No additional matters for consideration.

Shoalhaven Contribution Plan 2010

That proposed by the modification application is considered to increase the demand for community facilities in accordance with the Shoalhaven Contributions Plan 2010 (the Plan). The development is most aptly characterised as a Hotel/Restaurant development for the purpose of calculating contributions under the Plan.

Contributions for the original application were assessed based on 300sqm gross floor area, which excluded the stables within the proposed building.

Planning Report – S4.55 Assessment – DS20/1397 – 408 Bunkers Hill Rd, BARRENGARRY - Lot 144 DP 751262 (Por 144)

The revised plans have increased the size of the building to approximately 460sqm in gross floor area. However, as the stables were previously excluded and the two (2) associated tack rooms have been introduced into the design, the assessable gross floor area is 390sqm.

It is noted that modification has not been sought as part of this application to contributions under Condition 37 and the contribution amount required by the consent was paid on 6 February 2020.

Accordingly, additional Condition 37A is to be imposed requiring payment based on the additional 90sqm of gross floor area, should the application be determined by approval. This results in a 0.45ET.

Project	Description	Rate	Qty	Total	GST	GST Incl
CWFIRE2001	Citywide Fire & Emergency services	\$138.13	0.45	\$62.16	\$0.00	\$62.16
CWFIRE2002	Shoalhaven Fire Control Centre	\$202.07	0.45	\$90.93	\$0.00	\$90.93
CWMGMT3001	Contributions Management & Administration	\$574.39	0.45	\$15.31	\$0.00	\$15.31
Sub Total:						\$168.40
GST Total:						\$0.00
Estimate Total:						\$168.40

**(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	Satisfactory.
Built Environment	Satisfactory. The proposed modifications are considered to result in a positive built form impact.
Social Impacts	Satisfactory.
Economic Impacts	Satisfactory.

**(c) Suitability of the site for the development**

The subject site continues to be an appropriate site for the proposed development.

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

Eleven (11) submissions were received by Council objecting to the proposal. The concerns raised have been addressed earlier in this report.

**(e) The Public Interest**

Consideration has been given to the wider public interest in terms of both environmental and economic impact. The development is considered to be in the public interest.

**Delegations**

**Guidelines for use of Delegated Authority**

The Guidelines for use of Delegated Authority have been reviewed and the assessing officer does not have the Delegated Authority to determine the application.

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The application has been called in by the Councillors due to the community interest. The application must be determined by the elected Council.

### Recommendation

This application has been assessed having regard to the Heads of Consideration for Section 4.55(1A) under the *Environmental Planning and Assessment Act 1979*. As such, it is recommended that Modification Application No. DS20/1397 relating to Development Consent No. DA17/1157 be approved subject to the recommended modifications to the development consent as detailed below:

- a) To modify Condition 1 as follows:

### General

1. This consent relates to **Animal Boarding and Training Establishment (equine education centre) and the temporary use of the building as a Function Centre** as illustrated on the plans (referenced in the table below), specifications and supporting documentation stamped with reference to this consent, as modified by the following conditions. The development must be carried out in accordance with this consent. **(modified by DS20/1397)**

STAMPED DOCUMENTS/PLANS	REF/SHEET NO.	PREPARED BY	DATED
Site Plan	Dwg No. N26939-01	Allen Price & Scarratts Pty Ltd	May 2017
Landscape Plan & Sections <b>(inserted by DS20/1397)</b>	-	Realm Studios	08/05/2020
Stormwater Plan & Stormwater Management Details <b>(modified by DS20/1397)</b>	Dwg No. 20568-C02 & C03	Westlake Punnett	30/10/2020
Floor Plan <b>(modified by DS20/1397)</b>	DA 10, Rev A	Grove Architects	06/07/2020
Roof Plan <b>(inserted by DS20/1397)</b>	DA 11, Rev A	Grove Architects	06/07/2020
East & West Elevations <b>(modified by DS20/1397)</b>	DA 12, Rev A	Grove Architects	06/07/2020
South & North Elevations & Section <b>(modified by DS20/1397)</b>	DA 13, Rev A	Grove Architects	06/07/2020
Site and Soil Investigation and System Design for On Site Wastewater Management	Our ref: 2068ww	Harris Environmental Consulting	3/2/2017
Environmental Noise Impact Assessment - Proposed Function Venue & Equine Centre <b>(modified by DS20/1397)</b>	Reference No. 1703010E-R Rev A	Harwood Acoustics	28/01/2021
Equine Education Program	-	The Cedars – Kangaroo Valley	-

Notes:



Planning Report – S4.55 Assessment – DS20/1397 – 408 Bunkers Hill Rd, BARRENGARRY - Lot 144 DP 751262 (Por 144)

- 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 s96 of the Act, or a fresh development application. No works, **other than those approved under this consent**, must be carried out without the prior approval of Council.
- Where there is an inconsistency between the documents lodged with this application and the following conditions, the conditions must prevail to the extent of that inconsistency.

b) To modify Condition 6 as follows:

**NSW Rural Fire Service**

6. The conditions of the General Terms of Approval issued by the NSW Rural Fire Service (Reference No. D17/1532, dated 11 October 2017 and Reference No. DA-2017-01669-S4.55-1, dated 18 December 2020 in relation to construction standards) are included as conditions of this consent. **(modified by DS20/1397)**

c) To modify Condition 7 as follows:

**General**

7. The works and site layout must be as:

- specified in the Statement of Environmental Effects by Allen Price and Scarratts Pty Ltd (Reference No. N26939, Revision A, dated 28/04/2017);
- shown on the proposed stormwater plan by Westlake Punnett (Drawing No. 20568-C02; dated 30/10/2020); and
- shown on the ground floor plan by Grove Architects Pty Ltd (Drawing No. DA 10, Revision A, dated 06/07/2020).

No revisions to site layout, staging or external works that will impact on water quality, are to be permitted without the agreement of Water NSW. **(modified by DS20/1397)**

d) To modify Condition 20 as follows:

**Access and Stormwater Management (modified by DS20/1397)**

20. The access and all stormwater treatment and management measures must be implemented as shown on the proposed stormwater plans by Westlake Punnett (Drawing No. 20568-C02 & C03, dated 30/10/2020), in particular as elaborated or varied below:

- a rainwater tank with a minimum total capacity of 19,000 litres must be installed to collect all roof runoff from the equine education/function centre building with 9,000 litres be devoted to temporary detention, and a bleeder orifice with a maximum internal diameter of 12mm to be fitted halfway up the tank,
- any detention discharge together with overflow from the tanks must be directed to a level spreader,
- the tanks must be as a minimum plumbed to toilets within the equine education centre, and
- all other drainage from car parking areas must be directed to grassed areas north of the car parking area via sheet flow such that run-off does not result in increased erosion. **(modified by DS20/1397)**

e) To insert Condition 23A as follows:

Planning Report – S4.55 Assessment – DS20/1397 – 408 Bunkers Hill Rd, BARRENGARRY - Lot 144 DP 751262 (Por 144)

23A. *The development must be monitored, maintained and managed as per the Operational Environmental Management Plan. (inserted by DS20/1397)*

f) To modify Conditions 24 and 25 as follows:

#### **Construction Activities**

24. *A Soil & Water Management Plan must be prepared for all site works required as part of the development. The Plan must:*

- *be prepared by a person with knowledge and experience in the preparation of such plans*
- *meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004) manual*
- *be prepared prior to the issuance of a Construction Certificate, and be to the satisfaction of Council*
- *include controls to prevent sediment leaving the construction site and entering any natural drainage system or stormwater drain, and*
- *specify how suitable groundcover will be achieved within required timeframes. (modified by DS20/1397)*

25. *The Soil & Water Management Plan must be implemented, and no works are to commence until effective erosion and sediment controls have been installed around the existing and proposed construction site. The controls must be regularly inspected, maintained and retained until works have been completed and groundcover established. (modified by DS20/1397)*

g) To modify Conditions 35 and 36 as follows:

#### **Carpark Design**

35. *The car park and access must be designed in accordance with the proposed stormwater plan by Westlake Punnett (Drawing No. 20568-C02, dated 30/10/2020). Details must be displayed on the Engineering Design Plans and submitted with an application for a Construction Certificate. (modified by DS20/1397)*

#### **Stormwater Drainage Design**

36. *The drainage system must be in accordance with the proposed stormwater plans by Westlake Punnett (Drawing No. 20568-C02 & C03, dated 30/10/2020). Details must be submitted with an application for a Construction Certificate. (modified by DS20/1397)*

h) To insert Condition 37A as follows:

37A. *This development (as modified) will generate a need for the additional services and/or facilities described in Shoalhaven Contributions Plan 2010 and itemised in the following table:*

<b>Project</b>	<b>Description</b>	<b>Calculation</b>	<b>Amount</b>
CWFIRE2001	Citywide Fire & Emergency services	\$138.13 * 0.45	\$62.16
CWFIRE2002	Shoalhaven Fire Control Centre	\$202.07 * 0.45	\$90.93
CWMGMT3001	Contributions Management & Administration	\$574.39 * 0.45	\$15.31
			<b>\$168.40</b>

Planning Report – S4.55 Assessment – DS20/1397 – 408 Bunkers Hill Rd, BARRENGARRY - Lot 144 DP 751262 (Por 144)

*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 2010 can be accessed on Councils website [www.shoalhaven.nsw.gov.au](http://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. **(inserted by DS20/1397)**

i) To modify Condition 42 as follows:

**Mechanical Plant Equipment**

42. *The level of noise emission from any mechanical plant servicing the development must not exceed an 'A' frequency weighted, energy average, sound pressure level (Leq) of 25 dBA, when measured over 15 minutes at the closest receptor. This is to ensure the overall level of noise emission from the Site does not exceed the acceptable noise limit of 35 dBA. To achieve this, the total sound power level (Lw) of any mechanical plant combined should not exceed 80 dBA. **(modified by DS20/1397)***

j) To modify Condition 58 as follows:

**Noise (modified by DS20/1397)**

58. *The noise measures as required by this development consent and as detailed in the Environmental Noise Impact Assessment - Proposed Function Venue & Equine Centre (Reference 1703010E-R, Revision A, dated 28/01/2021), prepared by Harwood Acoustics must be implemented and maintained for the life of the approved use. In this regard, the following requirements must be complied with:*

- a) *Any amplified music or amplified voice through a Public Address system must not exceed an energy-average sound pressure level (I-eq, 15 minute) of **86dBA** or sound power level of **98 dBA**, when measured at 3m from the speakers within the building.*
- b) *All amplified music must be within the building.*
- c) *All doors and windows must be closed during all functions where there is amplified music with the exception of the two (2) central doors in the Eastern façade (D11 and D12).*
- d) *Speakers must be located no higher than 1.5m above the ground and angled toward the centre of the floor.*
- e) *A sound level meter must be available during all events so that the owner or property manager may 'spot check' for noise compliance during or prior to the event. The meter must be calibrated by a suitably qualified acoustical consultant. Spot checks must be undertaken if noise complaints are received from adjoining properties.*
- f) *The use of the premises must not cause or create offensive noise to adjacent residential areas. Offensive noise is defined in the Protection of the Environment Operations Act 1997.*
- g) *The neighbouring residents must be provided with the name and mobile telephone number of a person at each event that can be contacted to report any noisy or antisocial behaviour. **(modified by DS20/1397)***

All other conditions are to remain unchanged.



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 SECTION 4.55 MODIFICATION  
APPLICATION BY WAY OF  
CONSOLIDATED DEVELOPMENT CONSENT**

Environmental Planning and Assessment Act, 1979  
DA17/1157  
(Incorporating DS19/1196 & DS20/1397)

**TO:**

Allen Price & Scarratts Pty Ltd  
PO Box 73  
NOWRA NSW 2541

being the applicant(s) for DS20/1397 relating to:

408 Bunkers Hill Rd, BARRENGARRY - Lot 144 DP 751262

**APPROVED USE AND OR DEVELOPMENT:**

Animal Boarding and Training Establishment (equine education centre) and the temporary use of the building as a Function Centre

**DETERMINATION DATE:**

14 November 2017

**S4.55(1A) DETERMINATION DATE (DS20/1397):**

Pursuant to Clause 122 of the Environmental Planning and Assessment Regulation 2000, notice is hereby given that the above application has been determined by granting consent, subject to the conditions listed below.

**CONSENT TO OPERATE FROM:**

14 November 2017

**CONSENT TO LAPSE ON:**

14 November 2022

*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:

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## PART A

### CONDITIONS OF A GENERAL NATURE, INCLUDING A DESCRIPTION OF THE PROPOSED DEVELOPMENT

#### General

- This consent relates to **Animal Boarding and Training Establishment (equine education centre) and the temporary use of the building as a Function Centre** as illustrated on the plans (referenced in the table below), specifications and supporting documentation stamped with reference to this consent, as modified by the following conditions. The development must be carried out in accordance with this consent. **(modified by DS20/1397)**

STAMPED DOCUMENTS/PLANS	REF/SHEET NO.	PREPARED BY	DATED
Site Plan	Dwg No. N26939-01	Allen Price & Scarratts Pty Ltd	May 2017
Landscape Plan & Sections <b>(inserted by DS20/1397)</b>	-	Realm Studios	08/05/2020
Stormwater Plan & Stormwater Management Details <b>(modified by DS20/1397)</b>	Dwg No. 20568-C02 & C03	Westlake Punnett	30/10/2020
Floor Plan <b>(modified by DS20/1397)</b>	DA 10, Rev A	Grove Architects	06/07/2020
Roof Plan <b>(inserted by DS20/1397)</b>	DA 11, Rev A	Grove Architects	06/07/2020
East & West Elevations <b>(modified by DS20/1397)</b>	DA 12, Rev A	Grove Architects	06/07/2020
South & North Elevations & Section <b>(modified by DS20/1397)</b>	DA 13, Rev A	Grove Architects	06/07/2020
Site and Soil Investigation and System Design for On Site Wastewater Management	Our ref: 2068ww	Harris Environmental Consulting	3/2/2017
Environmental Noise Impact Assessment - Proposed Function Venue & Equine Centre <b>(modified by DS20/1397)</b>	Reference No. 1703010E-R Rev A	Harwood Acoustics	28/01/2021
Equine Education Program	-	The Cedars – Kangaroo Valley	-

#### Notes:

- 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 s96 of the Act, or a fresh development application. No works, **other than those approved under this consent**, must be carried out without the prior approval of Council.

Determination Notice – Page 3 of 17 – DA17/1157 incorporating DS19/1196 & DS20/1397

- *Where there is an inconsistency between the documents lodged with this application and the following conditions, the conditions must prevail to the extent of that inconsistency.*
- 2. The **approved use** must not be occupied or the use must not commence until all relevant conditions of development consent have been met or unless other satisfactory arrangements have been made with council (i.e. a security).

**Occupation Certificate**

- 3. An **Occupation Certificate** must be issued by the Principal Certifying Authority (PCA) before any of the approved development can be used or occupied.

**Limited Consent**

- 4. The temporary use of the building as a Function Centre is limited for a period of three years **as measured from the issue of an Occupation Certificate. (modified by DS19/1196)**
- 5. Should the use of the building for the purpose of an Animal Boarding and Training Establishment cease to operate, then the temporary use of the building as a Function Centre must also cease.

**Notes**

- a) *Application may be made to extend the consent under Section 96(1A) of the Environmental Planning & Assessment Act, 1979.*
- b) *If the applicant under S96 is not the original applicant, the written consent of the owner of the land must first be obtained.*
- c) *An application to extend the consent should be made at least 28 days **before** the consent will cease to operate.*
- d) *In deciding whether to extend the consent, Council will take into account any relevant policy amendments made since the consent was issued.*

**PART B**

**INTEGRATED DEVELOPMENT CONDITIONS**

**NSW Rural Fire Service**

- 6. The conditions of the General Terms of Approval issued by the NSW Rural Fire Service (Reference No. D17/1532, dated 11 October 2017 and Reference No. DA-2017-01669-S4.55-1, dated 18 December 2020 in relation to construction standards) are included as conditions of this consent. **(modified by DS20/1397)**



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## **PART C**

### **WATER NSW CONDITIONS**

#### **General**

7. The works and site layout must be as:

- specified in the Statement of Environmental Effects by Allen Price and Scarratts Pty Ltd (Reference No. N26939, Revision A, dated 28/04/2017);
- shown on the proposed stormwater plan by Westlake Punnett (Drawing No. 20568-C02; dated 30/10/2020); and
- shown on the ground floor plan by Grove Architects Pty Ltd (Drawing No. DA 10, Revision A, dated 06/07/2020).

No revisions to site layout, staging or external works that will impact on water quality, are to be permitted without the agreement of Water NSW. **(modified by DS20/1397)**

#### **Domestic Wastewater Management**

8. The domestic wastewater management septic tank and beds must be designed, located and installed in accordance with the recommendations in the wastewater report prepared by Harris Environmental Consulting (dated 3 February 2017) and Designing and Installing On-Site Wastewater Systems (Sydney Catchment Authority, 2012) but with the following specific requirements and modifications:

- the septic tank must have a minimum volume of 5,500 litres and must be fitted with an outlet filter,
- the effluent distribution pipe from the tank to the absorption beds must be buried at a minimum depth of 300 mm (500 mm under an access way) and laid in a manner that provides protection against mechanical damage or deformation,
- absorption beds with a total base area of 234 square metres must be installed (e.g. four beds each 20m long x 2.9m wide) and must be located as indicated in the report, and
- switching valves and/or a dosing/distribution mechanism must be installed to ensure the effluent is evenly distributed to different parts of the beds.

#### **Horse-Wash Bay Wastewater**

9. The wastewater generated from the horse-wash bay and cleaning of the stables must be disposed of via a manure trap and baffled septic tank to an appropriately designed and constructed absorption bed with the following specific requirements or modifications:

- the septic tank must have a minimum capacity of 2500 litres and must be fitted with an outlet filter,
- the absorption bed must have a minimum base area of 10 square metres (e.g. one bed each 10 metres long and 1 metre wide), and
- the manure trap must be cleaned out weekly and manure disposed of to the dedicated manure stockpile area specified below.

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### **Common Wastewater Management Requirements**

10. The absorption beds must be fenced off from livestock and vehicles.
11. All run-on and stormwater collected from roofs, access roads and other hard surface areas must be diverted away from the bed area, e.g. by means of a stabilised bund or drain with provision for energy dissipation at the outlet to prevent scouring or erosion.
12. All effluent must be fully assimilated within the boundaries of the property.
13. No effluent disposal area must be located within 100 metres of a named river, any perennial or intermittent creek or watercourse or water supply reservoir, or within 40 metres of a dam or drainage depression or waterbodies or roadside swale.
14. Appliances and fixtures with at least a four star water efficiency rating must be installed in the equine education/function centre to minimise the volume of wastewater produced.
15. These conditions of consent relating to wastewater management must be provided to the installers of the wastewater management and effluent disposal systems.
16. The installers of the wastewater management and effluent disposal systems must certify to Council in writing that the wastewater management and effluent disposal systems have been constructed and installed as per these conditions of consent and in accordance with Designing and Installing On-Site Wastewater Systems (Sydney Catchment Authority, 2012), and that the systems have been tested and are functioning properly.
17. Council must not issue any Occupation Certificate until Council has received the certification from the installers and approved the onsite wastewater management systems under the *Local Government Act 1993* as being consistent with these conditions.
18. The on-site wastewater management systems must be maintained according to Section 5 of the Department of Local Government's guidelines On-site Sewage Management for Single Households (1998), AS/NZS 1547:2012 On-site Domestic Wastewater Management, and the manufacturer's specifications.

### **Manure Management**

19. All manure generated in the stables building, corral and captured in the manure trap must be managed as elaborated below:
  - the collected manure must be stockpiled in dedicated bins or in a covered area, underlain by a sealed or impervious floor
  - the manure storage area or bins must be located away from any stormwater flow paths and a minimum of 40 metres from a dam or drainage depression and 100 metres from any perennial or intermittent watercourse, and
  - manure must be composted and use on-site or transported off-site.

### **Access and Stormwater Management (modified by DS20/1397)**

20. The access and all stormwater treatment and management measures must be implemented as shown on the proposed stormwater plans by Westlake Punnett (Drawing No. 20568-C02 & C03, dated 30/10/2020), in particular as elaborated or varied below:

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- a rainwater tank with a minimum total capacity of 19,000 litres must be installed to collect all roof runoff from the equine education/function centre building with 9,000 litres be devoted to temporary detention, and a bleeder orifice with a maximum internal diameter of 12mm to be fitted halfway up the tank,
  - any detention discharge together with overflow from the tanks must be directed to a level spreader,
  - the tanks must be as a minimum plumbed to toilets within the equine education centre, and
  - all other drainage from car parking areas must be directed to grassed areas north of the car parking area via sheet flow such that run-off does not result in increased erosion. *(modified by DS20/1397)*
21. No variation to stormwater treatment and management that will impact on water quality, must be permitted without the agreement of Water NSW.
22. A suitably qualified consultant or engineer must certify in writing to Water NSW and Council that all required wastewater and stormwater works have been carried out as per these conditions of consent and are in a functional state, prior to the issuance of any Occupation Certificate.

#### **Operational Environmental Management Plan**

23. An Operational Environmental Management Plan (OEMP) must be prepared in consultation with Water NSW by a person with knowledge and experience in the preparation of such plans **prior to the issuance of any Occupation Certificate**. The OEMP must be implemented which must include but not be limited to:
- details on the location, description and nature of wastewater and stormwater management structures such as pits, pipes, septic tanks, effluent disposal areas, rainwater collection system, and manure
  - an identification of the responsibilities and detailed requirements for the inspection, monitoring and maintenance of all wastewater and stormwater management structures and manure, including the frequency of such activities
  - the identification of the individuals or positions responsible for inspection and maintenance activities including a reporting protocol and hierarchy, and
  - checklists for recording inspections and maintenance activities.
- 23A. The development must be monitored, maintained and managed as per the Operational Environmental Management Plan. *(inserted by DS20/1397)*

#### **Construction Activities**

24. A Soil & Water Management Plan must be prepared for all site works required as part of the development. The Plan must:
- be prepared by a person with knowledge and experience in the preparation of such plans
  - meet the requirements outlined in Chapter 2 of NSW Landcom's Soils and Construction: Managing Urban Stormwater (2004) manual
  - be prepared prior to the issuance of a Construction Certificate, and be to the satisfaction of Council

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- include controls to prevent sediment leaving the construction site and entering any natural drainage system or stormwater drain, and
- specify how suitable groundcover will be achieved within required timeframes.  
(modified by DS20/1397)

25. The Soil & Water Management Plan must be implemented, and no works are to commence until effective erosion and sediment controls have been installed around the existing and proposed construction site. The controls must be regularly inspected, maintained and retained until works have been completed and groundcover established.  
(modified by DS20/1397)

## **PART D**

### **CONDITIONS THAT MUST BE COMPLIED WITH BEFORE WORK CAN COMMENCE**

#### ***Principal Certifying Authority/Construction Certificate***

26. Before any building works can commence:
- a) A Principal Certifying Authority (PCA) must be appointed, and
  - b) A Construction Certificate must be obtained from either Council or an accredited certifier.

#### ***Notice of Commencement***

27. Notice must be given to Council at least two (2) days prior to the commencement of building work.
28. Prior to the commencement of works, Council must be advised in writing of the name and 24 hour contact number of the designated person/company nominated by the applicant to be responsible for construction of all engineering works including erosion and sediment control measures and their maintenance.

#### ***Builders' Toilet***

29. Before commencing building operations, a builder's water closet accommodation must be provided to Council's satisfaction.

A chemical toilet may be used on the site or alternatively the site may be provided with temporary closet accommodation connected to Council's sewer where sewer is available and operational. Under no circumstances will pit toilets or similar be accepted by Council.

#### ***Existing Services***

30. Prior to the commencement of any work(s) associated with this development, the person benefitting from this consent must check that the proposed works are not affected by any Council, electricity, telecommunications, gas or other services. All services, existing and proposed, above or below ground are to be shown accurately on the engineering plans including longitudinal sections with clearances to proposed infrastructure clearly labelled. Any required alterations to services as a consequence of undertaking works under this consent will be at the developer's expense. In addition any repair or damage to services will be at the developers expense, and

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***Sign – Supervisor Contact Details***

31. A sign must be erected in a prominent position on any site where building work is being carried out:
- a) showing the name, address and telephone number of the Principal Certifying Authority for the work;
  - b) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
  - c) stating that unauthorised entry to the site is prohibited.

Any such sign is to be maintained while the building work is being carried out.

***Fencing***

32. Prior to the commencement of any works the building site is to be suitably fenced to prevent access to the site by members of the public and any unauthorised persons.

***PART E***

**CONDITIONS THAT MUST BE COMPLIED WITH BEFORE A CONSTRUCTION  
CERTIFICATE CAN BE ISSUED**

***Engineering Design Plans***

33. Engineering design plans and specifications for internal civil works must be submitted to the nominated accredited certifier (Private Certifier or Council) for approval, prior to the issue of a Construction Certificate. All work must be carried out in accordance with the approved plans.
34. All civil works are to be in accordance with Council's Engineering Design Specifications and Development Construction Specifications current at the time of construction unless otherwise specified in this consent.

***Carpark Design***

35. The car park and access must be designed in accordance with the proposed stormwater plan by Westlake Punnett (Drawing No. 20568-C02, dated 30/10/2020). Details must be displayed on the Engineering Design Plans and submitted with an application for a Construction Certificate. *(modified by DS20/1397)*

***Stormwater Drainage Design***

36. The drainage system must be in accordance with the proposed stormwater plans by Westlake Punnett (Drawing No. 20568-C02 & C03, dated 30/10/2020). Details must be submitted with an application for a Construction Certificate. *(modified by DS20/1397)*

***Contributions for Additional Services and/or Facilities***

37. This development will generate a need for additional services and/or facilities as described in Council's *Contributions Plan 2010*, as itemised in the following table.

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Project	Description	Calculation	Amount
CWFIRE2001	Citywide Fire & Emergency services	\$130.93 * 1.5	\$196.40
CWFIRE2002	Shoalhaven Fire Control Centre	\$191.55 * 1.5	\$287.32
CWMGMT3001	Contributions Management & Administration	\$48.37 * 1	\$48.37
			<b>\$ 532.09</b>

Contribution rates are adjusted annually on 1<sup>st</sup> July in accordance with the indexation formula indicated in the Contributions Plan (currently the implicit price deflator) and the total contribution levied **will be adjusted accordingly at the time of payment** (ie contributions are calculated on the rate applicable at the date of payment, **not** the date of development consent).

A total contribution, currently assessed at the sum of **\$532.09** (i.e. 2017/2018 rate) or as indexed in future years must be paid to Council **before the issue of a Construction Certificate**.

*Contributions Plan 2010* may be inspected at the Council Administrative Offices, Bridge Road, Nowra and Deering Street, Ulladulla.

- 37A. This development (as modified) will generate a need for the additional services and/or facilities described in Shoalhaven Contributions Plan 2010 and itemised in the following table:

Project	Description	Calculation	Amount
CWFIRE2001	Citywide Fire & Emergency services	\$138.13 * 0.45	\$62.16
CWFIRE2002	Shoalhaven Fire Control Centre	\$202.07 * 0.45	\$90.93
CWMGMT3001	Contributions Management & Administration	\$574.39 * 0.45	\$15.31
			<b>\$168.40</b>

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 2010 can be accessed on Councils website [www.shoalhaven.nsw.gov.au](http://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. **(inserted by DS20/1397)**

#### **Waste Minimisation and Management**

38. A Waste Minimisation and Management Plan (WMMP) must be prepared in accordance with the Shoalhaven Development Control Plan 2014 Chapter G9 – Waste Minimisation and Management Controls. The WMMP must be approved by Council or an accredited certifier prior to the issue of a Construction Certificate.

**Note:** "Waste" has the same meaning as the definition of "Waste" in the Protection of the Environment Operations Act 1997.



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#### ***On-Site Sewage Management System***

39. Prior to the issue of a Construction Certificate, approval from Council is required for the proposed sewage management system under section 68 of the *Local Government Act 1993*.

## ***PART F***

### **CONDITIONS RELATING TO THE APPROVED WORK AND SITE MANAGEMENT**

#### ***Colours and Materials***

40. The development must utilise the colours and materials as contained within the approved Schedule of Finishes, unless otherwise approved in writing by Council.

#### ***Waste Minimisation and Management Plan***

41. All waste must be contained within the site during construction and then be recycled in accordance with the approved Waste Minimisation and Management Plan (WMMP) or removed to an authorised waste disposal facility. No waste must 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 WMMP must be demonstrated by the retention of relevant receipts. These must be submitted to Council, upon request.

#### ***Mechanical Plant Equipment***

42. The level of noise emission from any mechanical plant servicing the development must not exceed an 'A' frequency weighted, energy average, sound pressure level (Leq) of 25 dBA, when measured over 15 minutes at the closest receptor. This is to ensure the overall level of noise emission from the Site does not exceed the acceptable noise limit of 35 dBA. To achieve this, the total sound power level (Lw) of any mechanical plant combined should not exceed 80 dBA. *(modified by DS20/1397)*

#### ***Drinking Water***

43. A drinking water treatment system and details of installation of tanks must be included in a quality assurance plan (QAP) to be submitted to NSW Health. This plan must outline how the treatment system will ensure drinking water supplied for events complies with the Australian Drinking Water Guidelines.

#### ***Building Code of Australia***

44. All building work must be carried out in accordance with the requirements of the Building Code of Australia.

**Note:** *This condition is prescribed under the Environmental Planning and Assessment Regulation 2000.*

#### ***Disabled Access – General***

45. Access for people with a disability must be provided to the building in conformity with Part D 3.2 of the Building Code of Australia and AS1428.1-2009 "design for access and mobility – General requirements for access in buildings".

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#### **Construction Hours**

46. To limit the impact of the development on adjoining owners, all construction work must be restricted to the hours of 7.00am to 6.00pm Monday to Friday and 8.00am to 3.00pm Saturdays. No construction work must take place on Sundays or Public Holidays.

#### **Construction Noise**

47. The noise from construction activities associated with the development must comply with the guidelines as outlined in the NSW Department of Environment and Conservation Industrial Noise Policy and Environmental Noise Management Guide. The LA10 level measured over a period of not less than 15 minutes when the construction site is in operation must not exceed the background (LA90) noise level by more than 10dB(A) when assessed at any sensitive noise receiver.

#### **Dust**

48. Where a dust nuisance is likely to occur, suitable screens and/or barricades must be erected during the excavation and building works. If necessary, water sprays must be used on the site to reduce the emission of dust. Screening must consist of minimum 2 metres height of shade cloth or similar material secured to a fence.

#### **Heritage**

49. Should any Aboriginal relics be unexpectedly discovered in any areas of the site, then all excavation or disturbance to the area is to stop immediately and the National Parks and Wildlife Service (NPWS) should be informed in accordance with Section 91 of the National Parks and Wildlife Act, 1974.

## **PART G**

### **CONDITIONS THAT MUST BE COMPLIED WITH BEFORE AN OCCUPATION CERTIFICATE CAN BE ISSUED**

#### **Prior to Issue of an Occupation Certificate**

50. Prior to the issue of an Occupation Certificate for the approved development, the relevant conditions of consent listed in Parts A, B, C, D, E & F must be complied with and completed to the satisfaction of the Principal Certifying Authority.

#### **Fire Safety – Prior to Occupation of New Building**

51. The owner is to supply Council with a Final Safety Certificate for the fire safety measures specified in the Fire Safety Schedule. The fire safety measures must be implemented or installed in the building prior to its occupation. The building must not be occupied without a final Fire Safety Certificate being issued and a Final or Interim Occupation Certificate being issued.

#### **On-Site Sewage Management System**

52. The sewage management system, including all works associated with the effluent disposal area, must be completed to the satisfaction of Council to enable Council to issue an Operational Approval for this system. Any form of Occupation Certificate must not be

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issued until such time as the Operational Approval for the sewage management system has been issued.

## **PART H**

### **CONDITIONS THAT RELATE TO THE ONGOING MANAGEMENT OF THE APPROVED DEVELOPMENT**

#### ***Fire Safety – Annual Statement***

53. At least once in every twelve month period an annual Fire Safety Statement is to be submitted to Council and to the Fire Commissioner of the NSW Fire and Rescue, Fire Safety Division in relation to the fire safety measures listed in the Fire Safety Schedule.

#### ***Operating Restrictions – Temporary Use of Land***

54. The temporary use of the building as a Function Centre is restricted as follows:
- a) is limited to 26 days in any period of 12 months. A register of usage and bookings must be kept and provided to Council upon request,
  - b) is approved for a maximum of 120 guests, and
  - c) is restricted to the hours of 10am – 11pm, Monday to Sunday.

#### ***Waste Facilities***

55. Waste receptacles must be provided throughout the site during an event. Recycling should be encouraged through the strategic placement of recycling bins near areas where food is served.
56. All rubbish and waste associated with the approved use must be sorted, collected in bins and removed from the site after the event, and deposited in a licensed waste facility.

#### ***Supervision***

57. The property owner or a person not related to/independent of the ceremony being held must be present for the duration of each function conducted on the subject site and be contactable to address any complaints that may be received and to ensure compliance with development consent conditions.

#### ***Noise (modified by DS20/1397)***

58. The noise measures as required by this development consent and as detailed in the *Environmental Noise Impact Assessment - Proposed Function Venue & Equine Centre* (Reference 1703010E-R, Revision A, dated 28/01/2021), prepared by Harwood Acoustics must be implemented and maintained for the life of the approved use. In this regard, the following requirements must be complied with:
- a) Any amplified music or amplified voice through a Public Address system must not exceed an energy-average sound pressure level (l-eq, 15 minute) of **86dBA** or sound power level of **98 dBA**, when measured at 3m from the speakers within the building.
  - b) All amplified music must be within the building.

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- c) All doors and windows must be closed during all functions where there is amplified music with the exception of the two (2) central doors in the Eastern façade (D11 and D12).
- d) Speakers must be located no higher than 1.5m above the ground and angled toward the centre of the floor.
- e) A sound level meter must be available during all events so that the owner or property manager may 'spot check' for noise compliance during or prior to the event. The meter must be calibrated by a suitably qualified acoustical consultant. Spot checks must be undertaken if noise complaints are received from adjoining properties.
- f) The use of the premises must not cause or create offensive noise to adjacent residential areas. Offensive noise is defined in the *Protection of the Environment Operations Act 1997*.
- g) The neighbouring residents must be provided with the name and mobile telephone number of a person at each event that can be contacted to report any noisy or antisocial behaviour. **(modified by DS20/1397)**

**Food Premises**

- 59. The construction and operation of the food premise must comply with the Food Act 2003; Food Regulation 2004; Australia New Zealand Food Authority Food Safety Standards 2001; and Council's Food Premises Construction Code.

***Note** the proposed layout supplied to Council provided insufficient information for a complete assessment against the requirements of the abovementioned legislation. It is the applicant's responsibility to refer to these documents and ensure compliance when setting up the food premise.*

- 60. The person benefitting from this consent must complete an application form to register the food premises with Council's Environmental Services Division for regular inspection by Council's Environmental Health Officer.

**Recording of Complaints – Temporary Use of Land**

- 61. The person benefitting from this development consent must keep a record/log book of all complaints made to the owner/operator or any employee or agent of the approved development in relation to the operation of the approved use. As a minimum in this regard, the complaints register must include details of the following:
  - a) the date and time of the complaint,
  - b) the method by which the complaint was made,
  - c) any personal details of the complainant provided by the complainant or, if no such details were provided, a note to that effect,
  - d) the nature of the complaint,
  - e) the action taken by the proponent in relation to the complaint, including any follow-up contact with the complainant, and
  - f) if no action was taken by the proponent, the reasons why no action was taken.

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The complaints register must be kept for a minimum of 2 years after the complaint was made and must be made available to Council at any time on request.

**Management Audit – Temporary Use of Land**

62. The person benefitting from this development consent must prepare and submit to Council a Management Audit (MA) relating to the operation of the approved development for the previous 12 month period. The first MA must be submitted within 30 days of the twelve (12) month anniversary of the determination date and then 30 days before the approved use ceases in accordance with the conditions of this consent. The MA must address, but not be limited to, the following:

- a) record/log of all complaints made for the period of the MA providing details as required by this consent,
- b) a record of the functions held during the previous twelve (12) months, including, date of function, number of attendees, times commenced and finished, buses used including bus company details, etc., and
- c) details of additional measures to be implemented, including a time-frame for implementation, to address any identified issues and/or concerns.

**Site Maintenance**

63. The owner or operator must at all times be responsible for on-going site management and maintenance in accordance with the following:

- a) activity on the site must not impact upon the amenity of any adjoining property or tenancy by reason of the emission of noise, dust, fumes, odour, vibration, electrical interference or otherwise,
- b) maintenance and replacement (if necessary) of all landscaping in accordance with the approved landscape plan,
- c) maintenance of vehicular movement areas including driveways, carparking, manoeuvring areas, line marking, pedestrian facilities, lighting, to the standard specified by this consent,
- d) maintenance of stormwater drainage pipes and systems to ensure efficient discharge of stormwater in accordance with the approved stormwater drainage plan, and
- e) maintenance of buildings, fencing, signage/markings to the standards specified in this consent.

**PART I**

**REASONS FOR CONDITIONS**

**Conditions of consent have been imposed to:**

1. Ensure the proposed development:
  - a) achieves the objects of the Environmental Planning and Assessment Act, 1979;
  - b) complies with the provisions of all relevant environmental planning instruments;

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- c) is consistent with the aims and objectives of Council's Development Control Plans, Codes and Policies.
- 2. Ensure that 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.
- 3. Meet the increased demand for public amenities and services attributable to the development in accordance with Section 94 of the Environmental Planning and Assessment Act, 1979.
- 4. Ensure the protection of the amenity and character of land adjoining and in the locality of the proposed development.
- 5. Minimise any potential adverse environmental, social or economic impacts of the proposed development.
- 6. Ensure that all traffic, carparking and access requirements arising from the development are addressed.
- 7. Ensure the development does not conflict with the public interest.

## **PART J**

### **ADVICE ABOUT 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 must be made **within three (3) months** of the date of the receipt of the determination to allow Council time to undertake the review within the prescribed period of six (6) months and be accompanied by the prescribed fee.

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 6 months after the applicant has been notified of the decision.

## **PART K**

### **GENERAL ADVICE TO APPLICANT**

#### ***Nature of Determination***

This is a s4.55 modification determination. It does not constitute a new development consent. Its form incorporates the modified conditions into the original development consent for ease of interpretation.

#### ***Privacy Notification***

Personal information contained on this Development Consent and any associated documents will be published on Council's website as required by the *Government Information (Public Access) (GIPA) Act 2009*.



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***Commonwealth Environment Protection and Biodiversity Conservation Act 1999***

The Commonwealth Environment Protection and Biodiversity Conservation Act 1999 provides that a person must not take an action which has, will have, or is likely to have a significant impact on

- a) A matter of national environmental significance (NES) matter; or
- b) Commonwealth land

without an approval from the Commonwealth Environment Minister.

This application has been assessed in accordance with the New South Wales Environmental Planning & Assessment Act, 1979. The determination of this assessment has not involved any assessment of the application of the Commonwealth legislation.

It is the proponent's responsibility to consult Environment Australia to determine the need or otherwise for Commonwealth approval and you should not construe this grant of consent as notification to you that the Commonwealth Act does not have application.

The Commonwealth Act may have application and you should obtain advice about this matter.

There are severe penalties for non-compliance with the Commonwealth legislation.

***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 covers disabilities not catered for in the minimum standards called up in the Building Code of Australia which references AS1428.1 - "Design for Access and Mobility". AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under the Disability Discrimination Act currently available in Australia.

***Disclaimer – s88B 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](http://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.

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**SIGNED** on behalf of Shoalhaven City Council:

DE21.59 - Attachment 2

**DE21.50 DA16/1465 - 173 Kinghorne St and 2 & 4  
Albatross Rd Nowra - Lot 1, 29 and 30 DP 25114**

**DA. No:** DA16/1465/4

**HPERM Ref:** D21/144532

**Department:** Development Services

**Approver:** Phil Costello, Director - City Development

**Attachments:** 1. s4.15 Assessment Planning Report (under separate cover)  
2. Determination Document - Refusal

**Description of Development:** Demolition of existing structures and construction of a mixed-use development consisting of 55 apartments including 16 x 3-bedroom, 31 x 2 bedroom and 8 x 1-bedroom apartments, a basement car parking area and 3 commercial tenancies at ground floor with frontage to both Kinghorne Street and Albatross Road

**Owner:** Bill Zervos and Jasmine Anne Simpson & John Irwin Gould

**Applicant:** Lee Carmichael Town Planning (now trading as) PDC Planners

**Notification Dates:** 14 June – 14 July 2017

**No. of Submissions:** Six (6) submissions in objection and Nil (0) in support.

**Purpose / Reason for consideration by Council**

On 1 October 2019, it was resolved by the Development and Environment Committee that Development Application (DA) 'DA16/1465 – Residential Units and Commercial Space – 173 Kinghorne Street, Nowra be called in to Council for determination due to significant public interest.' (DE19.107)

On 6 October 2020, the Development & Environment Committee resolved (MIN20.728):

*"That consideration of Development Application DA16/1465 – Mixed Use development consisting of 55 residential units and commercial space on the land known as 173 Kinghorne Street and 2 & 4 Albatross Road, Nowra (Lot 1, 29 and 30 DP 25114) be deferred to the January 2021 Development and Environment Committee Meeting to allow Council to undertake further traffic investigations in consultation with the developer."*

Council has taken the following actions, following the Council resolution:

1. On **18 November 2020**, relevant Council staff met to discuss critical aspects of the Development Application in particular the *Traffic Management Report* prepared by Jones Nicholson Consulting Engineers dated 27 February 2021 (Reference: CRPT-16020003.01B). The outcomes of the meeting were provided to the applicant on 26 November 2021 (D20/526133).
2. On **21 December 2020**, Council provided additional information to the applicant in the form of: 'Outputs' from Council's traffic modelling and Council's requirements for a future 4 lane cross section of Albatross Road (D20/563561). Council also offered as

part of the forwarding of this additional information the opportunity to meet further to ensure that all matters have been addressed relating to traffic and planning issues.

3. On **15 January 2021**, Council notified the applicant via email (D21/16222) that the information requested in Council's 21 December 2020 was required to be submitted to Council in 7 days.
4. On **4 February 2021**, Council emailed the applicant (D21/43579) offering to meet to discuss the additional information.
5. On **10 February 2021**, Council notified the applicant via email (D21/52704) that the information requested in Council's 21 December 2020 was required to be submitted to Council in 7 days as the applicant had not responded to Council in relation to the offer of a meeting and the information had not been submitted.
6. On **23 February 2021**, the applicant's traffic consultant (Stephen Falkner) emailed Council, to request the following:
  - traffic data on the existing road network from their records; and
  - projected traffic data for 10-year projections (2031).
7. On **12 March 2021**, Council emailed the applicant's traffic consultant (Stephen Falkner) (D21/99332) with the following:
  - Council's most recent tube traffic count for the area; and
  - projected traffic data for 10-year projections (2031).
8. On **24 March 2021**, Council emailed the applicant (D21/117366) to inform them that the application would be required to be reported to Council in the absence of a formal response to Council's email dated 21 December 2020.
9. On **31 March 2021**, the applicant was emailed (D21/127622) to inform them that the additional information was required to be submitted to Council within 7 days.

The assessing officer has also called and left messages with the applicant to discuss the application in the intervening period. The applicant has not responded to Council's emails and requests for updates.

#### **Recommendation (Item to be determined under delegated authority)**

That Development Application DA16/1465 – Mixed Use development consisting of 55 residential units and commercial space on the land known as 173 Kinghorne Street and 2 & 4 Albatross Road, Nowra (Lot 1, 29 and 30 DP 25114) be determined by way of refusal for the reasons set out in the section 4.15 Assessment Report (**Attachment 1**) and in the Notice of Determination (**Attachment 2**) to this report.

#### **Options**

1. Refuse the Development Application (DA) in accordance with the recommendation.  
Implications: The proposal would not proceed in its current form. The applicant can, however, apply for a section 8.2 review of Council's decision and/or could lodge an appeal with the NSW Land and Environment Court against Council's decision.
2. Approve the DA.  
Implications: Council would have to provide reasons to support the development, having regard to section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) considerations. Should Council resolve to approve the DA a suite of conditions would be required to be drafted for reconsideration by the Development & Environment

Committee. Under some circumstances, third parties (i.e., objectors) can seek a judicial review of Council's decision in the NSW Land and Environment Court.

3. Alternative recommendation.

Implications: Council will need to specify an alternative recommendation and advise staff accordingly.

**Location Map**



Figure 1 - Extract of the subject site in the local context.



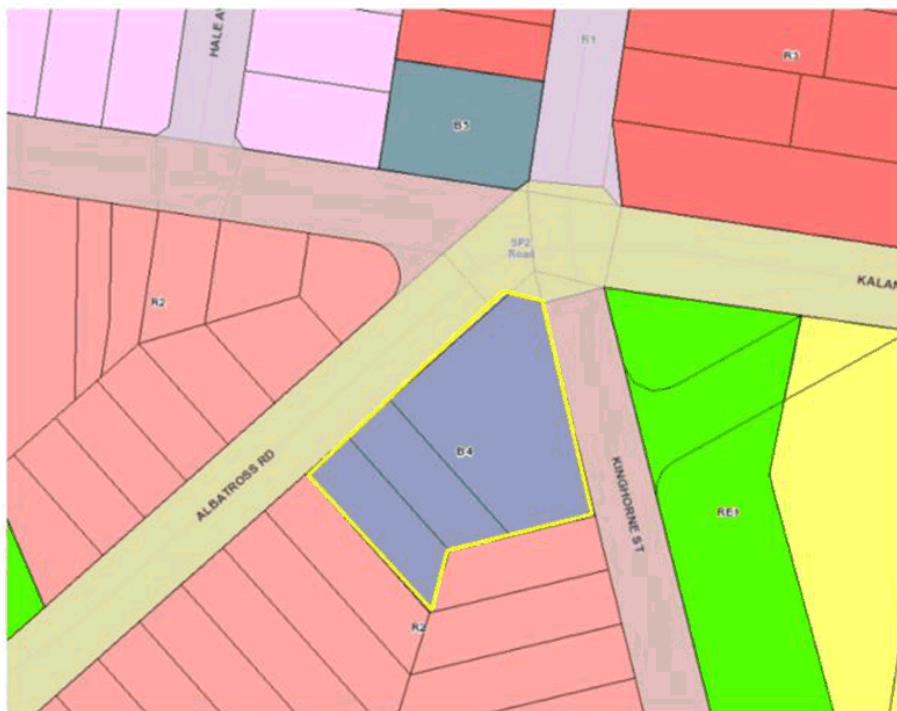


Figure 2 - Extract of the Shoalhaven Local Environmental Plan 2014  
Land Use Zoning Map with the subject site with a yellow border

## Background

### Post-Lodgement

Key dates are as follows:

- **8 April 2016**, the DA was lodged with Council.
- **9 August 2016**, Council requested additional information from the applicant in relation to the design and access arrangements from Albatross Road.
- **16 December 2016**, revised plans and additional information was submitted by the applicant in response to Council's letter dated 9 August 2016. The amended plans included modifications to the southern portions of each wing of the building and deletion of two apartments (reducing the unit yield from 57 to 55 apartments). The reduction in units on the southern portion of the development was proposed to achieve a more appropriate transition to the adjoining low-density development.
- **27 February 2017**, Council requested additional information from the applicant, with continued concerns raised in relation to design elements and major concerns raised in relation to the proposed access/egress onto Albatross Road.
- **7 March 2017**, Council met with the applicant to discuss the Planning Proposal over the site (described below) and continued concerns with the design and location of access/egress onto Albatross Road.



- **22 March 2017**, a further additional information letter was sent to the applicant to detail the outcomes of the 7 March 2017 meeting and to express continued concerns regarding the proposed access/egress onto Albatross Road.
- **10 July 2018**, Council met again with the applicant to discuss design and traffic issues.
- **12 September 2018**, the applicant lodged concept plans for access/egress to the development from Kinghorne Street for Council's consideration (refer to **Figure 15**).
- **12 October 2018**, Council provided feedback to the applicant on the concept plan, noting that the concept plan addressed the main concern that had been raised by Council being the relocation of the access from Albatross Road to Kinghorne Street frontage.
- **18 April 2019**, the applicant confirmed that they would **not** be pursuing any change to the design of the development which would relocate the access from Albatross Road to Kinghorne Street frontage.
- **12 August 2019**, the applicant submitted a further amended *Traffic Report* prepared by Jones Nicholson (D19/280251) to justify the retention of access on the Albatross Road frontage and to address concerns raised in relation to the designs apparent inconsistency with *State Environmental Planning Policy (Infrastructure) 2007*.
- **1 October 2019**, the Development and Environment Committee that Development Application (DA) 'DA16/1465 – Residential Units and Commercial Space – 173 Kinghorne Street, Nowra be called in to Council for determination due to significant public interest.' (DE19.107).
- **26 November 2019**, the applicant submitted amended plans, acoustic report, and clause 4.6 variation statement.
- **6 October 2020**, the Development & Environment Committee resolved (MIN20.728):  

*"That consideration of Development Application DA16/1465 – Mixed Use development consisting of 55 residential units and commercial space on the land known as 173 Kinghorne Street and 2 & 4 Albatross Road, Nowra (Lot 1, 29 and 30 DP 25114) be deferred to the January 2021 Development and Environment Committee Meeting to allow Council to undertake further traffic investigations in consultation with the developer."*

Council has taken the following action in relation to the above matter, following the 6 October 2020 Council resolution:

1. On 18 November 2020, relevant Council staff met to discuss critical aspects of the Development Application in particular the *Traffic Management Report* prepared by Jones Nicholson Consulting Engineers dated 27 February 2021 (Reference: CRPT-16020003.01B). The outcomes of the meeting were provided to the applicant on 26 November 2021 (D20/526133).
2. On 21 December 2020, Council provided additional information to the applicant in the form of: Outputs from Council's traffic modelling and Council's requirements for a future 4 lane cross section of Albatross Road (D20/563561). Council also offered as part of the forwarding of this additional information the opportunity to meet further to ensure that all matters have been addressed relating to traffic and planning issues.
3. On 15 January 2021, Council notified the applicant via email (D21/16222) that the information requested in Council's 21 December 2020 was required to be submitted to Council in 7 days.

4. On 4 February 2021, Council emailed the applicant (D21/43579) offering to meet to discuss the additional information.
5. On 10 February 2021, Council notified the applicant via email (D21/52704) that the information requested in Council's 21 December 2020 was required to be submitted to Council in 7 days as the applicant had not responded to Council in relation to the offer of a meeting and the information had not been submitted.
6. On 23 February 2021, the applicant's traffic consultant (Stephen Falkner) emailed Council, to request the following:
  - traffic data on the existing road network from their records; and
  - projected traffic data for 10-year projections (2031).
7. On 12 March 2021, Council emailed the applicant's traffic consultant (Stephen Falkner) (D21/99332) with the following:
  - Council's most recent tube traffic count for the area; and
  - projected traffic data for 10-year projections (2031).
8. On 24 March 2021, Council emailed the applicant (D21/117366) to inform them that the application would be required to be reported to Council in the absence of a formal response to Council's email dated 21 December 2020.
9. On 31 March 2021, the applicant was emailed (D21/127622) to inform them that the additional information was required to be submitted to Council within 7 days.

#### Site History and Previous Approvals

In April 2016, a Planning Proposal (PP) was lodged concurrently with this DA to rezone the subject site to enable development of the land as currently proposed.

The previous land zoning (B5 Business Development) only permitted residential development for the purpose of 'shop top housing' which would require the entire ground floor to be developed for commercial use.

The PP sought to amend the following Land Zoning and Height of Buildings maps in *Shoalhaven Local Environmental Plan 2014* (SLEP 2014):

- Land Zoning – Sheet LZN\_013E - amend zoning of subject land from B5 Business Development to B4 Mixed Use.
- Height of Buildings – Sheet HOB\_013E - amend maximum height of building from 11m default height (no mapped) maximum building height as per clause 4.3(2A) of *Shoalhaven Local Environmental Plan (LEP) 2014*, to a height determined by the outcome of the character assessment (maximum of 15m).

On 12 September 2017, the Development Committee resolved (MIN 17.776) to adopt the PP as exhibited with the following addition:

*"to avoid uncertainty, the width of the part of the site with an 8.5m maximum building height is 9m, as measured from the southern boundaries of Lot 1 and Lot 30 DP 25114, and south-eastern and south-western boundaries of Lot 29 DP 25114."*

Under Council's delegation, the PP was forwarded to NSW Parliamentary Counsel to draft the amendment to SLEP 2014 under Section 59(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

On 6 October 2017, Amendment No. 16 to SLEP 2014 was published on the NSW Legislation website and commenced, bring into effect the zoning and building height changes outlined above.

The following is a list of relevant approvals for the subject site:

- BA73/1794: Showroom additions
- BA74/0275: Storage Shed
- BA76/0601: Car yard additions
- DA01/2756: Car service centre – alterations and additions – approved – 9 October 2001.
- DA02/2244: Commercial Workshop/Shed – approved – 30 August 2002.

The subject site has operated in the capacity of vehicle servicing, repairs, and sales for a significant period.

Proposed Development

The Development Application (DA) is seeking development consent for the demolition of existing structures and construction of a mixed-use development consisting of 55 apartments, including:

- 8 x 1-bedroom apartments
- 31 x 2 bedroom
- 16 x 3 bedroom
- 3 commercial tenancies (total commercial floor area 259m<sup>2</sup> (267m<sup>2</sup> including bathroom i.e., GFA) at ground floor with frontage to both Kinghorne Street and Albatross Road.
- A basement car parking area accessed via Albatross Road with 93 car parking spaces.
- Construction of a left turn slip lane (removal of on-street parking) for access into the basement car park off Albatross Road.
- Construction of a central median and signage on Albatross Road to control the movement of traffic in and out of the proposed development (left in and left out movements only).

A site plan, ground floor, elevations, landscape plan and photomontages are provided in **Figures 3 – 14.**

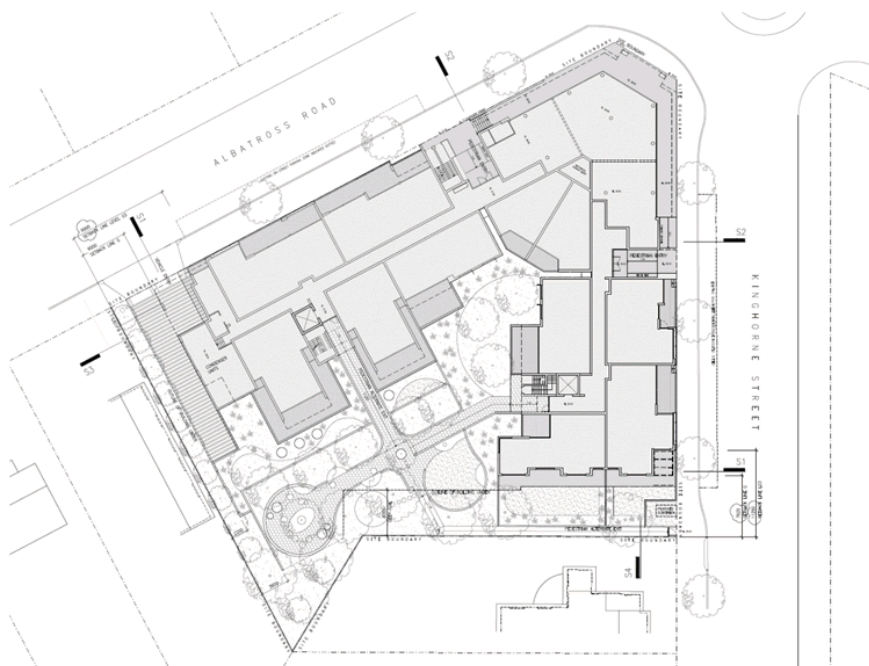


Figure 3 - Site Plan of the proposed development.

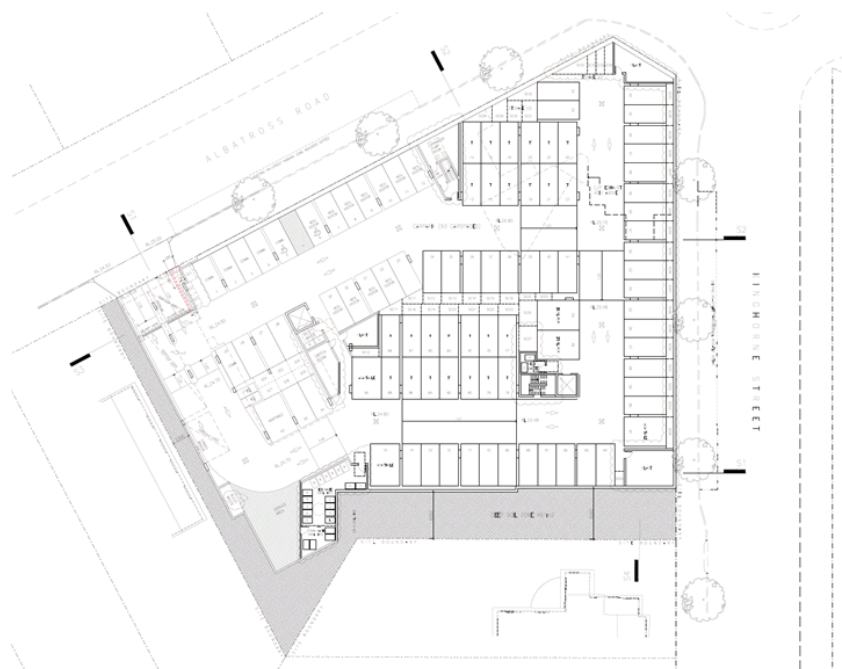


Figure 4 - Basement floor plan of the proposed development.

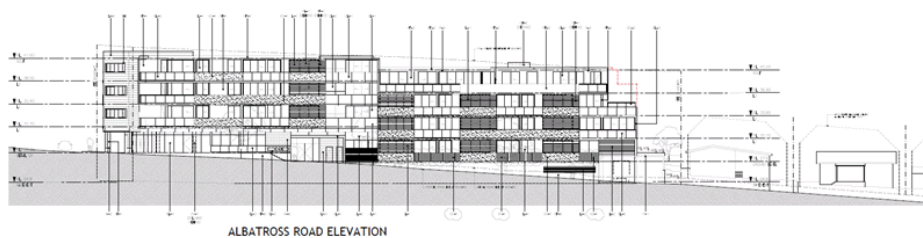


Figure 5 – Elevation of the proposed development (western elevation – Albatross Road)

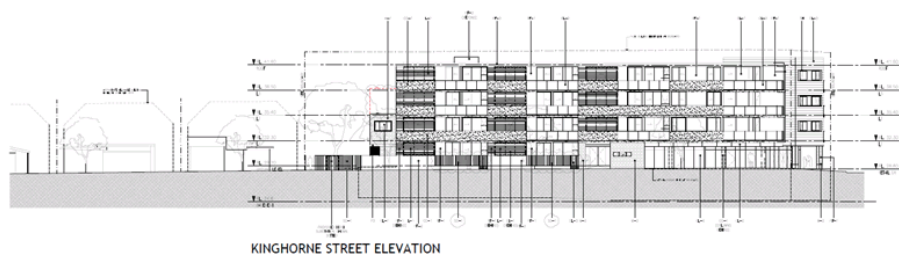


Figure 6 – Elevations of the proposed development (eastern elevation – Kinghorne Street).

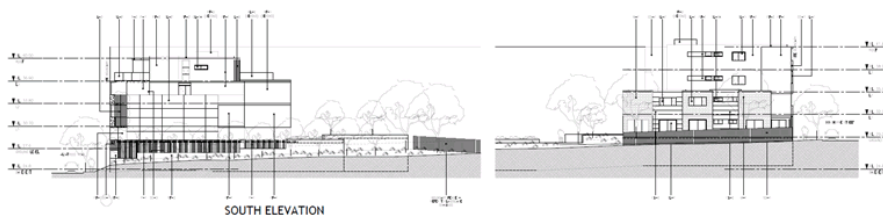


Figure 7 – Elevation of the proposed development (southern elevation).



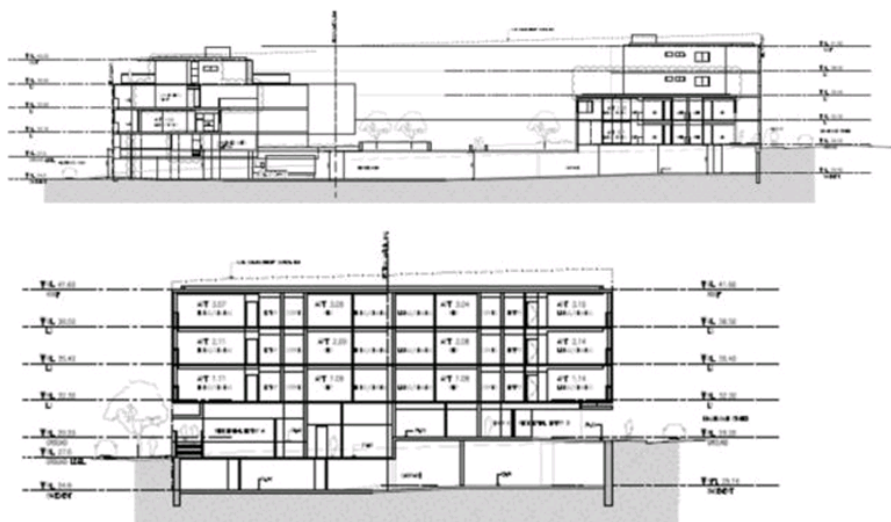


Figure 8 - Section plans of the proposed development.



Figure 9 - Section plans of the proposed development.





Figure 10 - Landscape plans of the proposed development.



Figure 11 - Photomontage view from the south-eastern (Kinghorne Street).



Figure 12 - Photomontage view from the north-eastern corner of Kinghorne and Kalandar Street.



Figure 13 -Photomontage of the south-western elevation of the development as viewed from Albatross Road.

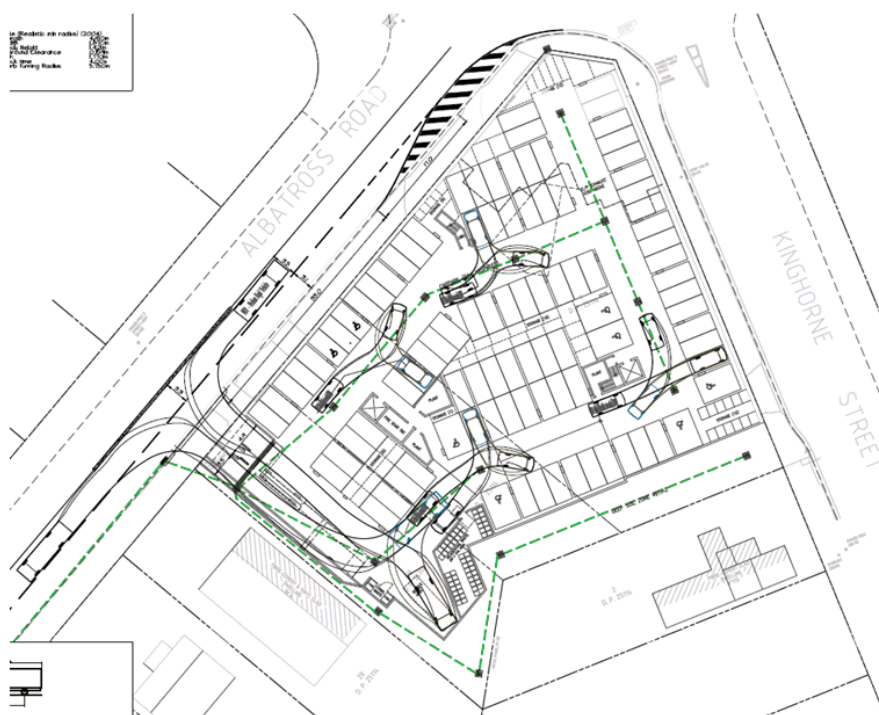


Figure 14 - Extract of engineering design plan indicating the slip-lane and entry design to the development. The design includes a central median on Albatross road to limit vehicle movements to a left in and left out movement.



### Subject Land

The subject site comprises 3 lots (subject site) located on the south-western corner of the intersection of Kinghorne Street, Albatross Road and Kalandar Street. The subject site is described and legally identified as follows:

- Lot 29 DP 25114 – 4 Albatross Road, Nowra
- Lot 30 DP 25114 – 2 Albatross Road, Nowra
- Lot 1 DP 25114 – 173 Kinghorne Street, Nowra

The site is an irregular shaped lot with a frontage of 74m to Albatross Road and 60m to Kinghorne Street with a 9.5m corner splay. The site falls gradually to the south-western corner of the site at Albatross Road.

The combined land area of the lots is approximately 3,497m<sup>2</sup>.

### Site & Context

An electrical wholesale supply business (L&H Electrical) occupies the site. The site had previously operated as a car servicing workshop that serviced and repaired motor vehicles. The site adjoins established residential uses to the south and west, a tyre service and residential uses to the north and public open space to the east.

The surrounding development can be broadly characterised as low-density residential consisting of single and two storey dwelling houses. Development immediately to the south consists of free-standing single storey dwellings and associated outbuildings.

Beyond these dwellings and on land bound by Albatross Road, Kinghorne Street and Albert Street is low density residential development – mainly of single storey construction and typically older housing stock.

To the west on the opposite side of Albatross Road is a continuation of predominately freestanding low-density dwellings with some multi dwelling housing developments.

To the east on the opposite side of Kinghorne Street, is a Council park and cemetery.

On the northern side of the intersection of Albatross Road and Kinghorne Street is an existing tyre shop. On the eastern side of Kinghorne Street at the intersection with Kalandar Street Council has recently approved 2 x 4 storey residential flat buildings, consisting of 91 apartments and basement car park (DA19/1846).

As mentioned earlier, the land was the subject of a planning proposal to zoning of subject land from B5 Business Development to B4 Mixed Use and amend maximum height of building to part 14m and 8.5m (transition to low density development to the south. The Planning Proposal was supported by a Character Assessment prepared by Urbanac dated May 2017 (D17/257485) which informed the building heights for the site.

The character assessment discussed the significance of providing transition in development scale and that a suitable building height will:

*“ensure a smooth transition between new development and existing housing stock and maintain good amenity for the dwellings immediately adjoining the site.”* (P10, of the Character Assessment by Urbanac.)

### Issues

#### Traffic, Vehicular access and impacts on the local road network.

The following roads are proximate to the subject site and will be impacted by the proposed development:

- Princes Highway – State highway.

- Albatross Road/Kalandar Street – Regional classified road
- Kinghorne Street – local road
- Berry Street – local road

The applicant proposes the following access and upgrades along the Albatross Road frontage:

- Construct an 8.15m entry/exit driveway which can accommodate the manoeuvring of a medium rigid vehicle (MRV) in and out of the proposed development.
- Construct a basement car parking area accessed via Albatross Road with 93 car parking spaces. Thirteen stacked car parking spaces have been provided in the basement car park area. The stacked parking spaces will be allocated to the 3-bedroom apartments, whereby the management of the car spaces is managed by the apartment residents themselves.
- Access to the basement car park is to be managed via security pass and intercom arrangement.
- Construction of a left turn slip lane for access into the basement car park off Albatross Road and removal of the existing car parking on Albatross Road (six (6) spaces) adjacent to the north western boundary.
- The construction of a central median and signage be constructed along Albatross Road to control the movement of traffic in and out of the proposed development. the central median will force vehicles exiting from the proposed development into a left turn only movement. Similarly, the construction of a central median will force vehicles wishing to enter the proposed development into a left turn in movement only. Vehicles travelling east along Albatross Road will need to utilise the Kinghorne Street/Albatross Road roundabout to make a U-turn.

The site is capable of being serviced by an MRV. Swept path plans that have been provided to demonstrate the ability of a garbage truck to manoeuvre in the basement car park area for garbage collection.

With regard to the servicing of the commercial units, the applicant proposes to utilise the existing on-street parking on the eastern and western sides of Kinghorne Street. A loading zone can be provided on the western side of Kinghorne Street to provide direct servicing access to the commercial units. This would require the approval of the local traffic committee.

#### State Environmental Planning Policy (Infrastructure) 2007 (ISEPP)

The subject site has frontage to Albatross Road (MR92), being a classified regional road. Accordingly, clause 101 of ISEPP applies and reads as follows:

#### **101 Development with frontage to classified road**

(1) *The objectives of this clause are—*

- (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

(2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
  - (i) *the design of the vehicular access to the land, or*

- (ii) the emission of smoke or dust from the development, or
- (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Under subclause 101(2) the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the subsequent considerations have been met by the proposal.

The 3 preconditions in subclause 101(2) are collective. Therefore, any one of the preconditions in subclause 101(2) about which Council is not satisfied could prevent the issue of consent:

- Subclause 101(2)(a) ('where practicable and safe, vehicular access to the land is provided by a road other than the classified road'), is relevant because the site has frontage to Kinghorne Street (unclassified at this location) and Albatross Road (regional classified road at this location).

The applicant has submitted concept plans (D18/355817) (refer to **Figure 15**) to demonstrate that practicable and safe, vehicular access to the land can be provided by a road (Kinghorne Street) other than the classified road.

In order to determine whether the access to the development is "practicable", the Court has established the test in the case of *Modern Motels Pty Ltd v Fairfield City Council* [2013] NSWLEC 138, Preston CJ at paragraph [42]:

*The phrase "where practicable" regulates the desired outcome ("vehicular access to the land is provided by a road other than a classified road"). The consent authority is precluded from granting consent to a development on land that has frontage to a classified road unless it is satisfied that the desired outcome will be achieved, where that desired outcome is practicable. That is to say, the practicability is as to the outcome of providing vehicular access to the land by a road other than the classified road. [emphasis added]*

The desired outcome is for access to the land to be via the unclassified local road – Kinghorne Street, which will ensure that the development does not compromise the effective and ongoing operation and function of the classified road (Albatross Road).



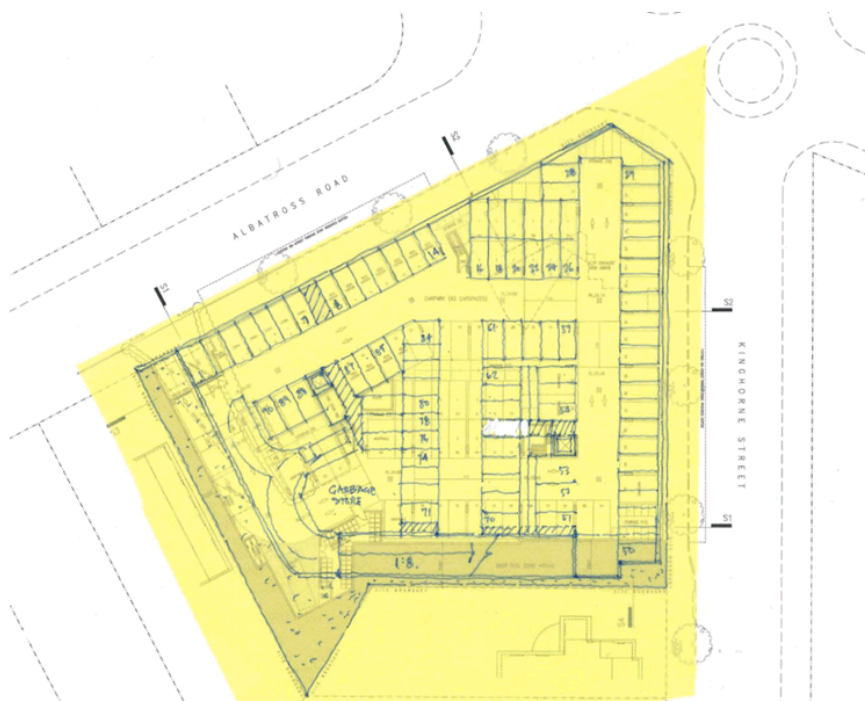


Figure 15 - applicant's submitted concept plan, demonstrating that access via Kinghorne Street is capable of being achieved.

- Subclause 101(2)(b) ("to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads") is relevant in that the applicant's submitted traffic reports do not (in the view of Council's Traffic and Transport Unit) establish that the safety, efficiency and ongoing operation of the classified road would not be adversely affected by the development as a result of the design of the vehicular access to the land, and the nature, volume or frequency of vehicles using the classified road to gain access to the land.

It is noted that on Page 15 of the *Traffic Management Report* prepared by Jones Nicholson, dated 27 February 2018 (D18/89444) concerning the Albatross Road access:

*"The proposed Albatross Road access is considered satisfactory in that it will not impact upon the safety, efficiency and ongoing operation of Albatross Road. Furthermore, practicable access for all traffic movements is not achievable from Kinghorne Street to the proposed development. Therefore, the proposed access from Albatross Road can be approved in meeting the requirements of SEPP Infrastructure clause 101."*

Council's Traffic and Transport Unit has considered all the applicant's detailed traffic reports and is not satisfied that the access onto Albatross Road demonstrates compliance with subclauses 101(2)(b)(i) and (iii) of the Infrastructure SEPP. It follows therefore that the development has not been able to meet preconditions 101(2)(a) and (b) and that Council therefore has questionable ability under the ISEPP to approve the development application in its current form.

- Subclause 101(2)(c) (*"the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road"*) is relevant, the noise criteria have been addressed in the submitted *Acoustic Report* prepared by KA Acoustics dated 6 November 2019 (D19/423688).

The recommendations of the report will ensure internal noise levels comply with those specified in Subclause 101(2)(c) are capable of being addressed by appropriate development consent conditions, if approved.

#### Car Parking

In relation to the numerical requirements for car parking for residents and visitors associated with the residential component of the development, this is set by Part 3J (Objective 3J-1) of the Apartment Design Guide. Design Criteria 1 of Objective 3J-1 requires that; *the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.* Granted that the car parking rates under car parking schedule in Chapter G21: Car Parking and Traffic in Shoalhaven Development Control Plan 2014 (SDCP 2014) are higher than the rate set by the Guide to Traffic Generating Developments, the Guide to Traffic Generating Developments applies.

#### *Parking rate (Residential):*

- 0.6 spaces per 1 bedroom unit.
- 0.9 spaces per 2-bedroom unit.
- 1.40 spaces per 3-bedroom unit.
- 1 space per 5 units (visitor parking).

#### Residential parking rate according to unit mix (55 units)

- 8 x 1-bedroom apartments (0.6 x 8) 4.8 spaces
- 31 x 2 bedroom (0.9 x 13) 41.65 spaces
- 16 x 3 bedroom (1.4 x 16) 22.4 spaces
- 55 Units (55 / 5) 11 visitor car spaces

Total number of car parking spaces required for residential units = 79.85 spaces required.

#### *Parking Rate (Commercial):*

The car parking rate applying to the commercial component of the development is to be calculated according to Chapter G21: Car Parking and Traffic in SDCP 2014

Commercial development within land zoned B3 Commercial Core at ground level or where access to the development is from ground level above an underground level of car parking is 1 space per 24m<sup>2</sup> gross floor area.

The commercial floor of 267m<sup>2</sup> is located at ground level with frontage to both Kinghorne Street and Albatross Road and is located above an underground level of car parking. Therefore, 267m<sup>2</sup> divided by 24m<sup>2</sup> = 11.13 spaces.

**Total of Car Spaces Required: 79.85 (residential) + 11.13 (commercial) = 90.98 spaces or 91 spaces**

**Total of Car Spaces Proposed: 93 spaces**

Note: In accordance with section 5.14 Loss of On-Street Car Parking – [Major Developments/ Redevelopments](#) of Chapter G21 of SDCP2014, it is noted that, where

*"major development/ redevelopment is proposed that has frontage to two or more streets, Council will take into account the loss of on-street car parking spaces arising from the construction of access, bus embayment's and car parking restrictions, where*

*these are directly related to the development proposal and will require these to be replaced on site."*

The design of the development including slip lane to provide left turn access to the development from Albatross road will result in the removal of all on-street car parking spaces along the Albatross Road development frontage to facilitate access. This will result in the removal of approximately six (6) on-street car parking spaces.

Taking into account the loss of car parking along the Albatross Road frontage (six (6) on-street spaces) the development is required to provide a total of **97 car spaces**. The development is arguably deficient **four (4) spaces**.

The deficiency in car parking is not supported for the following reasons:

- There are no valid reasons for reducing the number of the car parking spaces required to service the development.
- The proposal to provide access to the basement car park via an intercom to provide security to the basement car park area is unlikely to provide suitable public access to car parking for those members of the public wishing to visit the commercial uses and therefore there is likely to be a reliance on on-street car parking either to the south of the site or along Kinghorne Street. Furthermore, the location of the security gates and intercom to provide access to the basement car park is likely to result in unsafe manoeuvring of vehicles should they fail to gain access to the car park or result in queuing on Albatross Road should there be technical issues with the security gate (refer to **Figure 16**)
- The subject site is located 950m from the Nowra CBD and there is a likelihood that any customers visiting the site will drive to visit any of the proposed commercial tenancies or visit a resident of the building. The likely reliance on vehicles to access the development mean that providing sufficient car parking is a critical element of the development.
- There are no public parking facilities in the vicinity of the proposed development that may reduce the need for sufficient car parking to be provided in accordance with the car parking schedule.
- The availability of kerb-side parking opportunities in the vicinity of the proposed development will be reduced as a result of the proposed access arrangements on Albatross Road that will remove approximately six (6) on street car parking spaces.
- The existing and likely future traffic volumes on the surrounding road network, traffic circulation and safety are not likely to be improved through a reduction in on-site car parking.
- The anticipated impacts of not providing for adequate on-site car parking are likely to be significant and will impact on the broader locality.
- Strict compliance with the numerical standard is considered appropriate in the circumstances where the design and density of the development should respond to the constraints of the site. Were the residential component of the development to be considered wholly against the provisions of Chapter G21, the development would be deficient (including six (6) Albatross Road parking spaces) a total of eleven (11) spaces.
- The car parking supply proposed to service the site points to an overdevelopment of the site, potentially an issue with density of apartments and commercial floor area that is not consistent with the characteristics of the site.
- The proposal is likely to set an undesirable precedent granted the nature of the variation.
- The site is outside of the contribution area for parking and therefore developer contributions cannot be levied for the shortfall in on-site spaces.
- The development is located in a regional area. Residents are heavily reliant on private motor vehicles for transport as opposed to good, accessible, and frequent public transport. Therefore, adequate parking should be provided.

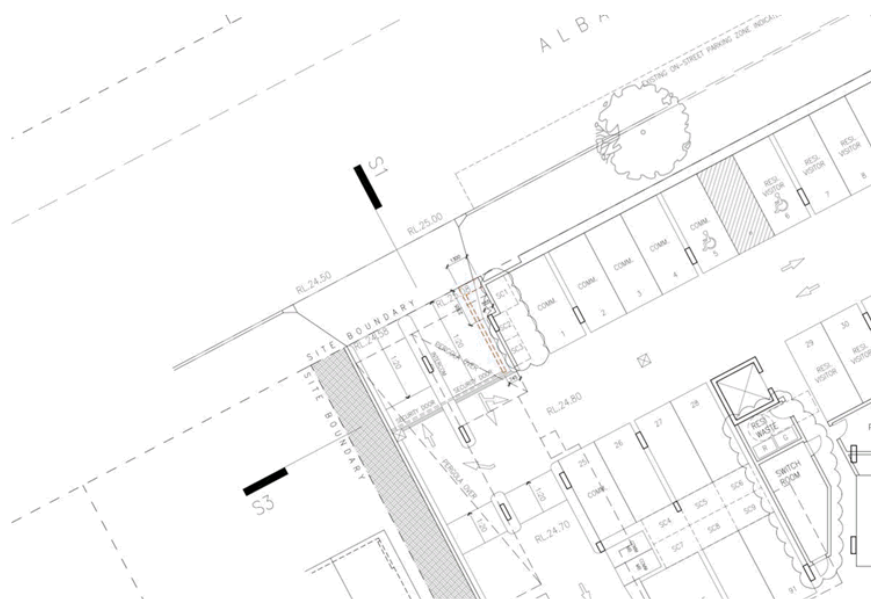


Figure 16 – Extract of the proposed basement plan indicating the location security door and intercom to gain access to the basement car park.

#### Variation to Clause 4.3 Height of Buildings

Development consent may, subject to clause 4.6, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument.



- ★ Denotes – N2 – 14m height
- ★ Denotes – I2 – 8.5m height

Figure 17 – Height controls applying to the site under the Shoalhaven Local Environmental Plan 2014



The application seeks a variation to clause 4.3 in accordance with Clause 4.6 of SLEP 2014.

Clause 4.3 of SLEP 2014 stipulates the objective and development standard for the height of buildings in Shoalhaven. Relevantly Clause 4.3(2) & (2A) state as follows:

(2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The SLEP 2014, through Clause 4.3 sets an 8.5m (I2) height limit for part of the site and a 14m (N2) height limit for rest of the site.

The 8.5m height limit applies to a 9m portion of the south eastern portion of the site extending across all lots subject of the development application where the lot adjoins the lower density R1 General Residential land to the south.

Parts of the proposed building exceed the 8.5m (I2) and 14m (N2) height are limited to a portion of the development.

The development proposed exceeds the maximum building height as follows:

- 14m height limit by 480mm or 3.4%;
- 8.5m height limit 1.465m or 17.2%; and
- The percentage exceedance of the maximum building height ranges from 1.4% to 17.2% with the average height limit exceedance being 4.83%.

The submitted height plane diagrams prepared by Kannfinch Architects illustrate that the height limit breach and indicate the percentage breach at each point (Refer to **Figure 18 and 19**).

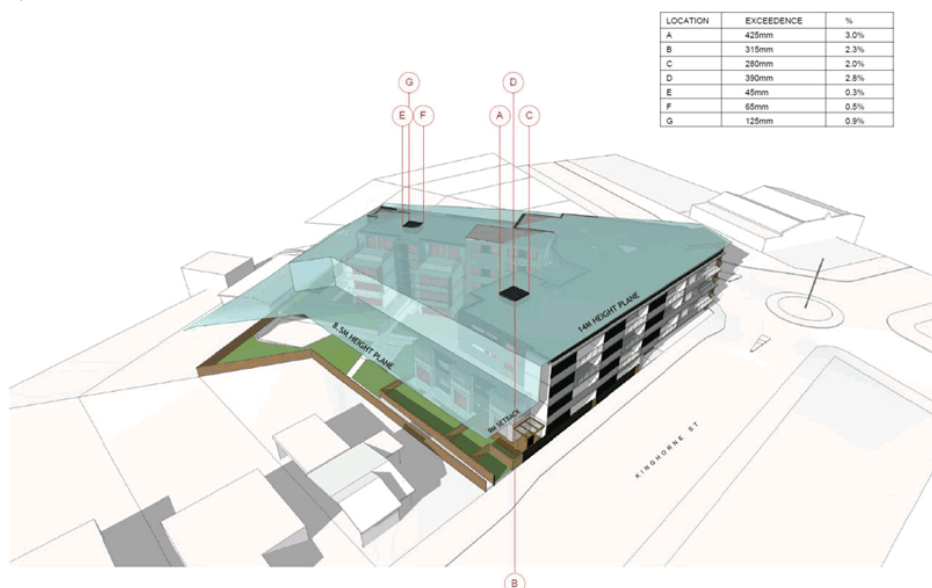


Figure 18 - Height plane instructions relating to the 14.0m (N2) maximum building height – south-eastern view from Kinghorn Street.

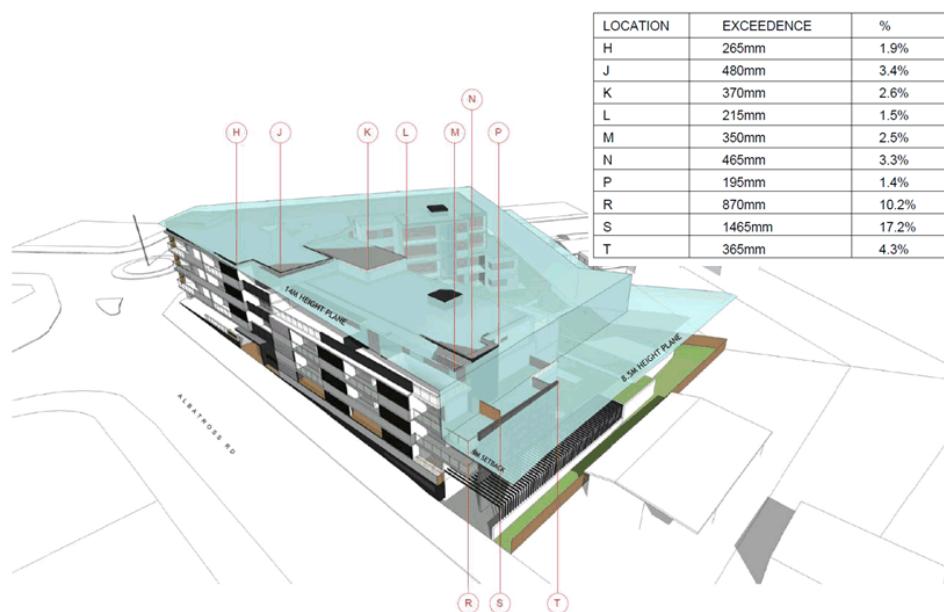


Figure 19 - Height Plane instructions relating to the 14.0m (N2) and 8.5m (I2) maximum building height - southwestern view from Albatross Street.

For the reasons detailed in the attached s4.15 Assessment Report (**Attachment 1**), it is not considered that the clause 4.6 variation request has satisfied:

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 matters.

In conclusion it is considered that the applicant's request to vary the development standard as it relates to the maximum building height should not be supported for the following reasons:

- The variation request does not demonstrate that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development.
- The variation request does not demonstrate there are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case.
- Does not demonstrate the development meets the objectives of the development standard.
- The proposed development is for the preceding reasons, not considered to be in the public interest; and
- The applicant has failed to demonstrate that there will be better planning outcomes achieved through variation to the height standard as it relates to the 8.5m height of building standard associated with a 9m setback to the southern boundary, as opposed to strict compliance with the development standard or amending the application to reduce the extent of the variation.



It is noted that the principal reason for not supporting the variation request relates to the exceedance of the height plane for the portion of the building fronting Albatross Road.

The exceedance of the maximum building height as it relates to the 8.5m maximum building height is likely to result in a loss of privacy and has been demonstrated to result in a loss of solar access to the existing development (refer to the shadow diagrams prepared by Kannfinch Architects). The overshadowing of the adjoining residences (No. 6 Albatross Road and No. 175 Kinghorne Street) is exacerbated by the adoption of a 6m setback (opposed to the required 9m setback) for the portion of the building along the Albatross road frontage.

The adjoining lots can only be developed as single dwellings or dual occupancies under the existing R2 Low Density Residential zoning. The exceedance of the 8.5m maximum building height along the Albatross Road frontage will exacerbate the blank wall along the southern elevation and does not serve to create an appropriate transition as anticipated in the PP associated with the site.

The PP and review of planning controls were undertaken resulting in a specific conclusion i.e., height. The DA and design submitted concurrently to the process has however not been adjusted to achieve the height control. This is of concern as the change to the zone and strategic context has only been relatively recently 'made' and it is already being varied.

Non-compliance with State Environmental Planning Policy No 65 – Design Quality of Residential Flat Development (SEPP 65) and Apartment Design Guide (ADG)

*State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development* (SEPP 65) applies to the proposed development which 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 SEPP 65, *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.*

A SEPP 65 Design Statement has been prepared by a Registered Architect (D20/6044) addressing the requirements of SEPP 65 and was submitted with the application accordance with Clauses 50(1A) & 50(1AB) of the EP&A Regulation. The SEPP 65 Design Statement has address Schedule 1 of SEPP 65.

It is considered that the design quality of the development, when evaluated against the nine design quality principles does not satisfactorily exhibit exceptional design excellence when assessed against the following principles:

- Principle 2: Built form and scale
- Principle 3: Density
- Principle 4: Sustainability
- Principle 5: Landscape
- Principle 6: Amenity

Schedule 1 Design quality principles	
Design quality principle	Comment
<p><b>Principle 1: Context and neighbourhood character</b></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</i></p>	<p>The surrounding development may be broadly characterised as low-density residential housing, consisting of single and two-storey dwelling houses. The development immediately to the south on Albatross Road and Kinghorne Street consists of free-standing single storey dwellings and associated outbuildings.</p> <p>Beyond these dwellings and on land bound by Albatross Road, Kinghorne Street and Albert Street is low-density residential development – mainly of single-storey construction.</p> <p>To the west and on the opposite side of Albatross Road is a continuation of predominately freestanding low-density dwellings with examples of established multi-dwelling housing developments.</p> <p>To the east, on the opposite side of Kinghorne Street, is a Council park and cemetery.</p> <p>On the northern side of the intersection of Albatross Road and Kinghorne Street on the western side of Kinghorne Street is an existing tyre shop. On the eastern side of Kinghorne Street at the intersection with Kalandar Street, Council has recently approved two - four storey residential flat buildings, consisting of 91 apartments and basement car park (DA19/1846).</p> <p>It is noted that the subject site was the subject of a planning proposal to zoning of subject land from B5 Business Development to B4 Mixed Use and amend maximum height of building to part 14m and 8.5m (transition to low density development to the south. The Planning Proposal was supported by a Character Assessment prepared by Urbanac Dated May 2017 (D17/257485) which informed the building heights for the site.</p> <p>While it is acknowledged that the desired future character of the locality will include higher density residential development over a small foot print commercial space at ground floor it is not considered that the current design which includes an exceedance into the 8.5m maximum building height provides an appropriate representation of that future character along the southern elevation of the Albatross Road frontage.</p> <p>Despite Council's concerns with the transition of the development to the low scale development to the south, the development is considered to satisfy this design principle.</p>
<p><b>Principle 2: Built form and scale</b></p> <p><i>Good design achieves a scale, bulk and height appropriate to the existing or desired future</i></p>	<p>The scale and bulk of the building is generally appropriate for the locality when considering the development in the strategic context of the site and the desire for a higher density of development to occur from the site.</p> <p>However, the proposed setback of the building to the</p>

<p><i>character of the street and surrounding buildings.</i></p> <p><i>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation, and the manipulation of building elements.</i></p> <p><i>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.</i></p>	<p>adjoining lower density R2 Low Density Residential zone does not provide an appropriate transition in built form or resolve the associated amenity impacts that are associated with the reduced setback.</p> <p>The southern portion of the building does not provide an appropriate <b>transition</b> to the low-density development to the south. While the applicant has made an attempt to reduce the bulk and scale of the development through the removal of two (2) apartments on the southern elevation, this has not overcome the need for a more suitable transition to the adjoining low-density environment.</p> <p>The aesthetics of the building are acceptable with appropriate colours and finishes.</p> <p>The development is not considered to satisfy this design principle.</p>
<p><b>Principle 3: Density</b></p> <p><i>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</i></p> <p><i>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.</i></p>	<p>55 units on a site area of 3,509m<sup>2</sup>, has a dwelling density of approximately 1 dwelling per 64m<sup>2</sup>.</p> <p>SLEP 2014 does not provide a floor space ratio under Clause 4.4 of the plan.</p> <p>While the density of development is consistent with that previously approved by Council in relation to the site on the north-eastern corner of Kinghorne and Kalandar Street (DA19/1846), it is not considered that the development <i>achieves a high level of amenity for residents and each apartment</i>. The lack of solar access and ventilation to the single bedroom apartments is of concern and will result in reduced amenity for occupants of these units which is not consistent with this principle.</p> <p>Furthermore, the design of the development does not demonstrate comprehensive compliance with the ADG as it relates to standards for:</p> <ul style="list-style-type: none"> <li>• <u>Solar access</u> - 13 of 55 apartments (24%) of apartments receive no sunlight between 9am and 3pm in mid-winter),</li> <li>• <u>Apartment size and layout</u> – the single bedroom apartment does not comply with the minimum widths (3.5m provided and 3.6m required)</li> <li>• <u>Private open space</u> – Several ground floor units do not provide at least 15sqm (G.04, G.08 and G.09) while other apartments do not provide a minimum depth of 3m (G0.2, G.03,G.04, G.08, G.10).</li> <li>• <u>Landscaped deep soil zone for larger blocks</u> - The total area of deep soil landscaping is 461m<sup>2</sup> (13% of the site area). The ADG recommends 15% deep soil zone for sites exceeding 1,500m<sup>2</sup>.</li> <li>• <u>Setbacks to the adjoining low-density development</u> – the setback of the Albatross portion of the development adjoining the south western boundary does not appear to comply with the required 9m</li> </ul>

	<p>setback. 6m is proposed to the 3rd level, however as this is measured to a balcony it is considered that the setback must be a minimum of 9m.</p> <ul style="list-style-type: none"> <li>• <u>Common circulation and spaces</u> – the maximum number of apartments off a circulation core on a single level is eight. Lobby B services 11 apartments on levels 01, 02, and 10 apartments on Level 03. It is noted that the ADG accepts that where this design criteria cannot be achieved the total units accessed off a circulation core must not exceed 12.</li> <li>• <u>Apartment mix</u> - The mix of one-bedroom units is not considered to provide an appropriate distribution to suitable locations within the building, with all single bedroom units provided within the compromised southern side of the V-shaped design – limiting solar access, ventilation and unit design.</li> <li>• <u>Car parking</u> - Taking into account the loss of car parking along the Albatross Road frontage (six (6) on-street spaces) the development is required to provide a total of 97 car spaces. The development is arguably deficient four (4) spaces.</li> </ul> <p>These non-compliances imply an overdevelopment of the site.</p> <p>It is likely however that the proposed density can be sustained having regard to existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p> <p>The development is not considered to satisfy this design principle</p>
<p><b>Principle 4: Sustainability</b></p> <p><i>Good design combines positive environmental, social and economic outcomes.</i></p> <p><i>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</i></p>	<p>37 of 55 apartments (67%) receive at least 3 hours direct sunlight between 9.00am and 3.00pm in mid-winter</p> <p>13 of 55 apartments (24%) of apartments receive no sunlight between 9am and 3pm in mid-winter. The ADG design criteria specified that a maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter. The development does not comply with the maximum number of units receiving no solar access.</p> <p>The majority of the proposed apartments have been designed to achieve satisfactory natural cross ventilation. for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. However, the design of the single bedroom apartments results in poor solar access and natural ventilation. There is likely to be a reliance on mechanical heating and cooling for these apartments.</p> <p>The central courtyard and the principal area of communal open space will not receive adequate solar access during winter. Due to the design of the development and location</p>



	<p>of the communal open space areas on the southern side of the building, the communal open space areas will have compromised sunlight access, and this does not appear to be capable of resolution without a significant redesign of the buildings and location of communal open space.</p> <p>The proposed development is supported by a BASIX Certificate as required under the EP&amp;A Regulation; however, this is not reflective of current layout.</p> <p>Stormwater is proposed to be reused for gardens in the communal area.</p> <p>The development is not considered to satisfy this design principle as it relates to the design of single bedroom units.</p> <p>The development is not considered to satisfy this design principle</p>
<p><b>Principle 5: Landscape</b></p> <p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p>	<p>The proposed landscaping meets the minimum deep soil requirements under the ADG. The total area of deep soil area is 461m<sup>2</sup> (13% of the site area). 328m<sup>2</sup> (9% of the site area) has a minimum dimension of 6m or larger. These areas have been designed to accommodate larger trees.</p> <p>The site exceeds 1500m<sup>2</sup> and as such it is appropriate to require 15% of the site as deep soil landscaped area. Additional deep soil planting could be provided through the reduction of units / building footprint and providing landscaping along the Kinghorn and Albatross Road frontages.</p> <p>Landscape plans have been reviewed by Council's landscape architect and are generally satisfactory when considering the plantings and maintenance arrangements (subject to recommended conditions if approved).</p> <p>There are no existing landscape features of note that would warrant retention.</p> <p>The development is not considered to satisfy this design principle.</p>
<p><b>Principle 6: Amenity</b></p> <p><i>Good design positively influences internal and external amenity for residents and neighbours. Achieving good</i></p>	<p>The proposed development does not achieve compliance with the ADG as it relates to the minimum standard for solar access, apartment size and layout, deep soil landscaping for larger sites, private open space, common circulation and spaces, apartment mix, car parking as</p>

<p><i>amenity contributes to positive living environments and resident wellbeing.</i></p> <p><i>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.</i></p>	<p>detailed in the ADG compliance table in the s4.15 Assessment Report – Appendix 1.</p> <p>The development is not considered to satisfy this design principle</p>
<p><b>Principle 7: Safety</b></p> <p><i>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</i></p> <p><i>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.</i></p>	<p>The design is considered to appropriately address Crime Prevention through Environmental Design (CPTED) matters and reduces areas of potential concealment/entrapment. Passive surveillance opportunities are available in the development.</p> <p>There are defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose. Entry points are located adjacent to the activated retail zone and designed to minimise opportunity for loitering.</p> <p>The residential lobbies and car park are proposed to operate on secured access. The car park access doors will operate individually via remote control (or similar) for residents and retail tenants, with an intercom system for visitors.</p> <p>The development is considered to satisfy this design principle.</p>
<p><b>Principle 8: Housing diversity and social interaction</b></p> <p><i>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</i></p> <p><i>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</i></p> <p><i>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.</i></p>	<p>The proposed development provides additional dwellings, with a range of sizes, in an area where additional housing is needed and is near a variety of services.</p> <p>The development provides both communal open space and a communal room. It is noted that the resident's room located on the south-west wing of the development has a compromised and diminutive floor area (20m<sup>2</sup>) that is not likely to be used by a broad range of people and is unlikely to provide opportunities for social interaction among residents.</p> <p>The development is considered to satisfy this design principle.</p>



<p><b>Principle 9: Aesthetics</b></p> <p><i>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.</i></p> <p><i>The visual appearance of a well-designed apartment development responds to the existing or future local context, particularly desirable elements, and repetitions of the streetscape</i></p>	<p>The architectural treatment is satisfactory.</p> <p>The development is considered to satisfy this design principle.</p>
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The development is considered to satisfactorily address the remaining design quality principles.

Clause 30(2) of SEPP 65 requires residential apartment development to be designed in accordance with the ADG.

The development has been assessed against the ADG and a full assessment is provided within the s.4.15 Assessment Report (Appendix 1 of this Report).

Parts 3 and 4 of the ADG provide objectives, design criteria and design guidance for the siting, design, and amenity of apartment developments. In accordance with ADGs, development needs to demonstrate how it meets the objective and design criteria. The design criteria set a clear measurable benchmark for how the objective can be practically achieved. If it is not possible to satisfy the design criteria, applications must demonstrate what other design responses are used to achieve the objective and the design guidance can be used to assist in this.

The development is non-complaint with the following Objectives and Design Criteria in Part 3 and 4 of the ADG, as outlined in the table below. Appendix A to the Section 4.15 Assessment Report (**Attachment 1**) provides a full assessment of the proposed development against each of the objectives of the ADG.

Objective	Assessment
<p><b>3E-1 Deep Soil Zones</b></p> <p>Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.</p> <p>On some sites it may be possible to provide larger deep soil zones, depending on the site area and context:</p> <ul style="list-style-type: none"> <li>• 10% of the site as deep soil on sites with an area of 650m<sup>2</sup> - 1,500m<sup>2</sup></li> <li>• 15% of the site as deep soil on sites</li> </ul>	<p>The total area of deep soil landscaping is 461m<sup>2</sup> (13% of the site area). 328m<sup>2</sup> (9% of the site area) has a minimum dimension of 6m or larger. These areas have been designed to accommodate larger trees.</p> <p>The site exceeds 1500m<sup>2</sup> and therefore it is appropriate to require 15% of the site as deep soil landscaped area. Landscape plans have been reviewed by Council's landscape architect and are satisfactory, subject to consideration of the requested changes.</p>

greater than 1,500m <sup>2</sup>	
<p><b>3F-1 Visual Privacy</b></p> <p>Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.</p> <p>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 (for building heights up to 12m): Habitable rooms and balconies: 6m Non-habitable rooms: 3m</p> <p><b>Note:</b> Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (figure 3F.5)</p>	<p>The adjacent sites to the south of the development site are zoned R2 Low Density Residential and currently contain single dwelling houses per lot.</p> <p>The setback of the Kinghorne portion of the development to the adjoining southern property boundary requires a minimum setback of 9m. The setback of this portion of the building varies for the ground and first floor of between 8m and 9m to windows and balconies and therefore does not strictly comply with the required 9m setback.</p> <p>The setback of the Albatross portion of the development adjoining the south western boundary does not appear to comply with this requirement. 6m is proposed to the 3rd level, however as this is measured to a balcony it is considered that the setback must be a minimum of 9m.</p>
<p><b>3H-1 Vehicle Access</b></p> <p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.</p>	<p>Vehicle access is provided at the southern end of the development along Albatross Road. The vehicular access is generally incorporated into the building's façade. Security gates have been setback from the frontage. While Council does not raise any concern with the design or integration of the access into the building from a strictly aesthetic standpoint it is noted that the car park entry and access should be located on secondary streets or lanes where available.</p> <p>The basement car park and manoeuvring are to be designed to comply with the Australian Standards and Chapter G21: Car Parking and Traffic.</p> <p>The proposal to access the development from the Regionally Classified Road (Albatross Road) is not supported and the applicant has been encouraged to provide access via the unclassified local road (Kinghorne Street).</p> <p>Under the ISEPP, a consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that, among other things, 'where practicable, vehicular access to the land is provided by a road</p>

	<p>other than the classified road’.</p> <p>It is considered that consent must not be granted for access off Albatross Road if practicable vehicular access is available to the site from a road other than the Albatross Road (that being Kinghorne Street). The applicant has submitted concept plans (D18/355817) indicating that there was practicable vehicular access from Kinghorne Street. This approach is reflected in the Land and Environment Court judgements.</p>
<p><b>3J-1 Bicycle and Car Parking</b></p> <p>Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.</p>	<p>Total number of car parking spaces required for residential units = 79.85 spaces required.</p> <p>The car parking rate applying to the commercial component of the development is to be calculated according to Chapter G21: Car Parking and Traffic in SDCP 2014</p> <p>Commercial development within land zoned B3 Commercial Core at ground level or where access to the development is from ground level above an underground level of car parking is 1 space per 24m2 gross floor area.</p> <p>The commercial floor of 267m2 is located at ground level with frontage to both Kinghorne Street and Albatross Road and is located above an underground level of car parking. Therefore, 267m2 divided by 24m2 = 11.13 spaces.</p> <p>Total of Car Spaces Required: 79.85 (residential) + 11.13 (commercial) = 90.98 spaces or 91 spaces</p> <p>Total of Car Spaces Proposed: 93 spaces</p> <p><b>Note: In accordance with section 5.14 Loss of On-Street Car Parking – Major Developments/ Redevelopments of Chapter G21 of SDCP2014, it is noted that:</b></p> <p>“major development/ redevelopment is proposed that has frontage to two or more streets, Council will take into account the loss of on-street car parking spaces arising from the construction of access, bus embayment’s and car parking restrictions, where these are directly related to the development proposal and will require these to be replaced on site.”</p> <p>The design of the development including slip lane to provide left turn access to the development from Albatross road will result in the removal of all on-street car parking spaces along the Albatross</p>

	<p>Road development frontage to facilitate access. This will result in the removal of approx. six (6) on-street car parking spaces.</p> <p>Taking into account the on-street car parking loss along the Albatross Road frontage (six (6) on-street spaces) the development is required to provide a total of 97 car spaces.</p> <p>The development is deficient four (4) spaces.</p> <p>Excavation of the site has been minimised in the placement of the car park access at the lowest point in the site.</p> <p>The car parking area has been designed to suit the site which is triangular. However, a logical layout is generally achieved.</p> <p>The car park protrudes above ground level greater than 1m however this is solely along the Albatross Road frontage and extends for less than 50% of the frontage. To minimise the visual impact appropriate colours are to be utilised and varied materials for balustrades located above the car parking area.</p> <p>Mixture of natural ventilation and a mechanical exhaust are to be utilised.</p>
<p><b>3J-2 Bicycle and Car Parking</b></p> <p>Parking and facilities are provided for other modes of transport.</p>	<p>Each resident has access to a secure storage cage which is large enough to accommodate a bicycle. Residential visitor and customer bicycle spaces are proposed in the form of post mounted bike rails within the road reserve, should Council require them.</p>
<p><b>4A-1 Solar and Daylight Access</b></p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows, and private open space.</p> <p>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p>	<p>37 of 55 apartments (67%) receive at least 3 hours direct sunlight between 9.00am and 3.00pm in mid-winter</p> <p>13 of 55 apartments (24%) of apartments receive no sunlight between 9am and 3pm in mid-winter.</p> <p>While the applicant has argued that the non-compliance with the Design Criteria is “<i>due to limitations imposed by the site configuration, southern slope and orientation</i>” it is noted that there are limited site constraints and there is opportunity to reduce the number of internal facing apartments and the design of dual aspect apartments overlooking the internal communal</p>

2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight	open space area and either Albatross or Kinghorne Street.
3. between 9 am and 3 pm at mid-winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	Of concern is that there are only two single bedroom apartments located on the third level that achieve the minimum daylight access with no lower-level single bedroom apartments receiving any solar access.
No.	<p>The minor non-compliance with the requirement that no less than 70% of apartments in a building receive a minimum of 3 hours direct sunlight could be readily accepted were the design to exceed the 15% of apartments in a building receiving no direct sunlight between 9 am and 3 pm at mid-winter.</p> <p>The substantial non-compliance with the maximum number of apartments receiving no direct sunlight between 9 am and 3 pm at mid-winter is a significant concern and will significantly increase the reliance on artificial lighting and heating, reduce energy efficiency and residential amenity.</p> <p>The design attempts to maximise the number of north facing apartments and limit the number of single aspects south facing apartments, however, it is noted that the internal facing single aspect apartments provided limited or no solar access. It is considered further consideration of the design to further limit single aspect southerly facing apartments would provide increased solar access and amenity to future residents.</p> <p>It is noted that, where possible, the building design maximises the number of living areas with a northerly aspect ensuring a high level of amenity is achieved. Services areas are generally provided to the rear or in central locations minimising their impact on the most desirable areas of the apartments.</p>
<b>4D-3 Apartment Size and Layout</b>	The open plan designs allow for a range of activities to happen in the kitchen and living spaces.
Apartment layouts are designed to accommodate a variety of household activities and needs.	
1. Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m (excluding wardrobe space)	1-bedroom apartment widths are 3.5m - this is marginally under 3.6m. The non-compliance is marginal and does not impede the usable area of the living rooms and would not likely have a significant detrimental impact on the amenity of the dwelling or resident use of the units impacted.
1. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)/.	However, it is noted that the design of the single bedroom units is once again impacted by the proposed design.



<p>2. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>• 3.6m for studio and 1-bedroom apartments</li> <li>• 4m for 2- and 3-bedroom apartments</li> </ul> <p>3. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts</p>	
<p><b>4E-1 Private Open Space and Balconies</b></p> <p>Apartments provide appropriately sized private open space and balconies to enhance residential amenity.</p> <p>1. All apartments are required to have primary balconies as follows: Studio: 4m<sup>2</sup> 1 Bedroom: 8m<sup>2</sup>, 2m minimum depth 2 Bedroom: 10m<sup>2</sup>, 2m minimum depth 3 Bedroom: 12m<sup>2</sup>, 2.4m minimum depth The minimum balcony depth to be counted as contributing to the balcony area is 1m.</p> <p>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 15m<sup>2</sup> and a minimum depth of 3m.</p>	<p>All balconies exceed the minimum area for the respective unit types. All balconies have a minimum depth of 2m.</p> <p>A number of the ground floor units do <u>not</u> provide at least 15sqm (G.04, G.08 and G.09) while other apartments do <u>not</u> provide a minimum depth of 3m (G0.2, G.03, G.04, G.08, G.10).</p>
<p><b>4F-1 Common Circulation and Spaces</b></p> <p>Common circulation spaces achieve good amenity and properly service the number of apartments.</p> <p>1. The maximum number of apartments off a circulation core on a single level is eight.</p> <p>2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40</p>	<p>Common spaces are provided with solar access, natural ventilation and allow for universal access.</p> <p>Lobby B services 11 apartments on levels 01, 02, and 10 apartments on Level 03. The corridors have been designed with light slots to capture natural light and ventilation to maintain amenity.</p> <p>* Note: Where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level</p>



<p><b>4K-2 Apartment Mix</b></p> <p>The apartment mix is distributed to suitable locations within the building.</p>	<p>The mix of one-bedroom units is not considered to provide an appropriate distribution to suitable locations within the building.</p> <p>The single bedroom units are limited to the southern elevation of the V-shaped building design which has resulted in units with severely compromised solar access, ventilation and private open space that will likely result in units with diminished amenity. The irregular floor plans will also result in odd-shaped rooms and the potential loss of the use of usable space within these units.</p> <p>It is considered that the single bedroom units should be spread more evenly throughout the development to enable these units a greater likelihood for increased amenity</p>
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State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (SEPP (BASIX))

The provisions of SEPP (BASIX) apply to the site. In accordance with the requirements of SEPP BASIX, Certification for each dwelling has been submitted with the development application.

Clause 55A of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) allows for a development application to be amended provided a new BASIX certificate is submitted to account for those amendments. An amended BASIX Certificate, to reflect amended plans was not submitted with the amended application.

Council cannot issue development consent without the provision of a new BASIX Certificate that reflects the amended application i.e., 55 residential units.

**Planning Assessment**

The DA has been (or will be) assessed under s4.15 of the Environmental Planning and Assessment Act 1979. Please refer to **Attachment 1**.

**Policy Implications**

A key policy consideration is height.

Currently, there is an 8.5m and 14m height limit which applies to the site under SLEP 2014.

The development proposed exceeds the maximum building height as follows:

- 14m height limit by 480mm or 3.4%;
- 8.5m height limit 1.465m or 17.2%; and
- The percentage exceedance of the maximum building height ranges from 1.4% to 17.2% with the average height limit exceedance being 4.83%.

The variation has been addressed by the applicant via a formal clause 4.6 variation statement. The matter is discussed in the attached section 4.15 report in further detail (**Attachment 1**) and has been considered previously in this Report.

#### Consultation and Community Engagement:

Six (6) public submissions were received in relation to Council's notification of the development. Six (6) were objections to the development. Nil (0) were in support of the development. The notification was made in accordance with Council's Community Consultation Policy with letters being sent within a 1m buffer of the site. The application was notified for a period of 30 days and advertised in the local papers in accordance with Council's Community Consultation Policy.

Key issues raised as a result of the notification are provided below:

- Traffic impacts on local road network
- Impact of additional cars parking on the on-street car parking
- Amenity impacts associated with overlooking and overshadowing
- Insufficient justification and planning purpose to support the PP.
- The bulk and scale of the development is not consistent with the low scale development to the south of the site and the site would be better developed for multi-dwelling housing.
- The proposed setbacks of the development to the southern boundary are not appropriate
- The pedestrian access point to the development on the Kinghorne Street frontage will result in safety and security issues

The planning concerns raised by the submitters are addressed in the attached section 4.15 report in further detail (**Attachment 1**).

#### Financial Implications:

There are potential cost implications for Council in the event of a refusal of the application. Such costs would be associated with defending any appeal in the Land and Environment Court, should the applicant utilise appeal rights afforded under the *Environmental Planning and Assessment Act 1979* (EP&A Act).

#### Legal Implications

Pursuant to section 8.2 of the EP&A Act, a decision of the Council may be subject of a review by the applicant in the event of approval or refusal. If such a review is ultimately pursued (if the recommendation is not adopted), the matter would be put to Council for consideration.

Alternatively, an applicant may also appeal to the Court against the determination pursuant to section 8.7 of the EP&A Act.

#### Summary and Conclusion


This application has been assessed having regard for section 4.15 (Evaluation) under the EP&A Act. Based upon the s4.15 Assessment Report (**Attachment 1**) it is recommended that Development Application No. DA16/1465 be refused for the following reasons.

1. Non-compliance with SEPP 65 in relation to the Apartment Design Guide (s4.15(1)(a)(i) of the EPA Act);

The development fails to satisfy clause 30(2)(a) and (b) of SEPP 65, in that the development does not demonstrate that adequate regard has been given to:

- (a) the design quality principles (Principle 2: Built form and scale; Principle 3: Density; Principle 4: Sustainability; Principle 5: Landscape; Principle 6: Amenities), and
  - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria (3E-1 Deep Soil Zones, 3F-1 Visual Privacy, 3H-1 Vehicle Access, 3J-1 Bicycle and Car Parking, 3J-2 Bicycle and Car Parking, 4A-1 Solar and Daylight Access, 4D-3 Apartment Size and Layout, 4E-1 Private Open Space and Balconies, 4F-1 Common Circulation and Spaces, 4K-2 Apartment Mix).
2. The proposal exceeds the maximum building height development standard under clause 4.3 of SLEP 2014. The applicant's written request to vary the maximum building height development standard has not adequately addressed matters required to be demonstrated by clause 4.6(3)(a) and (b) of SLEP 2014. The clause 4.6 Variation Request does not provide sufficient environmental planning grounds to support the variation, nor that compliance is unnecessary or unreasonable. (s4.15(1)(a)(i) of the EPA Act).
3. The development has failed to satisfy Council of preconditions clause 101(2)(a) and (b) of the ISEPP (s4.15(1)(a)(i) of the EPA Act).  
In accordance with clause 101(2)(a) and (b) of the ISEPP, Council must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:
  - (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and
  - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
    - (i) the design of the vehicular access to the land, or
    - (ii) the emission of smoke or dust from the development, or
    - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land
4. Clause 55A of the *Environmental Planning and Assessment Regulation 2000* allows for a development application to be amended provided a new BASIX certificate is submitted to account for those amendments. An amended BASIX Certificate, to reflect amended plans was not submitted with the amended application.
5. The proposed development is inconsistent with the Objectives, Performance Criteria and Acceptable Solutions as they relate to the following provisions of Chapter G21: Car Parking and Traffic Shoalhaven Development Control Plan 2014 (SDCP 2014) (s4.15(1)(a)(iii) of the EPA Act):
  - (a) 5.2 Traffic.
  - (b) 5.4 Access.
  - (c) 5.14 Loss of On-Street Car Parking – Major Developments/ Redevelopments.
6. The development is likely to have adverse impacts on the built environment (s4.15(1)(b) of the EPA Act).
7. The site is not suitable for the development as proposed (s4.15(1)(c) of the EPA Act).
8. The development is not in the public interest (s4.15(1)(e) of the EPA Act).

Planning Report – S4.15 Assessment - 173 Kinghorne Street and 2 & 4 Albatross Road, NOWRA - Lot 1, 29 & 30 DP 25114

	Planning Report S4.15 Environmental Planning & Assessment Act 1979
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DA Number	DA16/1465
Property	173 Kinghorne Street and 2 & 4 Albatross Road, NOWRA - Lot 1, 29 & 30 DP 25114
Applicant(s)	Lee Carmichael Town Planning NTA PDC Planners
Owner(s)	Bill Zervos and Jasmine Anne Simpson & John Irwin Gould

#### **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 section manager.

#### **1. Detailed Proposal**

Council is in receipt of a Development Application (DA) seeking development consent for the demolition of existing structures and construction of a mixed-use development consisting of 55 apartments, including:

- 8 x one-bedroom apartments
- 31 x two-bedroom
- 16 x three-bedroom
- 3 commercial tenancies (total commercial floor area 259m<sup>2</sup> (267m<sup>2</sup> including bathroom i.e. GFA) at ground floor with frontage to both Kinghorne Street and Albatross Road
- A basement car parking area accessed via Albatross Road with 93 car parking spaces.
- Construction of a left turn slip lane (removal of on-street parking) for access into the basement car park off Albatross Road.
- Construction of a central median and signage be constructed along Albatross Road to control the movement of traffic in and out of the proposed development (left in and left out movements only).

A site plan, ground floor, elevations, landscape plan and photomontages are provided in **Figures 1 – 12**.

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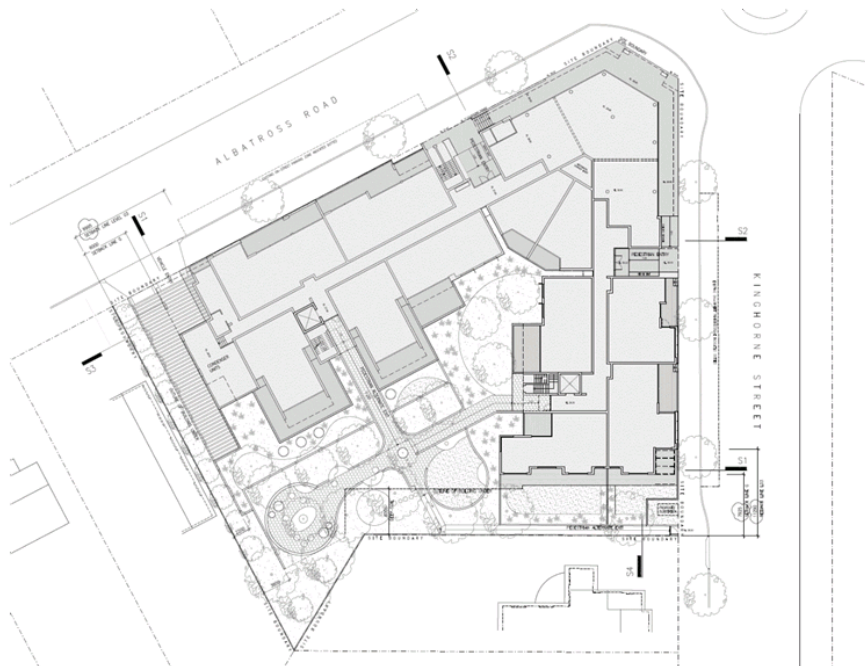


Figure 1 - Site Plan of the proposed development.

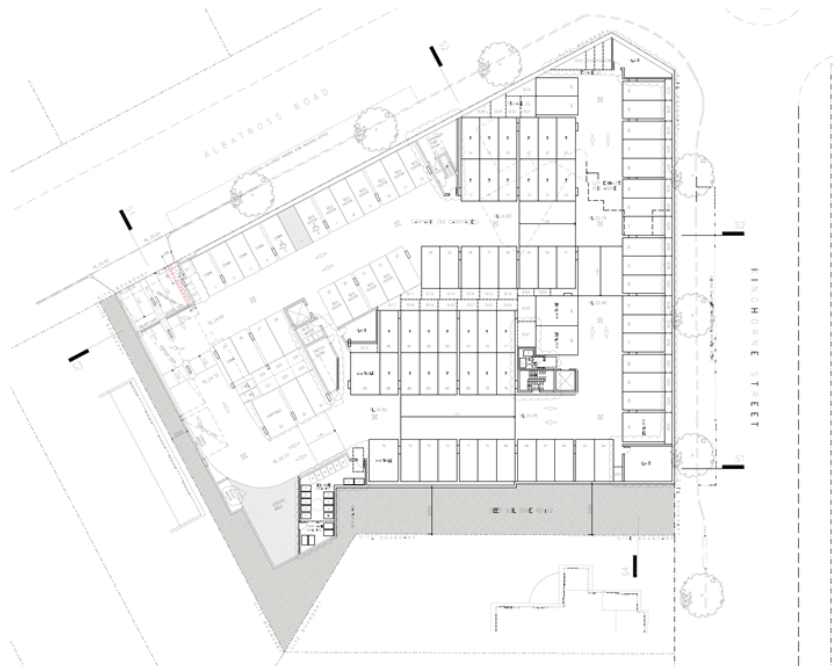


Figure 2 - Basement floor plan of the proposed development.



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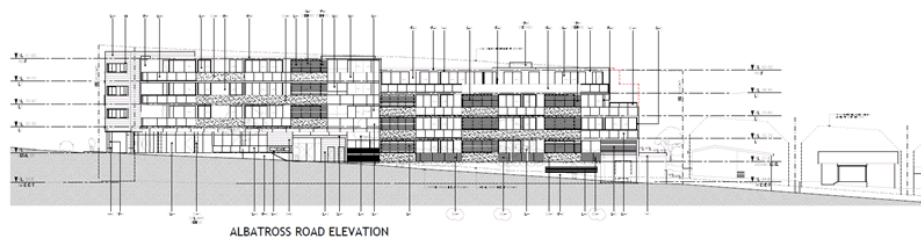


Figure 3 – Elevation of the proposed development (western elevation – Albatross Road).

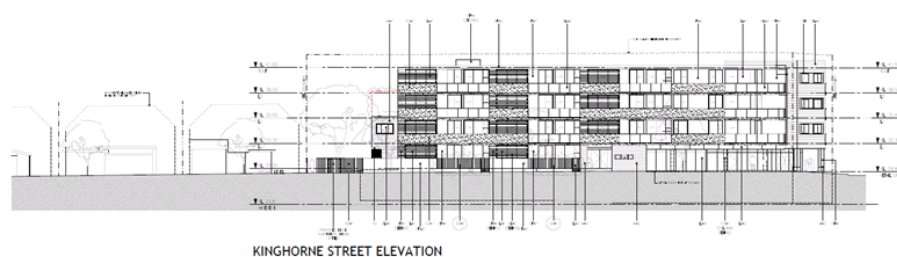


Figure 4 - Elevations of the proposed development (eastern elevation – Kinghorne Street).

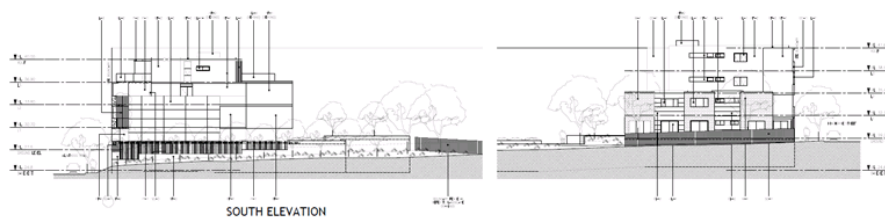


Figure 5 - Elevation of the proposed development (southern elevation)

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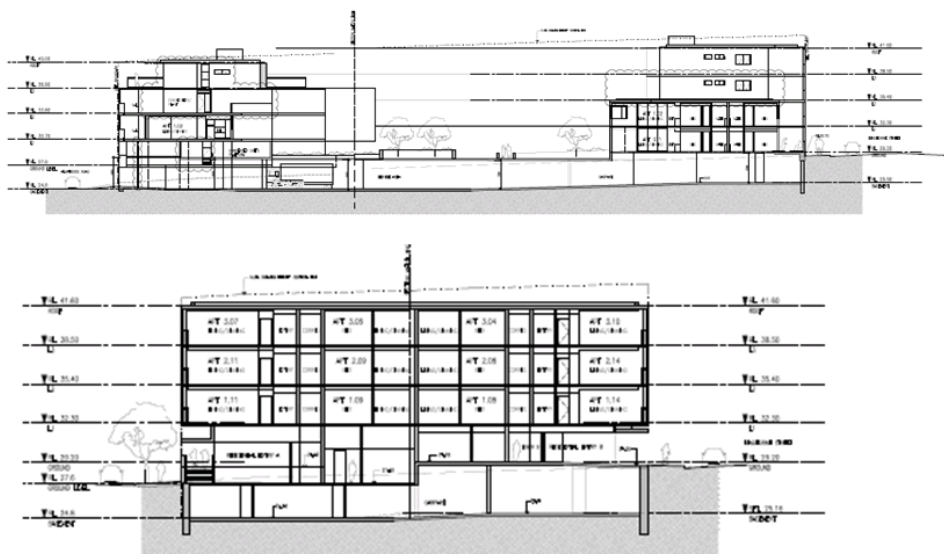


Figure 6 - Section plans of the proposed development.



Figure 7 - Section plans of the proposed development.

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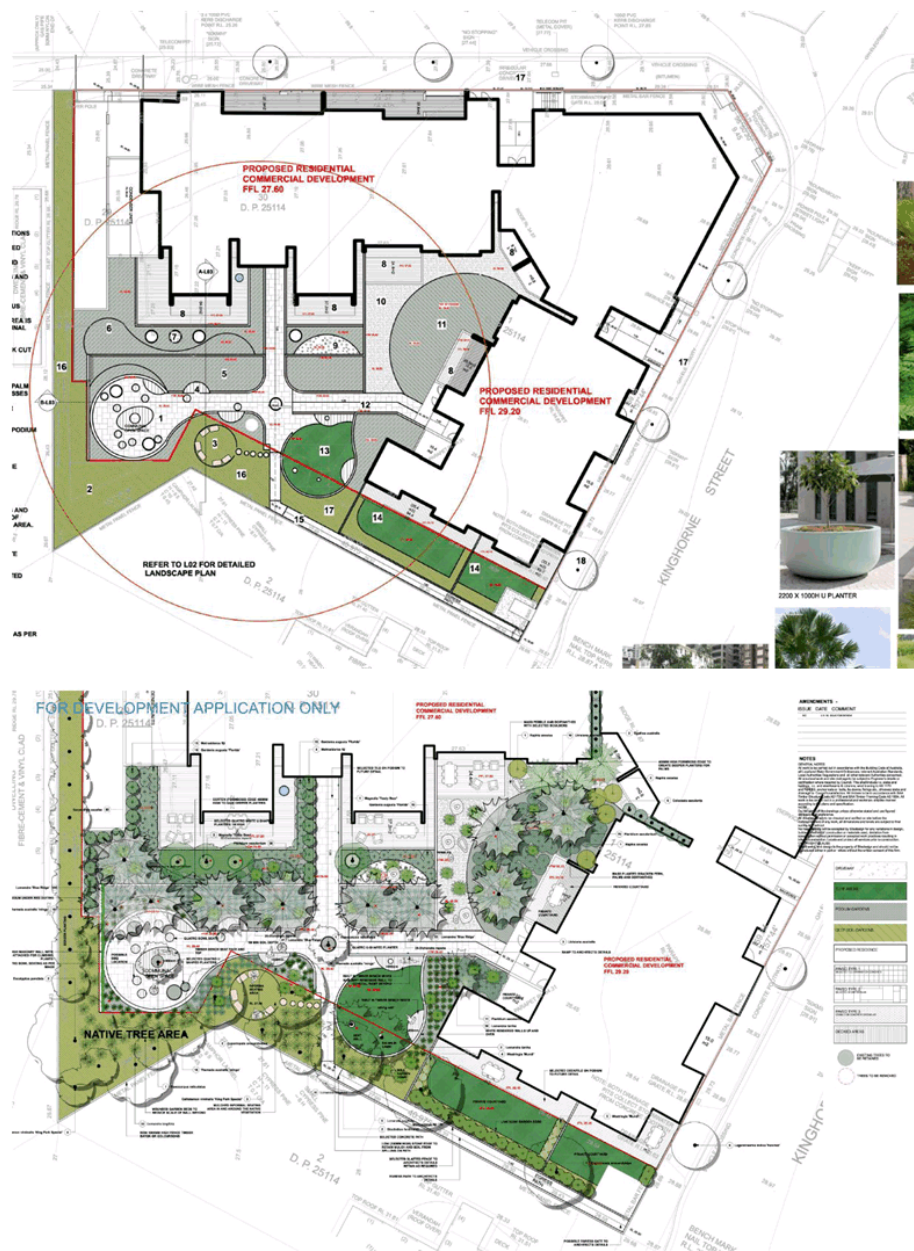


Figure 8 - Landscape plans of the proposed development.



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Figure 9 - Photomontage view from the south-eastern (Kinghorne Street).



Figure 10 - Photomontage view from the north-eastern corner of Kinghorne and Kalandar Street.

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## **2. Subject Site and Surrounds**

The subject site comprises 3 lots (subject site) and is located on the south-western corner of the intersection of Kinghorne Street, Albatross Road and Kalandar Street. The subject site is described as 173 Kinghorne Street and 2 & 4 Albatross Road, Nowra and legally identified as Lot 1, 29 and 30 DP 25114.

The subject site is an irregular shaped lot with a frontage of 74m to Albatross road and 60m to Kinghorne Street with a 9.5m corner splay. The combined land area of the lots is approximately 3497m<sup>2</sup>. The site grades gradually to the south-western corner of the site.

The site previously operated as a car servicing workshop that serviced and repaired motor vehicles in association with local car dealerships, however, the site is now operating as an electrical supplies wholesaler (L&H Electrical Supplies). The site is adjoined by established residential uses to the south and west, a tyre service and residential uses to the north and public open space to the east. On the northern side of the intersection of Albatross Road and Kinghorne Street on the western side of Kinghorne Street is an existing tyre shop. On the eastern side of Kinghorne Street at the intersection with Kalandar Street Council has recently approved (DA19/1846) two - four storey residential flat buildings, consisting of 91 apartments and basement car park.

The surrounding land uses are a mix of residential, commercial and public open space. An aerial image of the subject site is provided in **Figure 13** below.

### Deposited Plan and 88B Instrument

A review of the deposited plans reveals that there is no impediment to the development of the site as proposed.

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Figure 13 - Aerial image of the subject site in the local context.

### 3. Background

#### Post-Lodgement

On 18 April 2016, the DA was lodged with Council.

On 9 August 2016, Council requested additional information from the applicant in relation to the design and access arrangements from Albatross Road.

On 16 December 2016, revised plans and additional information was submitted by the applicant in response to Council's letter dated 9 August 2016. The amended plans included modifications to the southern portions of each building 'wing' and deletion of two apartments (reducing the unit yield from 57 to 55 apartments). The reduction in units on the southern portion of the development was proposed in an effort to achieve a more appropriate transition to the adjoining low-density development.

On 27 February 2017, Council requested additional information from the applicant, with continued concerns raised in relation to design elements and major concerns raised in relation to the proposed access/agrees onto Albatross Road.

On 7 March 2017, Council met with the applicant to discuss the Planning Proposal over the site (described below) and continued concerns with the design and location of access/egress onto Albatross Road.

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On 22 March 2017, a further additional information letter was sent to the applicant to detail the outcomes of the 7 March 2017 meeting and to express continued concerns the proposed access/egress onto Albatross Road.

10 July 2018, Council met again with the applicant to discuss design and traffic issues.

On 12 September 2018, the applicant lodged concept plans for access/egress to the development from Kinghorne Street for Council's consideration (refer to **Figure 14**).

On 12 October 2018, Council provided feedback to the applicant on the concept plan, noting that the concept plan addressed the main concern that had been raised by Council being the relocation of the access from Albatross Road to Kinghorne Street frontage.

On 18 April 2019, the applicant confirmed that they would not be pursuing any change to the design of the development which would relocate the access from Albatross Road to Kinghorne Street frontage.

On 12 August 2019, the applicant submitted a further amended *Traffic Report* prepared by Jones Nicholson (D19/280251) to justify the retention of access on the Albatross Road frontage and to address concerns raised in relation to the designs apparent inconsistency with *State Environmental Planning Policy (Infrastructure) 2007*.

On 1 October 2019, the Development and Environment Committee resolved in relation to the Development Application (DA) 'DA16/1465 – Residential Units and Commercial Space – 173 Kinghorne Street, Nowra be called in to Council for determination due to significant public interest.' (DE19.107)

On 26 November 2019, the applicant submitted amended plans, acoustic report, and clause 4.6 variation statement.

On 6 October 2020, the Development & Environment Committee resolved (MIN20.728):

*"That consideration of Development Application DA16/1465 – Mixed Use development consisting of 55 residential units and commercial space on the land known as 173 Kinghorne Street and 2 & 4 Albatross Road, Nowra (Lot 1, 29 and 30 DP 25114) be deferred to the January 2021 Development and Environment Committee Meeting to allow Council to undertake further traffic investigations in consultation with the developer."*

Council has taken the following action in relation to the above matter, following the Council resolution:

1. On 18 November 2020, relevant council staff met to discuss critical aspects of the Development Application in particular the *Traffic Management Report* prepared by Jones Nicholson Consulting Engineers dated 27 February 2021 (Reference: CRPT-16020003.01B). The outcomes of the meeting were provided to the applicant on 26 November 2021 (D20/526133).
2. On 21 December 2020, council provided additional information to the applicant in the form of: Outputs from Council's traffic modelling and Council's requirements for a future 4 lane cross section of Albatross Road (D20/563561). Council also offered as part of the forwarding of this additional information the opportunity to meet further to ensure that all matters have been addressed relating to traffic and planning issues.
3. On 15 January 2021, Council notified the applicant via email (D21/16222) that the information requested in Council's 21 December 2020 was required to be submitted to Council in 7 days.
4. On 4 February 2021, Council emailed the applicant (D21/43579) offering to meet to discuss the additional information.

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5. On 10 February 2021, Council notified the applicant via email (D21/52704) that the information requested in Council's 21 December 2020 was required to be submitted to Council in 7 days as the applicant had not responded to Council in relation to the offer of a meeting and the information had not been submitted.
6. On 23 February 2021, the applicant's traffic consultant (Stephen Falkner) emailed Council, to request the following:
  - traffic data on the existing road network from their records; and
  - projected traffic data for 10-year projections (2031).
7. On 12 March 2021, Council emailed the applicant's traffic consultant (Stephen Falkner) (D21/99332) with the following:
  - Council's most recent tube traffic count for the area; and
  - projected traffic data for 10-year projections (2031).
8. On 24 March 2021, council emailed the applicant ( D21/117366) to inform them that the application would be required to be reported to council in the absence of a formal response to Council's email dated 21 December 2020.
9. On 31 March 2021, the applicant was emailed (D21/127622) to inform them that the additional information was required to be submitted to Council within 7 days.

#### Site History and Previous Approvals

In April 2016, a Planning Proposal (PP) was lodged concurrently with this DA to rezone the subject site to enable the development of the land as currently proposed. The previous land zoning (B5 Business Development) only permitted development for the purpose of 'shop top housing' which would require the entire ground floor to be developed for commercial use.

The PP sought to amend the following Land Zoning and Height of Buildings maps in *Shoalhaven Local Environmental Plan 2014* (SLEP 2014):

- Land Zoning – Sheet LZN\_013E - amend zoning of subject land from B5 Business Development to B4 Mixed Use.
- Height of Buildings – Sheet HOB\_013E - amend maximum height of building from no mapped maximum building height to a height determined by the outcome of the character assessment (maximum of 15m). *Note: the current height for the site is up to 11m as per clause 4.3(2A) of Shoalhaven Local Environmental Plan (LEP) 2014.*

On 12 September 2017, the Development Committee resolved (MIN 17.776) to adopt the PP as exhibited with the following addition: *to avoid uncertainty, the width of the part of the site with an 8.5m maximum building height is 9m, as measured from the southern boundaries of Lot 1 and Lot 30 DP 25114, and south-eastern and south-western boundaries of Lot 29 DP 25114.*

Under Council's delegation, the PP was forwarded to NSW Parliamentary Counsel to draft the amendment to SLEP 2014 under Section 59(1) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

On 6 October 2017, Amendment No. 16 to SLEP 2014 was published on the NSW Legislation website and commenced, bringing into effect the zoning and building height changes outlined above.

The following is a list of relevant approvals for the subject site:

- BA73/1794: Showroom additions

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- BA74/0275: Storage Shed
- BA76/0601: Car yard additions
- DA01/2756: Car service centre – alterations and additions – approved – 9 October 2001
- DA02/2244: Commercial Workshop/Shed – approved – 30 August 2002

The subject site has operated in the capacity of vehicle servicing, repairs and sales for a significant period of time. A site inspection revealed that the use is ongoing.

#### 4. Consultation and Referrals

Internal Referrals		
Referral	Recommendation	Comment
Development Engineer	Concerns raised in relation to the design of the access/egress, pedestrian safety and servicing of the development.	Noted. Conditions have not been provided.
Traffic & Transport Unit	<p>Council's Traffic &amp; Transport Unit have reviewed the proposal along with the following reports:</p> <ul style="list-style-type: none"> <li>• <i>Traffic SIDRA Analysis</i> prepared by Jones Nicholson Consulting Engineers dated 31 July 2019 (D19/280251);</li> <li>• <i>Traffic Management Report</i> prepared Jones Nicholson Consulting Engineers dated 27 February 2018 (D18/89444);</li> <li>• <i>Traffic Management Report</i> prepared Jones Nicholson Consulting Engineers dated 23 November 2016 (D17/38303); and</li> <li>• <i>Assessment of Traffic and Parking Implications</i> prepared by Transport and Traffic Planning Associates dated April 2016 (Revision C) reference 16029 (D16/110933)</li> </ul> <p>In summary, the applicant has not provided sufficient justification as to why access for the proposed development should not satisfy the requirements of Clause 101(2)(a) of <i>State Environmental Planning Policy (Infrastructure) 2007</i> (ISEPP), pertaining to development with frontage to a classified road.</p> <p>Clause 101(2)(a) of ISEPP is a mandatory requirement that necessitates that the vehicular access to be via a local road (Kinghorne Street), being part of the unclassified road network and to which the site has an extensive street frontage.</p> <p>The desired outcome is for access to the land via the unclassified local road – Kinghorne Street, which will ensure that the development does not compromise the effective and ongoing operation and function of the classified road (Albatross Road).</p>	Noted. Conditions have not been provided.



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	Council's Traffic and Transport Unit has considered the applicant's submitted Traffic Reports and has concluded that the information provided does not establish that the safety, efficiency and ongoing operation of the classified road would not be adversely affected by the development as a result of: the design of the vehicular access to the land, and the nature, volume or frequency of vehicles using the classified road to gain access to the land.	
Building Surveyor	<p>The BCA Report and the Access Report have identified several non-compliances with the Building code of Australia (BCA). The reports make recommendations that these matters be addressed at Construction Certificate stage. Some of these matters are non-compliances with the Deemed to Satisfy provisions of the BCA. Where compliance with the Deemed to Satisfy provisions of the BCA is not achieved, an alternative solution addressing the Performance Provisions of the BCA must be provided. Any fire engineered alternative solution must be prepared by a C10 Accredited Fire Engineer and approved by an A1 Accredited Certifier (accredited by the Building Professionals Board).</p> <p>The building is required to be accessible in accordance with Part D3 of the BCA and the requirements of AS1428.1-2009.</p> <p>The accessible car parking space required by Clause D3.5 of the BCA to service the shops are located within a secure parking area and has not been made readily available/accessible to the public that may use the shops. This will need to be addressed prior to determination of the development application as additional spaces may be required to be provided.</p> <p>Subject to the imposition of the recommended conditions to address the above matters, the Building Surveyor has not objected to the development application.</p>	If approved conditions are recommended to be imposed as required to reflect the conditions recommended.
Waste	Subject to the imposition of the recommended conditions, the Waster Services Section has not objected to the development application.	If approved conditions are recommended to be imposed as required to reflect the proposed conditions.
Shoalhaven Water	Shoalhaven Water has issued a Shoalhaven Water Notice for the proposed development.	The Shoalhaven Water Notice is to be issued with the Development Consent if approved.
Environmental Health Officer – Acoustic Assessment	Environmental Services has reviewed the <i>Acoustical Report – Proposed Residential Unit Development At – 172 Kinghorne Street, Nowra NSW</i> by Koikas Acoustics Pty Ltd – Ref:	If approved conditions are recommended to be imposed as required to

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	<p>3907R20191105PD173KinghorneStNowra_DA – 6NOV2019.</p> <p>The report has concluded that “there is sufficient scope within the proposed building design to achieve the applied acoustic planning guidelines.” The conclusion has also stated that sufficient insulation against external sources of noise can be dealt with through acoustic glazing and internal insulation of the building complies with the BCA-although verification of the system should be given prior to constructing.</p> <p>The design as outlined in the architectural drawings submitted by Kannfinch Architects are the basis for the noise assessment and as such any deviation from the designs may change the outcomes of the noise report.</p> <p>Condition should also be included as follows:</p> <p><i>1. A detailed assessment of mechanical plant noise must be prepared for the development prior to construction.</i></p> <p><i>2. In-situ noise assessment must be undertaken by a suitable qualified sound engineer on a fully installed floor/ceiling assembly to ensure adequate acoustic insulation prior to the installation of floors/ceilings throughout the building. A report must be submitted to Council's Senior Environmental Health Officer outlining findings of the investigation.</i></p>	reflect the proposed conditions.
Environmental Health Officer – Contamination	<p>Environmental Services has reviewed the following contamination reports:</p> <ul style="list-style-type: none"> <li>• <i>Validation of Remediation Works – 173 Kinghorne, Nowra NSW 2541– REP-19-8156 – 12<sup>th</sup> July 2019 by Envirotech.</i></li> <li>• <i>Environmental Site Assessment (Targeted Phase II Site Investigation) 173 Kinghorne Street, Nowra NSW – 1<sup>st</sup> March 2016 by Envirotech</i></li> </ul> <p>It is noted that the <i>Environmental Site Assessment</i> conducted additional sampling around the property to ascertain if there was contamination at sites other than the underground petroleum storage (UPPS) tanks. This report clears the site from requiring additional remediation other than at the UPSS.</p> <p>Conditions have been recommended to deal with any unexpected finds and to reflect the recommendations of the submitted contamination and validation reports.</p>	If approved conditions are recommended to be imposed as required to reflect the proposed conditions.
Landscape Architect	No objection has been raised, subject to consideration of the following:	If approved conditions are recommended to be imposed as required to

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	<p><u>Plants</u></p> <p>The choice of plants although very densely planted is generally suitable for the development. However, they may want to consider the following:</p> <ul style="list-style-type: none"> <li>• The native area planting appears to be overplanted. Planting of 4 large Eucalyptus trees plus other native trees in an area approx. 5 x 10m will cause future issues to the property owner. The proposed understorey planting will not succeed here as there will be too much shade plus the fact that the garden is south facing.</li> <li>• The proposed hedge – <i>Metrosideros thomasi</i> will require regular pruning to keep it a suitable height as it is a small tree. Perhaps consider the Fuji Fire variety which is smaller in habit</li> </ul> <p><u>Streetscape</u></p> <p>There is no proposed streetscape treatment along Kinghorne Street and Albatross Road. The development should be in keeping with similar developments in Nowra such as the Quest Apartments. Street trees must be included the proposal and a minimum of 100Litre pot size – <i>Lagerstroemia indica</i> 'Natchez' is existing on Kinghorne Street and should continue on this development.</p> <p><u>Building</u></p> <p>Panel on Southern end of building is a bit stark and imposing. Suggest using a softer colour or same treatment as front – Timber look</p> <p><u>Further Action</u></p> <p>Please provide details of the streetscape on Kinghorne Street and Albatross Road.</p>	reflect the proposed conditions.
GIS	Recommended unit numbering has been provided and is to be included on the Development Consent if approved.	If approved conditions are recommended to be imposed as required to reflect the proposed conditions.

External Referrals		
Agency	Recommendation	Comment

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Endeavour Energy	Endeavour Energy have raised no objection to the Development Application subject to the recommendations and comments in their letter dated 23 July 2020 (D20/331930).	If approved conditions are recommended to be imposed as required to reflect the recommendations and comments of Endeavour Energy.
Transport for NSW (formerly RMS)	<p>On 30 March 2017, RMS provided a letter to Council (D17/105493) to clarify the RMS' position in relation to the proposed development and access arrangements onto the Regional Classified Road (Albatross Road) as follows:</p> <p><i>"RMS has reconsidered its previous advice (i.e. letter dated 14 July 2016) and wishes to advise that Albatross Road (at this location) is a regional classified road, and Kinghorne Street (at this location) is an unclassified road, both managed by Shoalhaven City Council.</i></p> <p><i>RMS has reviewed its level of involvement on classified regional roads and considers that it is more appropriate for councils to determine if proposed access arrangements are acceptable from a network perspective (i.e. acceptable in terms of safety and efficiency).</i></p> <p><i>Given the above, RMS entrusts Council to assess the traffic implications of this development application.</i></p> <p><i>RMS recognises that the proposed access arrangements to Albatross Road would require Section 138 consent from Council and concurrence from RMS under Section 138 of the Roads Act, 1993. Should the developer be able to demonstrate to Council that the proposed access arrangements to Albatross Road are acceptable and comply with relevant standards, RMS would issue its concurrence under Section 138 of the Road Act, 1993.</i></p> <p><i>RMS highlights that in determining the application under Part 4 of the Environmental Planning and Assessment Act, 1979, it is the consent authority's responsibility to consider the environmental impacts of any road works which are ancillary to the development. This includes any works which form part of the proposal and/or any works which are</i></p>	<p>Council has assessed the traffic implications of the development in accordance with ISEPP, SDCP 2014 and the relevant standards. Council's Traffic and Transport Unit does not believe that the applicant has demonstrated that the proposed access arrangements to Albatross Road are acceptable and comply with relevant standards, and therefore RMS may not be in a position to issue their concurrence under Section 138 of the Roads Act 1993.</p>

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	<i>deemed necessary to include as requirements in the conditions of development consent. Depending on the level of environmental assessment undertaken to date and nature of the works, the consent authority may require the developer to undertake further environmental assessment for any ancillary road works."</i>	
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## 5. Other Approvals

Integrated Approvals and Concurrences		
Agency	Recommendation	Comment
NRAR	On 17 July, NRAR notified Council, that to avoid any further delays NRAR would be acceptable to impose your condition requiring that the applicant be required to apply for and obtain a Controlled Activity Approval under the <i>Water Management Act 2000</i> prior to the issue of a CC (D20/325590)	Should the application be approved, a condition is recommended to be imposed to require the applicant to apply for and obtain a Controlled Activity Approval under the <i>Water Management Act 2000</i> prior to the issue of a CC

## 6. Statutory Considerations

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 (EP&A Act). The following planning instruments and controls apply to the proposed development:

Instrument	Relevant
Shoalhaven LEP 2014	<input checked="" type="checkbox"/>
State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004	<input checked="" type="checkbox"/>
State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development	<input checked="" type="checkbox"/>
State Environmental Planning Policy No 55 - Remediation of Land	<input checked="" type="checkbox"/>
State Environmental Planning Policy (Infrastructure) 2007	<input checked="" type="checkbox"/>

Additional information on the proposal's compliance with the above planning instruments is detailed below in Section 7 (Statement of Compliance/Assessment) of this report.

## 7. Statement of Compliance/Assessment



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The following provides an assessment of the submitted application against the matters for consideration under Section 4.15 of the EP&A Act.

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

Environmental Planning and Assessment Act 1979

Section 4.46 – Integrated Development		
Act	Provision	Approval
Water Management Act 2000	ss 89, 90, 91	Water use approval, water management work approval or activity approval under Part 3 of Chapter 3
Roads Act 1993	S138	Consent to: (a) erect a structure or carry out a work in, on or over a public road, or (b) dig up or disturb the surface of a public road, or (c) remove or interfere with a structure, work or tree on a public road, or (d) pump water into a public road from any land adjoining the road, or (e) connect a road (whether public or private) to a classified road

**i) Environmental planning instrument**

SEPP (Infrastructure) 2007 (ISEPP)

Subdivision 2 of ISEPP outlines the requirements for referral to the electricity supply authority for development likely to affect an electricity transmission or distribution network. The development is proposed within 5m of an exposed overhead electricity power line and therefore referral to Endeavour Energy is required (clause 45(1)(d)). Endeavour Energy have raised no objection to the DA subject to the recommendations and comments in their letter dated 23 July 2020 (D20/331930).

The subject site has frontage to Albatross Road (MR92), being a classified regional road. Accordingly, clause 101 of ISEPP applies and reads as follows:

**101 Development with frontage to classified road**

(1) *The objectives of this clause are—*

- (a) *to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and*
- (b) *to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.*

(2) *The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

- (a) *where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) *the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
  - (i) *the design of the vehicular access to the land, or*
  - (ii) *the emission of smoke or dust from the development, or*
  - (iii) *the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

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*(c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Under sub-clause 2 the consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that the subsequent considerations have been met by the proposal.

The three (3) preconditions in subclause 101(2) are collective. Therefore, anyone pre-condition in subclause 101(2) about which council is not satisfied prevents the issue of consent:

- Subclause 101(2)(a) is relevant because the site has frontage to Kinghorne Street (unclassified at this location) and Albatross Road (regional classified road at this location). The applicant has submitted concept plans (D18/355817) (refer to **Figure 14**) to demonstrate that practicable and safe, vehicular access to the land can be provided by a road (Kinghorne Street) other than the classified road.

In order to determine whether the access to the development is “practicable”, the Court has established the test in the case of *Modern Motels Pty Ltd v Fairfield City Council* [2013] NSWLEC 138, Preston CJ at paragraph [42]:

*The phrase “where practicable” regulates the desired outcome (“vehicular access to the land is provided by a road other than a classified road”). The consent authority is precluded from granting consent to a development on land that has frontage to a classified road unless it is satisfied that the desired outcome will be achieved, where that desired outcome is practicable. That is to say, the practicability is as to the outcome of providing vehicular access to the land by a road other than the classified road.*

The desired outcome is for access to the land via the unclassified local road – Kinghorne Street, which will ensure that the development does not compromise the effective and ongoing operation and function of the classified road (Albatross Road).

- Subclause 101(2)(b) is relevant and the applicant’s submitted traffic reports do not (in the view of Council Traffic and Transport Unit) establish that the safety, efficiency and ongoing operation of the classified road would not be adversely affected by the development as a result of: the design of the vehicular access to the land, and the nature, volume or frequency of vehicles using the classified road to gain access to the land.

It is noted that on Page 15 of the *Traffic Management Report* prepared by Jones Nicholson, dated 27 February 2018 (D18/89444) that concerning the Albatross Road access:

*The proposed Albatross Road access is considered satisfactory in that it will not impact upon the safety, efficiency and ongoing operation of Albatross Road. Furthermore, practicable access for all traffic movements is not achievable from Kinghorne Street to the proposed development. Therefore, the proposed access from Albatross Road can be approved in meeting the requirements of SEPP Infrastructure clause 101.*

Council’s Traffic and Transport Unit have considered all of the applicant’s detailed traffic reports and is not satisfied that the access onto Albatross Road demonstrates compliance with subclauses 101(2)(b)(i) and (iii) of the Infrastructure SEPP. It follows that the development has failed to meet preconditions 101(2)(a) and (b) and Council does not have the ability under the ISEPP to approve the development application in its current form.

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- Subclause 101(2)(c) is relevant, the noise criteria have been addressed in the submitted *Acoustic Report* prepared by KA Acoustics dated 6 November 2019 (D19/423688). The recommendations of the report to ensure internal noise levels comply with those specified in Subclause 101(2)(c) are capable of being addressed by appropriate development consent conditions.

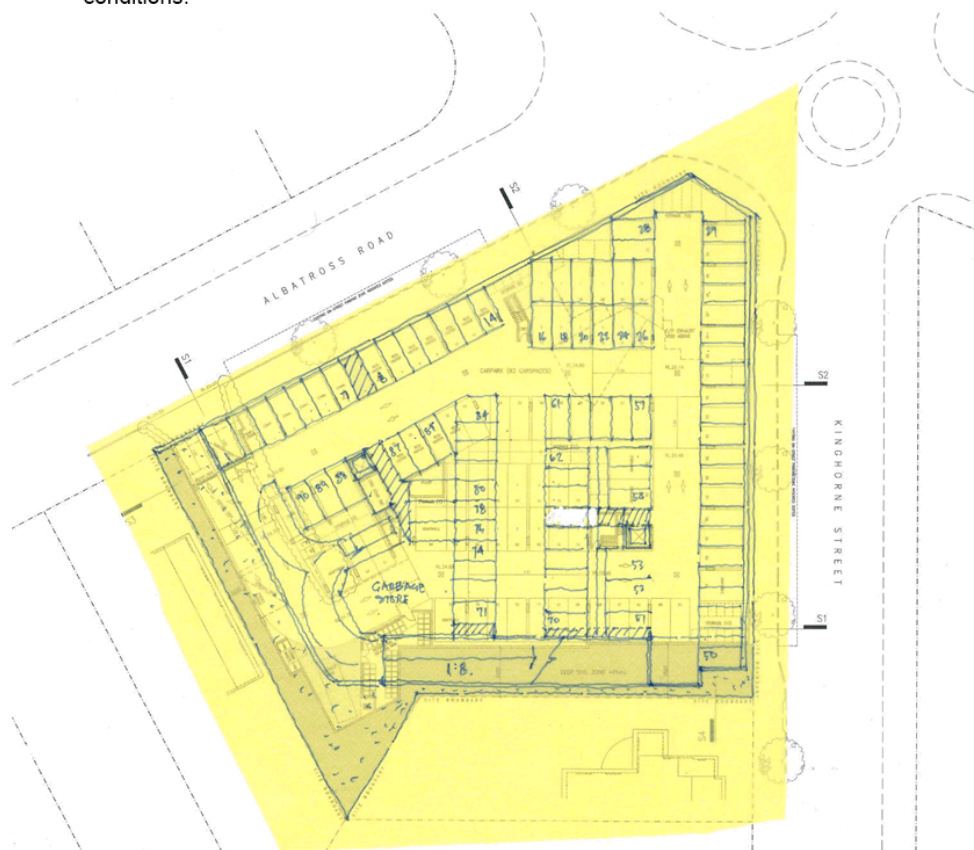


Figure 14 - applicant's submitted concept plan, demonstrating that access via Kinghorne Street (local road) is capable of being achieved.

**SEPP 55 Remediation of Land**

Question	Yes		No	
1. Is the proposal for residential subdivision or a listed purpose (the list provided in Table 1 of the contaminated land assessment guidelines)?	X	Proceed to Question 3	to	Proceed to Question 2
2. Does the proposal result in a change of use (that is the establishment of a new use)?		Proceed to Question 3	to	Assessment under SEPP 55 and DCP not required.
3. Does the application proposed a new: <ul style="list-style-type: none"> <li>Child care facility</li> <li>Educational use</li> <li>Recreational use</li> </ul>		Proceed to Question 5	to X	Proceed to Question 4

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Question	Yes	No
<ul style="list-style-type: none"> <li>Health care use</li> <li>Place of public worship</li> <li>Residential use in a commercial or industrial zone</li> </ul>		
4. Review the property file and conduct a site inspection of the site and surrounding lands. Is there any evidence that the land has been used for a listed purpose?	X	Proceed to Question 5
5. Is the proposed land use likely to have any exposure path to contaminants that might be present in soil or groundwater?	X	Request contaminated site assessment

Comment:

In accordance with Clause 7 of SEPP 55 Council must consider the potential for contamination on the site and its suitability for the proposed use. In accordance with Council's mapping, the site is listed as potentially contaminated land. The aim of the investigation was to assess whether there is soil contamination adjacent to an underground storage tank. The site previously operated as a car servicing workshop that serviced and repaired motor vehicles in association with local car dealerships, however, the site is now operating as an electrical supplies wholesaler (L&H Electrical Supplies).

The applicant submitted a report in support of the application titled *Environmental Site Assessment (Targeted Phase II Site investigation)* by Envirotech (Ref: REP-277015-A – 1/3/2016). Believed to be located within the site is an underground petrol storage system (UPSS) tank and associated fuel bowers.

The report recommends that the decommissioned Underground Petroleum Storage System (UPSS) tank be removed and disposed of off-site. Removal of the tank must be undertaken in accordance with NSW legislation and guidance, relevant Australian Standards and applicable work health and safety legislation.

Soil sample results were compared to the Health Investigation Levels (HILs) Guidelines and Ecological Screening Levels (ESLs) for residential allotments with limited soil access (NEPM 2013). The report concludes that chemically, the results meet the criteria of the Health Investigation Limits for all of the analyses contaminants across the site. In relation to the area of investigation, this area is deemed suitable for the proposed development.

An additional report titled *Validation of Remediation Works* prepared by Enviro Tech dated 12 July 2019 (D19/388658). The additional validation report has been considered by Council's Environmental Services unit to be satisfactory and appropriate conditions are recommended should the application be approved.

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

The provisions of SEPP (BASIX) apply to the site. In accordance with the requirements of SEPP BASIX, Certification for each dwelling has been submitted with the development application.

Clause 55A of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) allows for a development application to be amended provided a new BASIX certificate is submitted to account for those amendments. An amended BASIX Certificate, to reflect amended plans was not submitted with the amended application.

Council cannot issue development consent without the provision of a new BASIX Certificate that reflects the amended application i.e. 55 residential units.



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State Environmental Planning Policy (State and Regional Development) 2011

At the time of lodgment Schedule 4A of the *Environmental Planning and Assessment Act 1979* (EPA Act) was operative.

The proposed development has a capital investment value of (excluding GST) of \$15,197,610.

As the development does not meet or exceed the nominated CIV that would trigger determination by the Southern Regional Planning Panel and Council is the determining authority for the application.

State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development

*State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development* (SEPP 65) applies to the proposed development which 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 SEPP 65, *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.

A SEPP 65 Design Statement has been prepared by a Registered Architect (D20/6044) addressing the requirements of SEPP 65 and was submitted with the application accordance with Clauses 50(1A) & 50(1AB) of the *EP&A Regulation*. The *SEPP 65 Design Statement* has address Schedule 1 of SEPP 65. Council's assessment of the design quality principles is provided in the table below:

Schedule 1 Design quality principles	
Design quality principle	Comment
<b>Principle 1: Context and neighbourhood character</b>  <i>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.</i>  <i>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.</i>  <i>Consideration of local context is important for all sites, including sites in established areas, those</i>	It is noted that the surrounding development may be broadly characterised as low-density residential housing, consisting of single and two-storey dwelling houses. The development immediately to the south on Albatross Road and Kinghorne Street consists of free-standing single storey dwellings and associated outbuildings.  Beyond these dwellings and on land bound by Albatross Road, Kinghorne Street and Albert Street is low-density residential development – mainly of single-storey construction.  To the west and on the opposite side of Albatross Road is a continuation of predominately freestanding low-density dwellings with examples of established multi-dwelling housing developments.  To the east, on the opposite side of Kinghorne Street, is a Council park and cemetery.  On the northern side of the intersection of Albatross Road and Kinghorne Street on the western side of Kinghorne Street is an existing tyre shop. On the eastern side of Kinghorne Street at the intersection with Kalandar Street, Council has



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<p><i>undergoing change or identified for change.</i></p>	<p>recently approved two - four storey residential flat buildings, consisting of 91 apartments and basement car park (DA19/1846).</p> <p>It is noted that the subject site was the subject of a planning proposal to zoning of subject land from B5 Business Development to B4 Mixed Use and amend maximum height of building to part 14m and 8.5m (transition to low density development to the south. The Planning Proposal was supported by a Character Assessment prepared by Urbanac Dated May 2017 (D17/257485) which informed the building heights for the site.</p> <p>While it is acknowledged that the desired future character of the locality will include higher density residential development over a small foot print commercial space at ground floor it is not considered that the current design which includes an exceedance into the 8.5m maximum building height provides an appropriate representation of that future character along the southern elevation of the Albatross Road frontage.</p> <p>Despite council's concerns with the transition of the development to the low scale development to the south, the development is considered to satisfy this design principle.</p>
<p><b>Principle 2: Built form and scale</b></p> <p><i>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</i></p> <p><i>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</i></p> <p><i>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.</i></p>	<p>The scale and bulk of the building is generally appropriate for the locality when considering the development in the strategic context of the site and the desire for a higher density of development to occur from the site.</p> <p>However, the proposed setback of the building to the adjoining lower density R2 Low Density Residential zone does not provide an appropriate transition in built form or resolve the associated amenity impacts that are associated with the reduced setback.</p> <p>The southern portion of the building does not provide an appropriate transition to the low-density development to the south. While the applicant has made an attempt to reduce the bulk and scale of the development through the removal of two (2) apartments on the southern elevation, this has not overcome the need for a more suitable transition to the adjoining low density environment.</p> <p>The aesthetics of the building are acceptable with appropriate colours and finishes.</p> <p>The development is <u>not</u> considered to satisfy this design principle</p>
<p><b>Principle 3: Density</b></p> <p><i>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</i></p> <p><i>Appropriate densities are consistent with the area's existing or projected population.</i></p>	<p>55 units on a site area of 3,509m<sup>2</sup>, has a dwelling density of approximately 1 dwelling per 64m<sup>2</sup>.</p> <p>SLEP 2014 does not provide a floor space ratio under Clause 4.4 of the plan.</p> <p>While the density of development is consistent with that previously approved by Council in relation to the site on the north-eastern corner of Kinghorne and Kalandar Street (DA19/1846), it is not considered that the development achieves a high level of amenity for residents and each</p>

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<p><i>Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</i></p>	<p>apartment. The lack of solar access and ventilation to the single bedroom apartments is of particular concern and is likely to result in poor liveability associated with these units which is not consistent with this principle.</p> <p>Furthermore, the design of the development does not demonstrate comprehensive compliance with the ADG as it relates to standards for solar access, apartment size and layout, private open space, landscaped deep soil zone for larger blocks (15% deep soil zone for sites exceeding 1500m<sup>2</sup>), setbacks to the adjoining low density development, common circulation and spaces, apartment mix and car parking. These non-compliances suggest an overdevelopment of the site and an inappropriate density.</p> <p>It is likely that the proposed density can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p> <p>The development is <u>not</u> considered to satisfy this design principle</p>
<p><b>Principle 4: Sustainability</b></p> <p><i>Good design combines positive environmental, social and economic outcomes.</i></p> <p><i>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</i></p>	<p>37 of 55 apartments (67%) receive at least 3 hours direct sunlight between 9.00am and 3.00pm in mid-winter</p> <p>13 of 55 apartments (24%) of apartments receive no sunlight between 9am and 3pm in mid-winter.</p> <p>The majority of the proposed apartments have been designed to achieve satisfactory natural cross ventilation. for the amenity and liveability of residents and passive thermal design for ventilation, heating and cooling reducing reliance on technology and operation costs. However, the design of single bedroom apartments results in poor solar access and natural ventilation. There is likely to be a reliance on mechanical heating and cooling for these apartments.</p> <p>The central courtyard and the principal area of communal open space will receive inadequate solar access during winter. Due to the design of the development and location of the communal open space areas on the southern side of the building, the communal open space areas will receive poor access to sunlight and this cannot be resolved without a complete reconsideration of the design of the buildings and location of communal open space.</p> <p>The proposed development is supported by a BASIX Certificate as required under the EP&amp;A Regulation.</p> <p>Stormwater is proposed to be reused for gardens in the communal area.</p> <p>The development is <u>not</u> considered to satisfy this design principle as it relates to the design of single bedroom units.</p>
<p><b>Principle 5: Landscape</b></p> <p><i>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in</i></p>	<p>The proposed landscaping meets the minimum deep soil requirements under the ADG. The total area of deep soil area is 461m<sup>2</sup> (13% of the site area). 328m<sup>2</sup> (9% of the site area) has a minimum dimension of 6m or larger. These areas have been designed to accommodate larger trees.</p>

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<p><i>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.</i></p> <p><i>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.</i></p> <p><i>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.</i></p>	<p>The site exceeds 1500m<sup>2</sup> and therefore it may be appropriate to require 15% of the site as deep soil landscaped area. Additional deep soil planting could have been provided through the removal of the single bedroom apartments and redistribution of these units throughout the development and the potential for additional landscaping along the Kinghorne and Albatross Road frontages.</p> <p>Landscape plans have been reviewed by Council's landscape architect and are considered to be generally satisfactory when considering the plantings and maintenance arrangements (subject to recommended conditions if approved).</p> <p>There are no existing landscape features of note that would warrant retention</p> <p>The development is <u>not</u> considered to satisfy this design principle.</p>
<p><b>Principle 6: Amenity</b></p> <p><i>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.</i></p> <p><i>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.</i></p>	<p>The proposed development does not achieve compliance with the ADG as it relates to the minimum standard for solar access, apartment size and layout, deep soil landscaping for larger sites, private open space, common circulation and spaces, apartment mix, car parking as detailed in the ADG compliance table – Appendix A.</p> <p>The development is <u>not</u> considered to satisfy this design principle</p>
<p><b>Principle 7: Safety</b></p> <p><i>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</i></p> <p><i>A positive relationship between public and private spaces is</i></p>	<p>The design is considered to appropriately address Crime Prevention through Environmental Design (CPTED) matters and reduces areas of potential concealment/entrapment. Passive surveillance opportunities are available in the development.</p> <p>There are defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose. Entry points are located adjacent to the activated retail zone and designed to minimise the opportunity for loitering.</p>

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<p><i>achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</i></p>	<p>The residential lobbies and car park are proposed to operate on secured access. The car park access doors will operate individually via remote control (or similar) for residents and retail tenants, with an intercom system for visitors.</p> <p>The development is considered to satisfy this design principle.</p>
<p><b>Principle 8: Housing diversity and social interaction</b></p> <p><i>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</i></p> <p><i>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</i></p> <p><i>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.</i></p>	<p>The proposed development provides additional dwellings, with a range of sizes, in an area where additional housing is needed and is near a variety of services.</p> <p>The development provides both communal open space and a communal room. It is noted that the resident's room located on the south-west wing of the development has a compromised and diminutive floor area (20m<sup>2</sup>) that is not likely to be used by a broad range of people and is unlikely to provide opportunities for social interaction among residents.</p> <p>Despite the deficiencies in the design of the communal room, the development is considered to satisfy this design principle.</p>
<p><b>Principle 9: Aesthetics</b></p> <p><i>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.</i></p> <p><i>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape</i></p>	<p>The architectural treatment is satisfactory.</p> <p>The development is considered to satisfy this design principle.</p>

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

The development has been assessed against the Apartment Design Guide and a full assessment is provided under **Appendix A** of this Report.

Shoalhaven LEP 2014

The land is zoned B4 Mixed Use under the SLEP 2014.

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### Characterisation and Permissibility

The proposal is best characterised as a '*mixed use development*' consisting of '*commercial premises*' on the ground floor and '*residential flat building*' under the SLEP 2014. The proposal is permitted within the zone with the consent of Council.

The above terms are defined in the Dictionary to SLEP 2014 as follows:

**commercial premises** means any of the following—

- (a) business premises,
- (b) office premises,
- (c) retail premises.

**mixed use development** means a building or place comprising 2 or more different land uses.

**residential flat building** means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

### Zone objectives


Objective	Comment
<i>To provide a mixture of compatible land uses.</i> <i>To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.</i>	The development is considered to satisfy the objectives of the B4 zone. The development would provide a mixture of compatible uses (commercial and residential accommodation). the development would likely provide the potential for the use of the ground floor commercial tenancies for the purpose of business, office or retail land uses below residential units. The site is in an accessible location on the southern fringe of the Nowra town centre with opportunities for walking and cycling to the CBD.

### SLEP 2014 Clauses

Clause	Comments	Complies
<b>Part 2 Permitted or prohibited development</b>		
2.7 Demolition	The demolition of a building or work may be carried out only with development consent.	Yes.
<b>Part 4 Principal development standards</b>		
4.3 Height of Buildings	<p><b>Clause 4.3 Height of Buildings</b></p> <p>The objectives of this clause are stated in subclause (1) as follows:</p> <ul style="list-style-type: none"> <li>(a) <i>to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,</i></li> <li>(b) <i>to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,</i></li> <li>(c) <i>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.</i></li> </ul>	No.



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	<p>In accordance with subclause (2), the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.</p> <p>The Height of Buildings Map indicates that the subject site has split height standards of 14m (N2) and 8.5m (I2). An extract from the Height of Building Map is provided in <b>Figure 15</b> below.</p> <p>The development proposed exceeds the 14m height limit for the portion of the building located in this mapped are where the maximum building height is 14m – I2. The application seeks a variation to clause 4.3 in accordance with clause 4.6 of SLEP 2014.</p>  <p><i>Figure 15 - Extract from the SLEP 2014 Height of Building Map.</i></p>	
4.4 Floor Space Ratio	<p>The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.</p> <p>There is no Floor Space Ratio Map that relates to the subject site.</p>	N/A.
4.6 Exceptions to development standards	<p>Development consent may, subject to clause 4.6, 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.</p> <p>The development standard is not excluded from the operation of clause 4.6 as it is not listed within 4.6(8) of SLEP 2014.</p> <p>The application seeks a variation to Clause 4.3 in accordance with Clause 4.6 of SLEP 2014.</p> <p>An assessment of the applicant's request under Clause 4.6 to vary the development standard relating to building height under Clause 4.3 is provided immediately following this table.</p>	No.

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Part 5 Miscellaneous provisions		
5.10 Heritage Conservation	<p>The objectives of this clause are as follows:</p> <p>(a) to conserve the environmental heritage of Shoalhaven,</p> <p>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</p> <p>(c) to conserve archaeological sites,</p> <p>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</p> <p>The subject site is not identified as a heritage item or within a heritage conservation area under Schedule 3 of SLEP 2014. It is noted that the development site is opposite and nearby an item of local heritage significance under Schedule 3 of SLEP 2014, the item is listed as Item 361 - Nowra General Cemetery.</p> <p>The development is consistent with the objectives of the heritage provisions in that does not directly or indirectly adversely impact on the cemetery.</p>	Yes.
Part 7 Additional local provision		
7.1	<p>It is unlikely that the proposed works would disturb, drain or expose acid sulfate soils to the atmosphere to cause environmental damage.</p> <p>The subject works are proposed to be undertaken on Class 5 acid sulphate soil. The works would not involve disturbing the earth at a depth of 5 metres or the lowering of the watertable</p> <p>Despite this, a precautionary condition to ensure that if acid sulfate soils are identified during site preparatory works or excavation an acid sulfate management procedure is to be put in place should the application be recommended for approval.</p>	Yes.
7.2	The development will include significant earthworks to facilitate the construction of the basement separate consent for these works is not required outside of this consent.	Yes.
7.3	The subject land is not identified as a Flood Planning Area by mapping supporting the SLEP 2014.	N/A.
7.5	The subject property is not identified as being affected by areas of terrestrial biodiversity under this clause. In this regard, no adverse environmental impacts are likely to arise. Given these circumstances, the provisions of this clause, therefore, do not apply to the proposal.	N/A.
7.6	<p>The subject property is not identified as containing or within 40m of any watercourses under the provisions of Clause 7.6.</p> <p>However, the proposed drainage works which include drainage works within 40m of Nowra Creek will require the issue of a CAA from NRAR. The proposed development is considered to be</p>	N/A.

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	consistent with this clause (subject to appropriate conditions if approved).	
7.7	The site of the proposed development is <u>not</u> subject to a slope in excess of 20% and is not identified as a 'Sensitive Area' by Natural Resource Sensitivity - Land Mapping that supports the Shoalhaven LEP 2014.	N/A.
7.8	The Scenic Protection Area Map that accompanies the Shoalhaven LEP 2014 does not identify the subject land as being located within a 'Scenic Protection' area.	N/A.
7.11	The subject site has access to all essential services. All services are to be augmented as required.	Yes

#### Clause 4.6 Variations Assessment

Development consent may, subject to clause 4.6, 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 development standard is not excluded from the operation of clause 4.6 as it is not listed within 4.6(8) of SLEP 2014.

The application seeks a variation to Clause 4.3 in accordance with Clause 4.6 of SLEP 2014.

#### Development Standard to be Varied

Clause 4.3 stipulates the objective and development standard for the height of buildings in Shoalhaven. Relevantly Clause 4.3(2) & (2A) state as follows:

*(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

The SLEP 2014, through Clause 4.3 sets an 8.5m (I2) height limit for part of the site and a 14m (N2) height limit for rest of the site.

The 8.5m height limit applies to a 9m portion of the south-eastern portion of the site extending across all lots subject of the development application where the lot adjoins the lower density R1 General Residential land to the south.

#### The Extent of the Variation

Parts of the building exceed the 8.5m (I2) and 14m (N2) height limit for a portion of the development.

The development proposed exceeds the maximum building height as follows:

- 14m height limit by 480mm or 3.4%;
- 8.5m height limit 1.465m or 17.2%; and
- The percentage exceedance of the maximum building height ranges from 1.4% to 17.2% with the average height limit exceedance being 4.83%.

The submitted height plane diagrams prepared by Kannfinch Architects illustrate that the height limit breach and indicate the percentage breach at each point.

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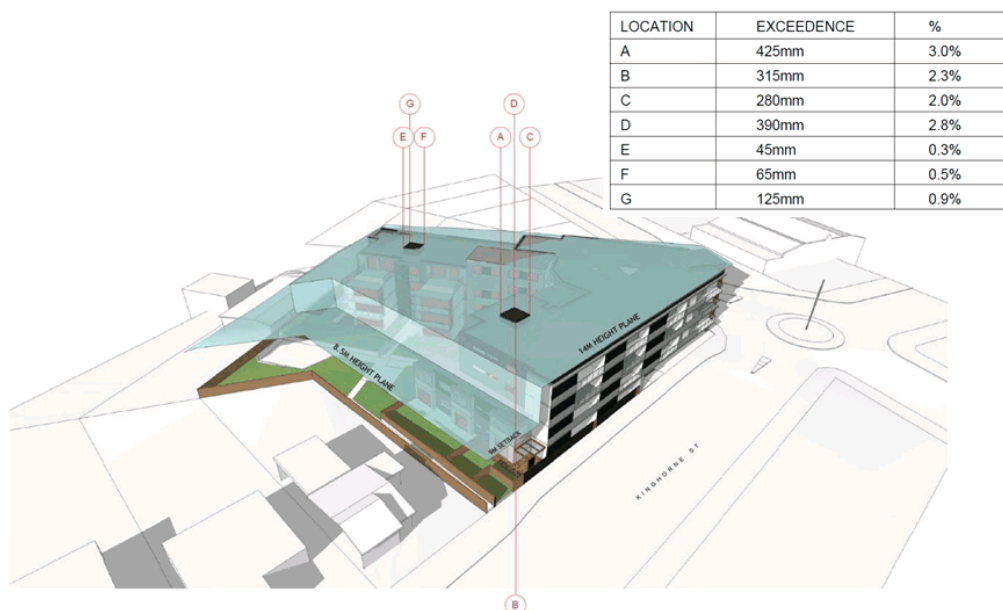


Figure 16 - Height plane instructions relating to the 14.0m (N2) maximum building height - south-eastern view from Kinghorne Street.

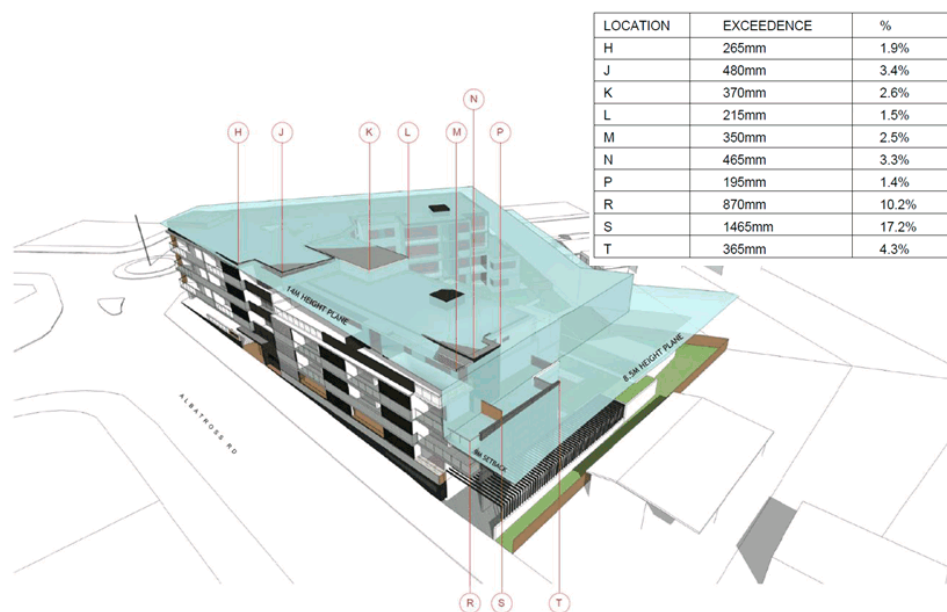


Figure 17 - Height Plane instructions relating to the 14.0m (N2) and 8.5m (I2) maximum building height - southwestern view from Albatross Street.

The applicant has submitted an amended written request to justify the contravention of the development standard under the requirements of clause 4.6 of SLEP 2014 (D19/423702)

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Council is required to consider sub-clauses (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.

The first step in satisfying clause 4.6(4)(a)(i), is to consider whether the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). Sub-clause (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 (clause 4.6(3)(a)); and
2. That there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). The written request needs to demonstrate both of these matters.

**Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case**

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:



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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 "5-part Test" and the applicant's response the separate tests is provided below:

**Test 1.** *The objectives of the development standard are achieved notwithstanding noncompliance with the standard.*

This single test relied upon by the applicant to demonstrate that compliance with the standard in the circumstances of the case would be unreasonable or unnecessary. The applicant's position is extracted from their Clause 4.6 Variation Report below:

*In this instance it is considered that the best way to demonstrate compliance is both unreasonable and unnecessary is because the underlying objectives of the development standard (Clause 4.3) are achieved.*

*The objectives of Clause 4.3 are to.*

- i. to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
- ii. to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*
- iii. 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 proposal is consistent with the above objectives for the following reasons:*

- 1) The arrangement of the development on the site, together with the site orientation, ensures that no overshadowing, significant view loss, or other amenity impacts arise out of the proposed height exceedance.*
- 2) The proposed development is setback from boundaries to adjacent lower-density zoned land and stepped to minimise the bulk and scale in relation to surrounding development. The points of exceedance are minor in nature and largely oriented along the Albatross Road frontage away from adjacent residential development. With the exception of the handrail and privacy screen that exceeds the 8.5m height limit the remainder of the exceedance points are located such that they would not be readily detectable from the public domain. The privacy screens are the building elements located the closest to adjoining residential properties. These building elements are in place to protect the amenity of neighbouring properties. Removing these building*

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*elements in order to comply with the height limit would have an adverse impact on adjoining property.*

- 3) *The proposed development has architectural merit and provides an attractive streetscape to a prominent intersection whilst providing amenity for occupants and existing/future neighbours.*
- 4) *The proposed development addresses the emerging neighbourhood character and desired future character by:*
  - *Providing a greater number of dwellings in order to address housing growth and in recognition of the site's location west of the Princes Highway and approximately 1km south of the CBD within the existing urban area providing access to a wide range of services, community facilities and shopping.*
  - *The development includes business premises at the ground floor which will be capable of supplying services and facilities to this development, as well as existing and future development in the area.*
  - *Responding to the site's location at the edge of the identified urban consolidation areas (particularly Nowra CBD South) and at one of the area's more significant intersections by accentuating this significant corner with a larger and appropriately scaled development in keeping with the scale of development anticipated by the planning controls.*
  - *Providing larger building form reflecting the likely future increasing urban character of the area and helping include a greater diversity of housing types and housing choice in Nowra. The development provides additional housing, of differing sizes, to fulfil a need identified by several strategic plans.*
  - *The stepping of subsequent floors of the building protects solar access and privacy for existing and future adjacent development.*
- 5) *Photomontages have been prepared and submitted. The photomontages illustrate how the new building will sit within the street and the extent to which it enhances the built environment.*
- 6) *The building will not obstruct any important views. Privacy impacts associated with the development have been managed through ensuring compliance with SEPP 65 and the associated ADG. The design is consistent with the relevant ADG design criteria relating to privacy.*
- 7) *Overshadowing studies have been undertaken the results of which have been depicted on shadow diagrams which form part of the architectural plan set. The shadow diagrams demonstrate that the proposal is acceptable with respect to how it impacts on the adjoining residential properties. The diagrams demonstrate that the proposal does not unduly impact on solar access to adjoining properties.*
- 8) *The proposal will have no adverse impacts on any heritage items.*

*For these reasons it is considered that the proposal meets the objectives of Clause 4.3 of the SLEP 2014.*

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**Council's Consideration of the written request relating to clause 4.6(3)(a)**

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

The applicant has provided an assessment of the proposed development in accordance with the "5 Part Test" established in the L&EC case of *Wehbe v Pittwater Council* [2007] NSWLEC 827, to argue that the development standard is unreasonable or unnecessary in the circumstances of the case.

The applicant has principally sought to argue that the 'the objectives of the standard are achieved notwithstanding non-compliance with the standard'.

Based upon a consideration of the applicant's written request, it is not considered that the applicant's written request has adequately addressed those matters required to be demonstrated by clause 4.6(3)(a).

- The variation to the development standard is not considered to have satisfied objective (i) and (ii) of clause 4.3 as it relates to the portion of the building that exceeds the 8.5m (I2) height limit,
  - i. to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,*
  - ii. to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,*

It is noted that the variation to the 8.5m (I2) height limit is not compatible with the height, bulk and scale of buildings located in this transitional zone of the site.

- The subject site was subject to a planning proposal to rezone the land and increase the maximum height of building limit from 11m to 15m. The planning proposal was approved; however, the height limit was increased only to 14m for the majority of the site. An 8.5m maximum building height associated with a 9m wide portion, as measured from the southern boundaries of Lot 1 and Lot 30 DP 25114, and south-eastern and south-western boundaries of Lot 29 DP 25114 was applied to the subject site. A *Character Assessment* was prepared on the proponent's behalf by Urbanac (D17/257485) which recommended a graduation in height, transitioning from two storeys at the southern interface to four storeys to the north. The *Character Assessment* acknowledges the importance for an appropriate transition from the low-density zone to the south and the higher density proposed on the subject site.
- While it is acknowledged that the desired future character of the locality will include higher density residential development over a small foot print commercial space at ground floor it is not considered that the current design which includes an exceedance into the 8.5m maximum building height provides an appropriate representation of that future character along the southern elevation of the Albatross Road frontage.
- The exceedance of the maximum building height as it relates to the 8.5m maximum building height is likely to result in a loss of privacy and has been demonstrated to result in a loss of solar access to the existing development (refer to the shadow diagrams prepared by Kannfinch Architects). The overshadowing of the adjoining residences (No. 6 Albatross Road and No. 175 Kinghorne Street) is exacerbated by the adoption of a 6m setback (opposed to the required 9m setback) for the portion of the building along the Albatross road frontage.
- It is noted that the portion of the building that exceeds the 14m (N2) height limit is considered to adequately address those matters required to be demonstrated by clause 4.6(3)(a), however, the request to vary the development standard must be considered on the whole and despite the non-compliance relating to the 14m maximum building height being supported, it is not considered that the non-compliance on a whole is supportable due to the exceedance of the maximum building height as it relates to the 8.5m development standard.

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**Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?**

Council 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).

The applicant's clause 4.6 variation report provides a written request that seeks to justify that there are sufficient environmental planning grounds to justify contravening the development standard. It states:

*The Environmental Planning grounds in favour of the variation are as follows:*

- a. Careful revision of the submitted plans and diagrams attached to this submission will reveal that the extent of the encroachment is reasonable and limited to only a small portions of the building that are located away from adjoining lands.*
- b. The physical form of the building is well articulated and a variety of building materials are proposed to be used in construction. The proposal will enhance the streetscape qualities of the area despite the encroachments made.*
- c. The parts of the structure that exceed the height limit will not be visually prominent compared to the remainder of the building from any important public places. The height of the structure will be compatible with the existing built environment despite the exceedance.*
- d. The site was subject to a planning proposal to rezone the land and increase the height limit from 11m to 15m. The planning proposal was approved, however the height limit was increased only to 14m, rather than the requested 15m. The design of the building has not changed and the 15m height limit was applied for specifically to allow for the lift overruns and roof features as indicated. It is not clear why the 14m limit was adopted as the planning proposal demonstrated that the site can accommodate a 15m height limit without unreasonable development impacts. In this regard, there are no documented urban design or planning reasons for the strict imposition of a 14m height limit for the subject land.*
- e. Despite the height limit exceedance, the scale of the building is not increased, nor is any additional floor space or habitable area created. From the public domain the areas of the building exceeding the 14m height limits are not readily identifiable and do not increase the perception of bulk.*
- f. There are no overshadowing, or significant view loss or other amenity impacts arising out of the proposed height exceedance g. Adjusting the building to achieve strict compliance with the building height limit would reduce internal amenity and result in greater cut into the site for no clear planning or developmental outcome benefit.*
- h. The development site is at the far southern end of the existing Nowra CBD with several B4 and R3 zoned lots to the north. While land to the south and west is predominantly low-density residential development the site itself remains suitable for the proposal given the proximity of the CBD and higher density development on the northern side of Kalendar Street. Where the site adjoins low density residential development the building has been setback and stepped to minimise the perception of bulk and avoid unnecessary amenity impacts.*
- i. The proposal remains consistent with the objectives of Clause 4.3 as outlined earlier in this report.*
- j. The proposal is consistent with relevant aims of the Shoalhaven Local Environmental Plan 2014 as;*
  - i. The proposal seeks to provide additional housing in the locality which in part is consistent with the aim to facilitate the social and economic wellbeing of the community (aim (b)). In this respect, without the variation to the applicable height limits being granted, there would likely be a loss of the number of apartments*

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*proposed, a change the apartment mix, or a re-arrangement of the entire development that would likely result in a sub-standard design outcome.*

- ii. The proposal, despite the breach to the maximum height limit does not harm the community (aim e)). The development proposed is permitted within the B4 zone and the design of the new building has no unreasonable negative impacts on the built or natural environment.*

- k. The proposal remains consistent with the relevant objects of the Environmental Planning and Assessment Act despite the variation to the development standard as it;*

- i. In relation to object (c) the proposal is representative of orderly and economic use and development of the land. The exceedance to the maximum height limits allows the building to maintain a consistent built form, with accessible internal circulation. One way of achieving compliance would be to have the offending building / part of the development cut into the site further. The benefits of this (i.e. achieving full compliance with the height limit) are outweighed by the disadvantages which would include increased excavation, a deeper basement, and uneven building floor levels. Further to this, no neighbouring properties would benefit in terms of noticeably reduced impacts with respect to overshadowing / solar access / privacy.*

*Alternatively, less or smaller apartments could have been proposed, however, this is not considered representative of a good economic use of the land. The site is within a location where the provision of housing ought to be maximised as it is within an existing urban area providing access to a wide range of services, community facilities and shopping.*

- ii. The design of the development incorporating the exceedance to the maximum height limits promotes good design and amenity of the built environment (object (g)).*

*With respect to amenity of the built environment, the parts of the building that exceed the applicable height limits have no negative impacts on adjoining buildings with respect to overshadowing or privacy. In fact, the privacy screens which exceed the height limit aim to reduce impacts on adjoining properties. In terms of other potential amenity impacts on the surrounding built environment, the parts of the building that exceed the height limit would not reasonably increase the potential for additional and unacceptable acoustic impacts, visual impacts, or impacts on view sharing.*

*The design of the development is representative of good design not only due to the lack of impacts on the amenity of the built environment but the design with the proposed height exceedance allows the building to maintain a consistent built form, and provides for the internal circulation within buildings to be largely level and with a maximised accessibility.*

- l. The proposal if approved, will not result in any inconsistencies with other environmental planning instruments.*

- m. The proposal if approved will not set an undesirable precedence for reasons outlined above.*

The applicant's written request has not adequately addressed those matters required to be demonstrated by clause 4.6(3)(b). The applicant's written request does not demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The "environmental planning grounds" go chiefly toward the development as a whole as **opposed to the contravening elements of the development**;
- The contravention as it relates to the southern element of the building along the Albatross Road frontage results in potential overlooking and overshadowing in addition to that is inconsistent with the development standard and will result in **potential for amenity impacts** as a result of the non-compliance.



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- The non-compliance as it relates to the Albatross Road frontage could likely be eliminated from the development through the [adoption of a 9m setback](#) to the southern boundary in accordance with the ADG and reducing the height of the development to [two storeys as was anticipated by Council as part of supporting the PP for the site](#).
- The proposal is not considered to promote the objects of the EPA Act, namely: the orderly and economic use and development of land (Section 1.3(c)), and good design and amenity of the built environment (Section 1.3(g)).

Council cannot be satisfied that the written request has adequately addressed those matters required to be demonstrated by clause 4.6(3)(b). The requirement to demonstrate that there are sufficient environmental planning grounds to justify contravention has not been made out.

Were the application to be amended to remove the contravening element of the building which exceed the 8.5m (12) height limit i.e. through increasing the setback to the southern boundary and reconfiguration of the unit layout to remove the need for the use of privacy screening for POS areas associated with units on the southern portion of the building fronting Albatross Road it is likely that their would be sufficient environmental planning grounds to justify contravening the development standard.

**Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?**

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.

The proposed development is not consistent with the objectives of the Height of Buildings development standard, for the reasons outlined above.

Pursuant to the provisions of the SLEP 2014, the land is zoned B4 – Mixed Use. The objectives of this zone are as follows:

- *To provide a mixture of compatible land uses*
- *To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling*

The proposal is consistent with each objective of the B4 – Mixed Use zone, for the following reasons:

1. The application includes compatible commercial floor area at ground level to activate the Kinghorne and Albatross Road frontage with residential units provided to the rear of the commercial units at ground floor and an additional three (3) levels of residential above.
2. The future use of the commercial floor space is likely to be consistent with the desired needs of the community in an accessible location approximately 950m from the centre of the Nowra CBD.
3. The location of the site and adjacent pathway network provides opportunities for walking to and from the Nowra CBD, bus and taxi connections.

While the development is considered to be consistent with the B4 zone objectives, for the reasons outlined previously, it is not considered that the development satisfies the objectives of the height of building development standard under Clause 4.3(1) and is therefore not considered to be in the public interest.

The identified departures proposed within the development demonstrate the development has not been properly considered for the site, given the site constraints and opportunities. The written request fails to demonstrate that there are sufficient environmental planning grounds to justify

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contravention of the development standard. The proposal fails to promote the objects of the EPA Act, namely: good design and amenity of the built environment (Section 1.3(g)).

Consequently, the applicant's written submission under clause 4.6 is not in the public interest under clause 4.6(4)(a)(iii) and is not supported.

**Clause 4.6 (4) (b) – Concurrence of the Secretary has been obtained**

Council has assumed concurrence.

**Clause 4.6 (5) – Decision to grant concurrence**

Specific clauses must be considered. See below.

**Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?**

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

**Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?**

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*".

The applicant has failed to demonstrate that there will be better planning outcomes achieved through variation to the height standard as it relates to the 8.5m height of building standard associated with a 9m setback to the southern boundary, as opposed to strict compliance with the development standard or amending the application to reduce the extent of the variation.

**Clause 4.6(5)(c) - Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?**

There no other matters required to be taken into consideration by the Secretary before granting concurrence.

**Summary and conclusion with regard to clause 4.6**

The clause 4.6 variation request does not adequately explore the issues. It is problematic for the follow reasons:

- It does not demonstrate that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- Does not demonstrate there are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case;
- Does not demonstrate the development meets the objectives of the development standard; and
- Does not demonstrate that the proposed development is in the public interest and there is a public benefit in maintaining the standard.

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**ii) Draft Environmental Planning Instrument**

There are no Draft EPIs that require consideration by Council.

**iii) Any Development Control Plan**

Shoalhaven DCP 2014

**Generic Chapters**

**G1: Site Analysis, Sustainable Design and Building Materials in Rural and Coastal Areas**

**5.1 Site Analysis**

A1.1 A site analysis is provided with a development application with appropriate details for consideration of the site and the broader context.

A1.2 For development other than for a single dwelling house and associated structures, your development application should show:

- Topographical features such as slope, existing natural vegetation and opportunities for the creation of views and vistas.
- Opportunities to orientate buildings and private open spaces having regard to solar access, winds and views.
- The character of the surrounding development, particularly to setbacks and subdivision layout.
- The likely impact on surrounding development, particularly with regard to overshadowing, privacy and obstruction of views.
- The extent to which driveways and/or parking areas are likely to dominate the appearance of the development.
- The visibility, width and design speed of proposed roads and/or driveways.
- Bush fire, flooding and drainage constraints, easements for services and extent of contaminated land.
- The character of any adjacent public land/reserves, particularly the location of mature trees in relation to the proposed development.

Comment: Adequate detail has been displayed within the submitted plans to ascertain compliance with the DCP.

**G2: Sustainable Stormwater Management and Erosion/Sediment Control**

Appropriate sediment and erosion controls will be required prior to the commencement of works and until such time as the site is stabilised.

A stormwater plan will be required before a Construction Certificate can be granted and will be conditioned accordingly.

All stormwater is to be disposed of via Albatross Road within street drainage upgrades required along the eastern side of Albatross road running south of the site with ultimate disposal via an existing drainage easement on the northern side of Albatross Road and discharge into Nowra Creek.

On 17 July 2020, NRAR notified Council, that to avoid any further delays NRAR would be acceptable to impose a condition requiring that the applicant be required to apply for and obtain a Controlled Activity Approval under the Water Management Act 2000 prior to the issue of a CC (D20/325590).

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**G3: Landscaping Design Guidelines**

5 Controls

A1.1 Existing trees and landscape elements which make a positive contribution to the character of the area should be retained and integrated into the redevelopment of the land. Proposals to remove existing trees and landscape elements must propose suitable landscaping to retain streetscape character.

Comment: Satisfied. Suitable landscaping is proposed and subject to recommended conditions of consent.

A2.1 For development other than a new dwelling house, alterations and additions to a dwelling house or a dual occupancy, landscaping must be in accordance with an approved landscape plan for the site, prepared by a qualified landscape architect or designer. The plans should meet the performance criteria.

Comment: The submitted plan is satisfactory in this regard, subject to recommended conditions of consent.

A3.1 A landscape plan must be submitted with the development application illustrating the following landscape principles:

- The location, height and species of all existing and proposed vegetation;
- Methods employed to minimise soil erosion; and
- Cross-section through entire site indicating major level changes, existing retained and proposed landscaping that demonstrates the proposed finished landscape (hard and soft).

Comment: The submitted plan is satisfactory in this regard. There are no major level changes. Additional commentary provided under **Appendix A** in relation to compliance with the ADG as it relates to landscaped areas and communal spaces.

**G4: Tree and Vegetation Management**

There are no significant trees on the site. The development is unlikely to require the removal or modification of vegetation on an adjoining lot.

**G7: Waste Minimisation and Management Controls**

5 Controls

A.1.1 A waste minimisation and management plan are submitted with the development application in accordance with Council's Waste Minimisation and Management Guidelines 2009.

Comment: Satisfied. The application is supported by a WMMP prepared by MRA Consulting Group. The WMMP addresses waste streams generated during the demolition, construction and ongoing operation.

Waste collection from the site will be facilitated via an 8.0m waste collection vehicle with basement collection of bins from the nominated service area in the south-eastern corner of the basement. The waste storage area provides an area for the storage of 56 x 240L bins.

Suez have previously indicated in a letter to Kannfinch Architects dated 1 April 2016 that their waste collection vehicles are capable of servicing the site (D16/110218). It is acknowledged that the design has been amended subsequent to the submission of the letter from Suez, however, the

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design changes are considered to be inconsequential for the purposes of waste contractor servicing.

### **G13: Medium Density and other Residential Development**

A32.1 The development is designed in accordance with State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development (SEPP 65) and the Apartment Design Guide.

Comment: The development is designed in accordance with SEPP 65 and the Apartment Design Guide (ADG) and an assessment against the Policy and the ADG are provided in this report and Appendix A.

It is noted that the development does not demonstrate full compliance with the Design Quality Principles of SEPP 65 or the objectives and acceptable design criteria and guidance of Chapter 3 and 4 of the ADG. A full assessment of the development against the ADG is provided in **Appendix A** of this Report.

### **G21: Car Parking and Traffic**

#### **5.1 Car Parking Schedule**

In relation to the numerical requirements for car parking for residents and visitors associated with the residential component of the development, this is set by Part 3J (Objective 3J-1) of the Apartment Design Guide. Design Criteria 1 of Objective 3J-1 requires that; the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less. Granted that the car parking rates under car parking schedule in Chapter G21: Car Parking and Traffic in Shoalhaven Development control Plan 2014 (SDCP 2014) are higher than the rate set by the Guide to Traffic Generating Developments, the Guide to Traffic Generating Developments applies.

#### *Parking rate (Residential):*

- 0.6 spaces per 1 bedroom unit.
- 0.9 spaces per 2 bedroom unit.
- 1.40 spaces per 3 bedroom unit.
- 1 space per 5 units (visitor parking).

#### Residential parking rate according to unit mix (55 units)

- |                              |            |              |
|------------------------------|------------|--------------|
| • 8 x 1-bedroom apartments   | (0.6 x 8)  | 4.8 spaces   |
| • 31 x 2 bedroom             | (0.9 x 13) | 41.65 spaces |
| • 16 x 3 bedroom             | (1.4 x 16) | 22.4 spaces  |
| • 55 Units (1 space/5 units) | (55 / 5)   | (11 spaces)  |

Total number of car parking spaces required for residential units = 79.85 spaces required.

#### *Parking Rate (Commercial):*

The car parking rate applying to the commercial component of the development is to be calculated according to Chapter G21: Car Parking and Traffic in SDCP 2014

Commercial development within land zoned B3 Commercial Core at ground level or where access to the development is from ground level above an underground level of car parking is 1 space per 24m<sup>2</sup> gross floor area.

The commercial floor of 267m<sup>2</sup> is located at ground level with frontage to both Kinghorne Street and Albatross Road and is located above an underground level of car parking. Therefore, 267m<sup>2</sup> divided by 24m<sup>2</sup> = 11.13 spaces.



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**Total of Car Spaces Required: 79.85 (residential) + 11.13 (commercial) = 90.98 spaces or 91 spaces**

**Total of Car Spaces Proposed: 93 spaces**

Note: In accordance with section 5.14 Loss of On-Street Car Parking – Major Developments/ Redevelopments of Chapter G21 of SDCP2014, it is noted that, where

*“major development/ redevelopment is proposed that has frontage to two or more streets, Council will take into account the loss of on-street car parking spaces arising from the construction of access, bus embayments and car parking restrictions, where these are directly related to the development proposal and will require these to be replaced on site.”*

The design of the development including slip lane to provide left turn access to the development from Albatross road will result in the removal of all on-street car parking spaces along the Albatross Road development frontage to facilitate access. This will result in the removal of approx. six (6) on-street car parking spaces.

Taking into account the loss of car parking along the Albatross Road frontage (six (6) on-street spaces) the development is required to provide a total of 97 car spaces. The development is arguably deficient four (4) spaces.

## 5.2 Traffic

*P1 To ensure new development:*

- can be accommodated without adverse impact on the surrounding road network.
- Does not jeopardise the provision of future network requirements.

*P2 To provide safe and efficient circulation, manoeuvring and parking of vehicles*

*P3 To minimise potential for pedestrian conflict.*

*P4 To ensure that a vehicle can enter and leave the parking space in no more than two manoeuvres.*

Comment: The development application has been assessed by Council's Traffic and Transport Unit. The development is not considered to meet the Performance Criteria. The development is not considered to provide sufficient information or justification for the anticipated adverse impact that the development will likely have on the surrounding road network. Furthermore, the development is likely to jeopardise the provision of future network requirements associated with Albatross Road and any upgrade works required to the adjoining intersection of Kinghorne Street and Albatross Road.

## 5.3 Parking Layout and Dimensions

Comment: Despite the shortfall in car parking the and subject to conditions being recommended by Council's Development Engineer, the layout and dimensions are likely to be capable of being conditioned to comply with AS 2890.1. The minimum car bay and aisle requirements stipulated in the AS 2890.1:2004 for user class 1A are 2.4m width, 5.4m length and 5.8m aisle width. All the proposed regular car spaces comply with the above dimensional requirements and could be conditioned to comply with the relevant Australian Standards.

## 5.4 Access

*P5.1 To ensure that driveways relate to:*

- i) Type of land use
- ii) Frontage road type
- iii) Size of parking facility
- iv) Type of vehicle likely to enter the development

*P5.2 To ensure that traffic safety is preserved both on-site and within the local road network.*

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**Comment:** The proposed site entry and exit have been designed to provide entry via Albatross Road. The proposed access to Albatross Road is not considered to facilitate and preserve traffic safety on Albatross Road. the submitted information does not satisfactorily demonstrate compliance with Australian Standard AS2890.1 Figure 3.2 (refer to **Figure 19** below). Council's Traffic and Transport Unit does not consider this will be possible for Albatross Road but can be satisfied on Kinghorne Street.

Frontage Road Speed (km/hr)	Domestic Property Absolute Minimum (m)	Minimum SSD (m)
40	30	55
50	40	69
60	55	83
70	70	97
80	95	111
90	125	130
100	139	160
110	153	190

Figure 18 - Minimum Sight Distance Requirements - adapted from AS 2890.1: Figure 3.2

The current speed limit is 50km/h. When assessing public road designs the RMS requires Council to consider designing for 10km/h greater than the prevalent speed zone, so in this case sight distance and designs should also be checked for a 60km/h speed environment.

Australian Standard AS 2890 requires domestic property access to have a sight distance of 40m (for a 50km/h speed zone) or 55m for a 60 km/h speed zone.

AS2890 (Figure 3.2) suggests an absolute minimum value of 40m however wherever practicable, domestic property accesses should try and achieve sight distances in the range 45-69m (for a 50 km/h speed zone) or 65-83m (for a 60 km/h speed zone).

If access to the development was from as far south as possible (at the developments southern boundary), sight distance looking back to the north, to approaching traffic, is approximately 40m on Albatross Road, and approximately 60m on Kinghorne Street (for traffic turning left into Kinghorne Street), but is significantly greater to southbound traffic approaching from the north. The sight distance restriction on Albatross Road is due to the bend immediately to the west of the intersection of Albatross Road/Kinghorne Street. There is no such restriction on Kinghorne Street.

Further, irrespective of whether a roundabout is retained, or future traffic signals are installed at the intersection of Albatross Road/Kinghorne Street, the movements of concern are:

- Albatross Road - traffic approaching from the northern or eastern legs would have the greater approach speeds, travelling quickly around the bend. This is a road safety concern, given the limiting sight distance downstream around the bend
- Kinghorne Street - traffic approaching from the north would have the greater approach speed, however, since there is very good sight distance to the north, this is less of a concern.

This means:

- AS2890 (domestic sight distance) cannot be achieved in all respects on Albatross Road
- AS2890 (domestic sight distance) can be achieved on Kinghorne Street

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The other type of sight distance that needs to be considered is 'approach sight distance'. This sight distance is also a concern on Albatross Road, due to the bend immediately to the east of the intersection of Albatross Road/Kinghorne Street.

For a 50km/h speed environment, AUSTROADS (Guide to Road Design Part 4A) states in Table 3.1 that approach sight distance (ASD) needs to be 48m (for a reaction time of 1.5 seconds) or 55m (for a reaction time of 2 seconds), and notes (3) that "a 1.5 second reaction time is only to be used in constrained situations where drivers will be alert ... the general minimum reaction time is 2 seconds".

The available sight distance is 40m on Albatross Road, AUSTROADS (Guide to Road Design Part 4A) Table 3.1 demonstrates that ASD cannot be achieved on Albatross Road, but can be achieved on Kinghorne Street, where there is considerably greater sight distance.

This sight distance assessment indicates that Kinghorne Street is the only option that could satisfy sight distance requirements and not compromise the ongoing safety and efficiency of the classified main road network (Albatross Road).

Council's Traffic and Transport Unit cannot support access from the development to Albatross Road based upon the current design which presents real safety risks in relation to sight distances. Alternative access to the development from Kinghorne Street would likely enable the satisfaction of the SDCP 2014 (as it relates to Section 5.4), Australian Standard AS2890.1 and AUSTROADS (Guide to Road Design Part 4A) Table 3.1

#### 5.5 Manoeuvrability

Comment: Internal access driveways are designed to relevant standards and provide sufficient room for the manoeuvring of a vehicle.

Subject to Council's Development Engineer recommended conditions of consent, as amended the development is capable of satisfy the relevant performance criteria relating to manoeuvrability.

#### 5.6 Service Areas

Comment: A loading bay is not provided within the basement. A shared services area is provided adjacent to the bin storage area. Swept paths for a medium rigid vehicle (MRV) have been provided demonstrating the ability of a garbage truck to manoeuvre in the basement car park area for garbage collection.

The applicant has not provided a dedicated loading bay on the site to service the commercial tenancies. The applicant has indicated that a loading bay could be provided on the western side Kinghorne Street to provide direct servicing access to the commercial units. Such an approach would be subject to Local Traffic Committee approval.

#### 5.7 Landscape Design

A9.1 The application must include detailed landscape plans indicating dimensions, levels and drainage, existing vegetation as well as location, type and character of proposed plantings.

Comment: Satisfied. Plans included.

A10.1 Perimeter planting to screen the proposed car park is to be defined in your landscape plan. The minimum width of perimeter planting is 3m and 1m for driveways.

Comment: N/A. Basement car parking.

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A10.2 Internal plantings of car parking areas are to be of a nature to shade cars and soften the impact of hard paved surfaces without obscuring visibility.

Comment: N/A. Basement car park.

A10.3 Consideration should also be given to the types of trees planted within car parks. Plants which have a short life, tend to drop branches, gum or fruit or plants which interfere with underground pipes are not suitable for car parks.

Comment: Noted.

A10.4 Car parks should be located to complement existing streetscape qualities. Consideration should be given to the streetscape qualities of the locality and the possibility of locating a car park to the rear of a site, or the provision of suitable landscaping to minimise any visual intrusion.

Comment: While council has concerns with the proposed location of the access to the basement car park on Albatross Road, the access design and impact on the existing streetscape qualities are satisfactory when considered strictly from a landscape design perspective.

A10.5 Consideration should be given to incorporating stormwater control measures in the design of landscaped areas, to control and reduce the level of stormwater which enters Council's stormwater drainage systems.

Comment: Stormwater control measures are proposed to be incorporated into the development.

A11.1 Planting is to be designed appropriately so as not to impact upon minimum sight distance requirements (at access points, intersections, and around curves), clearance requirements (horizontal and vertical), and clear zone requirements.

Comment: Planting do not impact on minimum sight distance requirements. Concerns remain in relation to the proposed sight distances irrespective of compliance with the landscaping provisions of this section. Satisfied.

#### 5.8 Drivers with a disability

Comment: The basement car parking has been designed with six (6) adaptable and two (2) disabled driver spaces have been provided within the basement car park.

#### 5.9 Construction Requirements

Comment: Satisfied. Subject to Council's Development Engineer recommended conditions of consent if the application is approved.

#### 5.10 Design of Driveways

Comment: Satisfied. Subject to Council's Development Engineer recommended conditions of consent if the application is approved.

#### 5.14 Loss of On-Street Car Parking – Major Developments/ Redevelopments

Where major development/ redevelopment is proposed that has frontage to two or more streets, Council will take into account the loss of on-street car parking spaces arising from the construction of access, bus embayments and car parking restrictions, where these are directly related to the development proposal and will require these to be replaced on site.

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Comment:

The design of the development including slip lane to provide left turn access to the development from Albatross road will result in the removal of all on-street car parking spaces along the development frontage to facilitate access. This will result in the removal of approx. six (6) on-street car parking spaces.

The design of the development including slip lane to provide left turn access to the development from Albatross road will result in the removal of all on-street car parking spaces along the development frontage to facilitate access. This will result in the removal of approx. six (6) on-street car parking spaces.

The development makes no provisions for the replacement of these car parking spaces on-site. Taking this into consideration the development is arguably deficient four (4) spaces.

**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 relevant planning agreements relating to the subject site.

**iv) Environmental Planning and Assessment Regulation 2000**

There are no relevant considerations.

**v) Repealed**

Shoalhaven Contribution Plan 2019

The proposed development is considered to increase the demand for community facilities in accordance with the Shoalhaven Contributions Plan 2019 (the Plan). The development is most aptly described as a Medium Density/Dual Occupancy development for the purpose of calculating contributions under the Plan.

Commercial Land Use

Commercial gross floor area = 267m<sup>2</sup>



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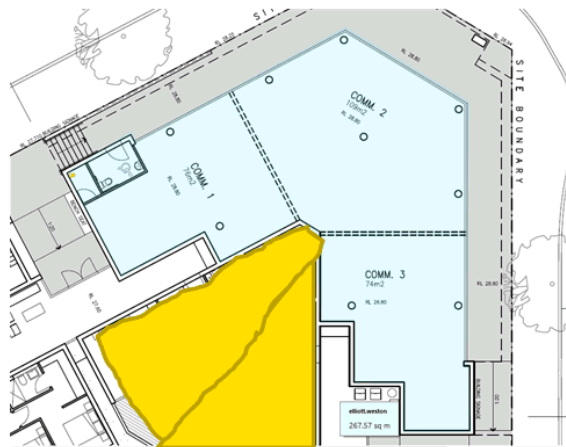


Figure 19 - Extract of Ground floor plan with the gross floor area of the commercial tenancies highlighted in blue with the floor area indicated. (yellow is a redaction of the internal floorplans of units).

**Section 94 ET Calculations - DA16/1465 (UPN: 36570)**

Close Reset Print Return Calc.

☐ Residential ☒ Non-Residential

**Non Residential**  
Note: enter area in m2 and calculator will convert area to ET's.

Retail:	0	Proposed - Gross Area m2
Commercial Office:	267	Proposed - Gross Area m2
Hotel/Restaurant:	0	Proposed - Gross Area m2
BulkyGoods:	0	Proposed - Gross Area m2
Industrial:	0	Proposed - Gross m2, include parking/landscape
Retail:	0	Existing - Gross Area m2
Commercial Office:	0	Existing - Gross Area m2
Hotel/Restaurant:	0	Existing - Gross Area m2
BulkyGoods:	0	Existing - Gross Area m2
Industrial:	0	Existing - Gross m2, include parking/landscape
<b>Total ETs:</b>	<b>2.67</b>	<b>Management Project ETs: 1.34</b>

Residential Land Use

Floor	1-bedroom	2- bedroom	3-bedroom	Total
Ground Floor	2	6	3	11
First Floor	2	12	3	17
Second floor	2	9	4	15
Third floor	2	4	6	12
Total	8	31	16	55

Note: 3 ET credit is to be applied for the existing three lots.

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**Section 94 ET Calculations - DA16/1465 (UPN: 36570)**

Close Reset Print Return Calc

☒ Residential ☐ Non-Residential

Calculation Type: Medium Density/Dual Occupancy

**Medium Density/Dual Occupancy**

**Proposed:**

8	1 Bedroom Units
31	2 Bedroom Units
16	3 Bedroom Units
0	4 Bedroom Units

**Existing:**

3	Lots/Dwellings
0	1 Bedroom Units
0	2 Bedroom Units
0	3 Bedroom Units
0	4 Bedroom Units

**Total ETs:** 31.6

Project	Description	Rate	Qty	Total	GST	GST Incl
01AREC 0009	Planning Area 1 recreational facilities upgrades various locations	\$745.30	31.6	\$23,551.48	\$0.00	\$23,551.48
01AREC 2006	Northern Shoalhaven Sports Stadium	\$582.03	31.6	\$18,392.15	\$0.00	\$18,392.15
01AREC 3007	Nowra Swimming Pool Expansion	\$414.31	31.6	\$13,092.20	\$0.00	\$13,092.20
01CFAC 2012	Nowra District Integrated Youth Services Centre	\$33.16	31.6	\$1,047.86	\$0.00	\$1,047.86
CW AREC 0005	Shoalhaven Community and Recreational Precinct SCArP Cambewarra Road Bomaderry	\$2,522.83	31.6	\$79,721.43	\$0.00	\$79,721.43
CW CFAC 0007	Shoalhaven Regional Gallery	\$72.29	31.6	\$2,284.36	\$0.00	\$2,284.36
CW CFAC 2002	Shoalhaven Multi Purpose Cultural & Convention Centre	\$1,540.56	31.6	\$48,681.70	\$0.00	\$48,681.70
CW CFAC 2006	Shoalhaven City Library Extensions, Berry Street, Nowra	\$867.56	31.6	\$27,414.90	\$0.00	\$27,414.90
CW FIRE 2001	Citywide Fire & Emergency services	\$138.13	32.94	\$4,550.00	\$0.00	\$4,550.00
CW FIRE 2002	Shoalhaven Fire Control Centre	\$202.07	32.94	\$6,656.19	\$0.00	\$6,656.19
CW MGMT 3001	Contributions Management & Administration	\$574.39	32.94	\$18,920.41	\$0.00	\$18,920.41
				Sub Total:		\$244,312.66
				GST Total:		\$0.00
				Estimate Total:		\$244,312.66

Nowra Bomaderry Structure Plan 2008 (Structure Plan)

The Structure plan applies to the Nowra Bomaderry area and establishes a set of principles to manage growth in the area. The Structure Plan identifies Nowra as the primary commercial and administrative centre and supports an increase in people living in higher densities in existing areas, in a range of dwelling types, in close proximity to the Nowra CBD.

By limiting the overall commercial floor space in the development, the commercial primacy and vibrancy of the Nowra CBD will be maintained.

**(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 is unlikely to have an unsatisfactory impact on the natural environment. The site is cleared of vegetation and any associated impact through drainage works within the

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Head of Consideration	Comment
	Nowra Creek can be appropriately managed via a Controlled Activity Approval issued by NRAR
Built Environment	<p>The scale and bulk of the building is generally appropriate for the locality when considering the development in the strategic context of the site and the desire for a higher density of development to occur from the site.</p> <p>However, the proposed setback of the building to the adjoining lower density R2 Low Density Residential zone does not provide an appropriate transition in built form or resolve the associated amenity impacts that are associated with the reduced setback.</p> <p>The southern portion of the building does not provide an appropriate transition to the low-density development to the south and protrudes into the 8.5m maximum building height. While the exceedance of the maximum building height for the portions of the building which exceed the 14m building height are supportable, it is not considered that the design of the development suitably responds to the height controls relating to the transitional zone.</p> <p>While the applicant has made an attempt to reduce the bulk and scale of the development through the removal of two (2) apartments on the southern elevation, this has not overcome the desire for a more appropriate transition to the adjoining low density environment.</p> <p>the design of the development does not demonstrate comprehensive compliance with the ADG as it relates to standard for solar access, apartment size and layout, private open space, landscaped deep soil zone for larger blocks (15% deep soil zone for sites exceeding 1500m<sup>2</sup>), setbacks to the adjoining low density development, common circulation and spaces, apartment mix and car parking.</p> <p>The proposed aesthetics, materials and finishes are considered appropriate, however, further consideration of the design of the development would likely result in a substantially better built environment outcome.</p>
Social Impacts	It is considered that the development has the potential to have a positive contribution to the social context through the provision of an additional type of housing and the delivery of a small footprint commercial floor space.
Economic Impacts	The development has the potential to have a positive economic impact through the immediate construction jobs and ongoing use of the development, including, retail or commercial tenancies

#### (c) Suitability of the site for the development

The site is zoned B4 – Mixed Use zone which permits '*mixed use*' development along with '*commercial*' and '*residential flat buildings*' amongst a range of other uses.

The site is proximate to the public transport, shopping and other services in the Nowra CBD – 950 north of the site.

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The site is located at the southern edge of the Nowra township in a predominately low-density residential environment, however, there are a small number of commercial developments to the north of the site. The future character of the of the locality and area is changing with the approval of two-four storey residential flat building containing 91 apartments on the corner of Kinghorne and Kalandar Street (DA19/1846). Generally, the architectural design and aesthetics of the building are consistent with the existing and future character of the locality, albeit, that concerns remain in relation to the bulk and scale of the development as it relates to the Albatross Road frontage and transition R2 zone to the south.

The site is not identified as being encumbered by any potential constraints or natural hazards (excluding bushfire).

Whilst the site is suitable for this type of development, critical elements of the development, including: the vehicular access onto Albatross Road with the identified issues with road safety and impacts on the surrounding traffic network, deficiencies in car parking, specific non-compliances with the ADG and non-compliance with the maximum building height development standard (clause 4.3 of SLEP 2014) which is not supported under clause 4.6, mean 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. Submissions were received by Council objecting to the proposal. The concerns raised are outlined below:

Notification period: 14 June – 14 July 2017

Submissions: Six (6) in objection and Nil (0) in support.

Summary of Public Submissions	
Objection Raised	Comment
The development is too large for the area. The height, density and mass are a concern.	The site has been the subject of a PP which considered the zoning and maximum building height associated with the site.
The site would be more appropriately developed for lower rise and townhouse/terrace style housing which would serve the area better and would provide a better streetscape and public amenity. The built form of the town is important. Larger buildings like these should be located by the river and closer to town.	It is considered that a development of this type and similar scale is appropriate for the site and reflects the future character of the area. However, it is considered that there are design elements that could be improved to create a more considered development.
Car parking on Kinghorne and Albatross Road will likely be negatively affected. The likely additional visitors and customers wishing to visit the commercial tenancies will be required to park on the surrounding streets where car parking is limited.	The application proposes 93 car parking spaces in a basement car park, accessed via Albatross Road.  The design of the development including slip lane to provide left turn access to the development from Albatross road will result in the removal of all on-street car parking spaces along the Albatross Road development frontage to facilitate access. This will result in the removal of approx. six (6) on-street car parking spaces.

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	<p>Taking into account the car parking provided along the Albatross Road frontage (six (6) on-street spaces) the development is required to provide a total of 97 car spaces. Taking this into consideration the development is arguably deficient four (4) spaces.</p> <p>It is not considered that the deficiency in car parking should be supported and the applicant has provided no justification for the shortfall in car parking.</p>
The development will result in unreasonable overshadowing and would impact on the private open space areas of adjoining residents.	<p>The development will result in additional overshadowing of residential premises to the south of the site. The overshadowing will result in the loss of some solar access.</p> <p>It is apparent from the shadow diagrams prepared by Kannfinch (Sheet 1 – 7) that solar access to the glazed area of the window along the northern elevation of the dwelling located at No. 6 Albatross Road and No. 175 Kinghorne Street will be compromised, however, the north-facing living areas and principal open space of adjoining dwellings (No. 6 Albatross Road and No. 175 Kinghorne Street) will receive 3 hours of sunlight.</p>
The shadow diagrams prepared by Kannfinch do not detail the extent of the overshadowing of the Albatross Road portion of the development.	The shadow diagrams prepared by Kannfinch Architects have been reviewed and are considered provide all required information required for a shadow diagram.
The planning proposal to raise the maximum building height from 11m has been made solely for commercial gain without a sound planning purpose.	On 6 October 2017, Amendment No. 16 to SLEP 2014 was published on the NSW Legislation website and commenced, bring into effect the zoning and building height changes outlined above.
<p>The additional traffic associated with the development cannot be supported by the local road network, with particular concern being raised when Nowra Creek is in flood and additional traffic is prevented from using the Berry Street bridge and is forced to utilise Kinghorne Street roundabout.</p> <p>The number of residents that could be added to this area would greatly increase the traffic flow and create problems for locals and those travelling to and from the highway as well as future residents of the proposed apartments with exit and entry onto a busy road.</p>	<p>The applicant has not provided sufficient justification as to why access for the proposed development should not satisfy the requirements of Clause 101(2)(a) of <i>State Environmental Planning Policy (Infrastructure) 2007</i>, pertaining to development with frontage to a classified road. This mandatory requirement would require the vehicular access to be via Kinghorne Street, being part of the unclassified road network and to which, the site has an extensive street frontage.</p> <p>The desired outcome is for access to the land via the unclassified local road – Kinghorne Street, which will ensure that the development does not compromise the effective and ongoing operation and function of the classified road (Albatross Road).</p>



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	<p>The applicant's submitted Traffic Reports do not establish that the safety, efficiency and ongoing operation of the classified road would not be adversely affected by the development as a result of: the design of the vehicular access to the land, and the nature, volume or frequency of vehicles using the classified road to gain access to the land.</p>
<p>Servicing, waste collection and parking of trade vehicles associated with the commercial use does not appear to have been addressed.</p>	<p>All servicing associated with the development is proposed to be via the basement car park and service area.</p> <p>A loading bay is not provided within the basement. A shared services area is provided adjacent to the bin storage area. Swept paths for a medium rigid vehicle (MRV) have been provided demonstrating the ability of a garbage truck to manoeuvre in the basement car park area for garbage collection.</p> <p>The applicant has not provided a dedicated loading bay on the site to service the commercial tenancies. The applicant has indicated that a loading bay could be provided on the western side Kinghorne Street to provide direct servicing access to the commercial units. Such an approach would be subject to Local Traffic Committee approval.</p>
<p>The location of pedestrian access on the southern boundary on Kinghorne Street will result in noise and safety issues for the adjoining residents.</p>	<p>The proposed pedestrian access points are considered to be appropriate and consistent with Objective 3G-1 and 3G-2 of the ADG. The building entries and pedestrian access connects to and addresses the public domain.</p> <p>Pedestrian access and entries access, entries and pathways are accessible and easy to identify.</p>
<p>The setbacks of the development are insufficient and will impact on amenity and privacy of adjoining residents</p>	<p>In accordance with Objective 3F-2 of the ADG</p> <p>Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (figure 3F.5).</p> <p>The adjacent sites to the south of the development site are zoned R2 Low Density Residential and currently contain single dwelling houses per lot.</p> <p>Setback of the Kinghorne portion of the development to the adjoining southern property boundary requires a minimum setback of 9m.</p>

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	<p>the building varies in separation for the ground and first-floor elements between 8 – 9m.</p> <p>Setback of the Albatross portion of the development adjoining the south western boundary does not appear to comply with this requirement. 6m is proposed to the 3rd level, however as this is measured to a balcony it is considered that the setback must be a minimum of 9m.</p> <p>It is not considered that the setback of the development to the adjoining residential development is sufficient and will result in amenity impacts, overshadowing and does not provide for an appropriate transition from the low density (R2) development to the south and the proposed high density development on the subject site.</p>
The application is unlikely to result in a reduction in traffic noise is identified in the application.	Noted.
The development will obscure sight distances across the roundabout adjoining the site	Council's Traffic and Transport Unit have raised concerns with the required sight distances associated with the vehicular access/egress on Albatross Road.
The development will result in potential glare from reflected glass surfaces on traffic approaching the adjoining roundabout from the north and east.	An assessment of glare associated with the development has not been completed by the applicant, however, it is not considered that any associated glare would be significant or warrant amendment to the design of the development.

#### (e) The Public Interest

The development has been assessed against state and local environmental planning instruments, and the development control plan and related guidelines for the Shoalhaven City Council.

The assessment identified the development does not comply with:

- SEPP (infrastructure) as it relates to access,
- SEPP 65 as it relates to the specified Design Quality Principles outlined above.
- The ADG as it relates to standards for solar access, apartment size and layout, private open space, landscaped deep soil zone for larger blocks (15% deep soil zone for sites exceeding 1500m<sup>2</sup>), setbacks to the adjoining low density development, common circulation and spaces, apartment mix and car parking..
- The building does not meet the maximum building height development standard contained under Clause 4.3 of SLEP and the written request for variation of the development standard is not supported.
- SDCP 2014 Chapter G21: Car Parking and Traffic as it relates to the design of the vehicular access and car parking required to service the development.

Accordingly, the proposal is not considered to be in the public interest.

#### Delegations

#### Guidelines for use of Delegated Authority

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The Guidelines for use of Delegated Authority have been reviewed and the assessing officer does not have the Delegated Authority to determine the Development Application.

On 1 October 2019, the Development and Environment Committee resolved in relation Item No. DE19.107 *'That DA16/1465 – Residential Units and Commercial Space – 173 Kinghorne Street, Nowra be called in to Council for determination due to significant public interest.'* (MIN 19.727).

The development application must 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 Development Application No. DA16/1465 be refused for the following reasons:

1. Non-compliance with SEPP 65 in relation to the Apartment Design Guide (s4.15(1)(a)(i) of the EPA Act);  
The development fails to satisfy clause 30(2)(a) and (b) of SEPP 65, in that the development does not demonstrate that adequate regard has been given to:
  - (a) the design quality principles (Principle 2: Built form and scale; Principle 3: Density; Principle 4: Sustainability; Principle 5: Landscape; Principle 6: Amenities), and
  - (b) the objectives specified in the Apartment Design Guide for the relevant design criteria (3E-1 Deep Soil Zones, 3F-1 Visual Privacy, 3H-1 Vehicle Access, 3J-1 Bicycle and Car Parking, 3J-2 Bicycle and Car Parking, 4A-1 Solar and Daylight Access, 4D-3 Apartment Size and Layout, 4E-1 Private Open Space and Balconies, 4F-1 Common Circulation and Spaces, 4K-2 Apartment Mix).
2. The proposal exceeds the maximum building height development standard under clause 4.3 of SLEP 2014. The applicant's written request to vary the maximum building height development standard has not adequately addressed matters required to be demonstrated by clause 4.6(3)(a) and (b) of SLEP 2014. The Clause 4.6 Variation Request does not provide sufficient environmental planning grounds to support the variation, nor that compliance is unnecessary or unreasonable. (s4.15(1)(a)(i) of the EPA Act).
3. The development has failed to satisfy Council of preconditions 101(2)(a) and (b) of the ISEPP (s4.15(1)(a)(i) of the EPA Act).  
In accordance with Clause 101(2)(a) and (b) of the ISEPP, Council must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:
  - (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and
  - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:
    - o the design of the vehicular access to the land, or
    - o the emission of smoke or dust from the development, or
    - o the nature, volume or frequency of vehicles using the classified road to gain access to the land
4. The proposed development is inconsistent with the Objectives, Performance Criteria and Acceptable Solutions as they relate to the following provisions of Chapter G21: Car Parking and Traffic Shoalhaven Development Control Plan 2014 (SDCP 2014) (s4.15(1)(a)(iii) of the EPA Act):

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- (a) 5.2 Traffic.
- (b) 5.4 Access.
- (c) 5.14 Loss of On-Street Car Parking – Major Developments/ Redevelopments.
- 5. Clause 55A of the *Environmental Planning and Assessment Regulation 2000* allows for a development application to be amended provided a new BASIX certificate is submitted to account for those amendments. An amended BASIX Certificate, to reflect amended plans was not submitted with the amended application.
- 6. The development is likely to have adverse impacts on the built environment (s4.15(1)(b) of the EPA Act).
- 7. The site is not suitable for the development as proposed (s4.15(1)(c) of the EPA Act).
- 8. The development is not in the public interest (s4.15(1)(e) of the EPA Act).

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**Appendix A - Apartment Design Guide Compliance Table**

Objective	Assessment	Achieved?
<b>3A-1 Site Analysis</b>  Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context.	A site analysis was provided with the DA demonstrating the site constraints and required information and diagrams as stipulated in the	Yes
<b>3B-1 Orientation</b>  Building types and layouts respond to the streetscape and site whilst optimising solar access within the development.	Building strongly defines Albatross Road and Kinghorne Street with direct access to both.  The primary living and balcony areas provided for the majority of apartments are orientated to the north, north east or north west and front the street or private road.  While, the development generally complies with this objective, further consideration of the location and redistribution of single bedroom apartments throughout the development is recommended to provide differing outlooks and improved solar access and cross ventilation	Yes
<b>3B-2 Orientation</b>  Overshadowing of neighbouring properties is minimised during mid-winter.	The development follows the street frontage creating a V-shape building footprint. This assists in minimising overshadowing to the south.  The orientation of the site and building layouts reduces overshadowing of adjoining buildings / properties. However, there will still be additional overshadowing impacts on the adjoining properties to the south. The overshadowing of the adjoining residences (No. 6 Albatross Road and No. 175 Kinghorne Street) is exacerbated by the adoption of a 6m setback (opposed to the required 9m setback) for the portion of the building along the Albatross road frontage.  The development proposes a consistent building separation for the Ground floor and Level 1, with a	Yes



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	<p>greater separation for Levels 2 and 3.</p> <p>There are no solar collectors on the neighbouring buildings presently. A minimum of 4 hours solar access is available to adjoining rooftop areas should solar collectors be desired.</p>	
<p><b>3C-1 Public Domain Interface</b></p> <p>Transition between private and public domain is achieved without compromising safety and security.</p>	<p>Unit G.09 and G.10 have direct street entry.</p> <p>The primary residential entries are well defined by boundary fencing and secure entry gates/doors.</p> <p>Opportunities for people to be concealed have been minimised.</p>	<p>Yes. Subject to Conditions in relation to the treatment of ground floor balustrades to require appropriate materials and colours of those ground floor balustrades so they provide a positive interaction with the streetscape. This would include a 50% transparent design with premium materials with consistent finish to the building.</p> <p>A condition of consent is to be imposed requiring the screening of any substation from public view.</p>
<p><b>3C-2 Public Domain Interface</b></p> <p>Amenity of the public domain is retained and enhanced.</p>	<p>New landscaping and footpaths are proposed to be established as part of the proposal.</p> <p>Landscape plan displays a substation in view of Kinghorne Street. A condition of consent is to be imposed requiring the screening of any substation from public view.</p> <p>The visual prominence of underground car park vents through location at ground level along Albatross Road and the colours utilise assist in mitigating any visual prominence.</p>	<p>Yes</p>

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	Protrusion of the basement car park is generally minimised without the need for split level parking. The basement and services entry is located at the lowest corner of the site and the general basement level is consistent with this level in order to minimise excavation across the site.	
<b>3D-1 Communal and Public Open Space</b>  An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.  Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)  Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	25% of the site area comprises of communal spaces. The communal spaces are located at ground level  The communal open space area is 987m <sup>2</sup> or 28% of the site area.  Based on the plans submitted the development complies. The communal seating area receives a minimum of 50% direct sunlight from 11am-1pm.	Yes
<b>3D-2 Communal and Public Open Space</b>  Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.	Communal open space areas comprise of soft landscaping, seating, BBQ area and hard stand areas which encourage a variety of passive uses and activities.  The two principal communal open space areas are integrated well into the landscape design however the total area provided for usable communal activities that is not landscape gardens or otherwise used for pedestrian connection within the development is compact. The communal open space has been identified with a BBQ area with a variety of seating and the 'informal seating area'.  The two primary communal open space areas provide a combination of sheltered and outdoor environments	Yes
<b>3D-3 Communal and Public Open Space</b>  Communal open space is designed to maximise safety.	Communal spaces between buildings at the ground level are visible from habitable rooms and balconies of units facing into the communal area.	Yes

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	No public open spaces areas are proposed nor is a public communal open space desirable based on the current design.	
<b>3E-1 Deep Soil Zones</b>  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.	The total area of deep soil landscaping is 461m <sup>2</sup> (13% of the site area). 328m <sup>2</sup> (9% of the site area) has a minimum dimension of 6m or larger. These areas have been designed to accommodate larger trees.	Yes
Deep soil zones are to meet the following minimum requirements: Minimum dimension: 6m Percentage of site area: 7%		
On some sites it may be possible to provide larger deep soil zones, depending on the site area and context: • 10% of the site as deep soil on sites with an area of 650m <sup>2</sup> - 1,500m <sup>2</sup> • 15% of the site as deep soil on sites greater than 1,500m <sup>2</sup>	The site exceeds 1500m <sup>2</sup> and therefore it may be appropriate to require 15% of the site as deep soil landscaped area  Landscape plans have been reviewed by Council's landscape architect and are considered to be satisfactory, subject to consideration of amended plantings	No.
<b>3F-1 Visual Privacy</b>  Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.  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 (for building heights up to 12m): Habitable rooms and balconies: 6m Non-habitable rooms: 3m  <b>Note:</b> Apartment buildings should have an increased separation distance of 3m (in addition to the requirements set out in design criteria 1) when adjacent to a different zone that permits lower density residential development to provide for a transition in scale and increased landscaping (figure 3F.5)	The adjacent sites to the south of the development site are zoned R2 Low Density Residential and currently contain single dwelling houses per lot.  Setback of the Kinghorne portion of the development to the adjoining southern property boundary requires a minimum setback of 9m is required.  Setback of the Albatross portion of the development adjoining the south western boundary does not appear to comply with this requirement. 6m is proposed to the 3rd level, however as this is measured to a balcony it is considered that the setback must be a minimum of 9m.	No. the development should have a 9m and 6m separation to habitable rooms and balconies and non-habitable rooms respectively.

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<p><b>3F-2 Visual Privacy</b></p> <p>Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.</p>	<p>The building has been designed to enable access of light and air to private outdoor spaces. Balconies and courtyards are appropriately screened as required to limit views into private open space areas (balconies and courtyards).</p> <p>Vertical blades are used in the internal courtyard windows where required to direct views away from habitable rooms and balconies.</p> <p>The applicant has proposed privacy screening to the units with balconies facing to the south.</p>	<p>Yes.</p>
<p><b>3G-1 Pedestrian Access and Entries</b></p> <p>Building entries and pedestrian access connects to and addresses the public domain.</p>	<p>Separate building entries are provided on Kinghorne Street and Albatross Street. Activated areas are appropriately located towards the northern intersection. Residential units at ground level or elevated above the street provide an appropriate transition to the R2 Low Density Residential adjoining the site to the south.</p> <p>Building entrances sufficiently relate to the street and existing pedestrian network.</p> <p>There is a clear line of sight between the street through the building entry into the main lobby space.</p>	<p>Yes</p>
<p><b>3G-2 Pedestrian Access and Entries</b></p> <p>Access, entries and pathways are accessible and easy to identify.</p>	<p>All building entrances are well defined through architectural elements to enable easy identification from the street. All entrances are level to the footpaths and do not include steps.</p>	<p>Yes</p>
<p><b>3H-1 Vehicle Access</b></p> <p>Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes.</p>	<p>Vehicle access is provided at the southern end of the development along Albatross Road. The vehicular access is generally incorporated into the building's façade. Security gates have been setback from the frontage. While Council does not raise any concern with the design or integration of the access into the building from a strictly aesthetic stand point it is noted that the car park entry and access should be located on secondary streets or lanes where available.</p>	<p>No.</p>

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	<p>The basement car park and manoeuvring are to be designed to comply with the Australian Standards and Chapter G21: Car Parking and Traffic.</p> <p>The proposal to access the development from the Regionally Classified Road (Albatross Road) is not supported and the applicant has been encouraged to provide access via the unclassified local road (Kinghorne Street).</p> <p>Under the ISEPP, a consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that, among other things, 'where practicable, vehicular access to the land is provided by a road other than the classified road'.</p> <p>It is considered that consent must not be granted for access off Albatross Road if practicable vehicular access is available to the site from a road other than the Albatross Road (that being Kinghorne Street). The applicant has submitted concept plans (D18/355817) indicating that was practicable vehicular access from Kinghorne Street. This approach is reflected in the Land and Environment Court judgements.</p>	
<p><b>3J-1 Bicycle and Car Parking</b></p> <p>Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas.</p>	<p>Total number of car parking spaces required for residential units = 79.85 spaces required.</p> <p>The car parking rate applying to the commercial component of the development is to be calculated according to Chapter G21: Car Parking and Traffic in SDCP 2014</p> <p>Commercial development within land zoned B3 Commercial Core at ground level or where access to the development is from ground level above an underground level of car parking is 1 space per 24m2 gross floor area.</p>	No.



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	<p>The commercial floor of 267m<sup>2</sup> is located at ground level with frontage to both Kinghorne Street and Albatross Road and is located above an underground level of car parking. Therefore, 267m<sup>2</sup> divided by 24m<sup>2</sup> = 11.13 spaces.</p> <p><b>Total of Car Spaces Required: 79.85 (residential) + 11.13 (commercial) = 90.98 spaces or 91 spaces</b></p> <p><b>Total of Car Spaces Proposed: 93 spaces</b></p> <p>Note: In accordance with section 5.14 Loss of On-Street Car Parking – Major Developments/ Redevelopments of Chapter G21 of SDCP2014, it is noted that:</p> <p>“major development/ redevelopment is proposed that has frontage to two or more streets, Council will take into account the loss of on-street car parking spaces arising from the construction of access, bus embayments and car parking restrictions, where these are directly related to the development proposal and will require these to be replaced on site.”</p> <p>The design of the development including slip lane to provide left turn access to the development from Albatross road will result in the removal of all on-street car parking spaces along the Albatross Road development frontage to facilitate access. This will result in the removal of approx. six (6) on-street car parking spaces.</p> <p>Taking into account the on-street car parking loss along the Albatross Road frontage (six (6) on-street spaces) the development is required to provide a total of 97 car spaces.</p> <p>The development is deficient four (4) spaces.</p>	
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DE21.60 - Attachment 2

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<p><b>3J-2 Bicycle and Car Parking</b></p> <p>Parking and facilities are provided for other modes of transport.</p>	<p>Each resident has access to a secure storage cage which is large enough to accommodate a bicycle. It is proposed to provide residential visitor and customer bicycle spaces on the street in the form of post mounted bike rails attached to existing street does or signposts, should Council require them.</p>	<p>No. A condition is recommended for the provision of on-street bicycle parking should the application be approved.</p>
<p><b>3J-3 Bicycle and Car Parking</b></p> <p>Car park design and access is safe and secure.</p>	<p>All car parking is provided behind secure roller shutters. The car park design is in accordance with AS2890.</p>	<p>Yes</p>
<p><b>3J-4 Bicycle and Car Parking</b></p> <p>Visual and environmental impacts of underground car parking are minimised.</p>	<p>All car parking is below ground and accessed from Albatross Road, reducing any visual impacts.</p>	<p>Yes</p>
<p><b>4A-1 Solar and Daylight Access</b></p> <p>To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space.</p> <ol style="list-style-type: none"> <li>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</li> <li>2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight</li> <li>3. between 9 am and 3 pm at mid-winter. A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.</li> </ol>	<p>37 of 55 apartments (67%) receive at least 3 hours direct sunlight between 9.00am and 3.00pm in mid-winter</p> <p>13 of 55 apartments (24%) of apartments receive no sunlight between 9am and 3pm in mid-winter.</p> <p>While the applicant has argued that the non-compliance with the Design Criteria is "due to limitations imposed by the site configuration, southern slope and orientation" it is noted that there are limited site constraints and there is ample opportunity to reduce the number of internal facing apartments and the design of dual aspect apartments overlooking the internal communal open space area and either Albatross or Kinghorne Street.</p> <p>Of concern is that there are only two single bedroom apartments located on the third level that achieve the minimum daylight access with no lower level single bedroom apartments receiving any solar access.</p> <p>The minor non-compliance with the requirement that no less than 70% of apartments in a building receive a minimum of 3 hours direct sunlight could be readily accepted were the</p>	<p>No.</p>

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	<p>design to exceed the 15% of apartments in a building receiving no direct sunlight between 9 am and 3 pm at mid-winter.</p> <p>The substantial non-compliance with the maximum number of apartments receiving no direct sunlight between 9 am and 3 pm at mid-winter is a significant concern and will significantly increase the reliance on artificial lighting and heating, reduce energy efficiency and residential amenity.</p> <p>The design attempts to maximise the number of north facing apartments and limit the number of single aspects south facing apartments, however, it is noted that the internal facing single aspect apartments provided limited or no solar access. It is considered further consideration of the design to further limit single aspect southerly facing apartments would provide increased solar access and amenity to future residents.</p> <p>It is noted that, where possible, the building design maximises the number of living areas with a northerly aspect ensuring a high level of amenity is achieved. Services areas are generally provided to the rear or in central locations minimising their impact on the most desirable areas of the apartments.</p>	
<b>4A-2 Solar and Daylight Access</b>  Daylight access is maximised where sunlight is limited.		Yes
<b>4A-3 Solar and Daylight Access</b>  Design incorporates shading and glare control, particularly for warmer months.	Screening and overhanging elements protect openings from direct sun impact and solar gain.	Yes
<b>4B-1 Natural Ventilation</b>  All habitable rooms are naturally ventilated.	All habitable rooms are naturally ventilated.	Yes

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<p><b>4B-2 Natural Ventilation</b></p> <p>The layout and design of single aspect apartments maximises natural ventilation.</p>	<p>All units are provided with floor to ceiling sliding doors and windows are openable permitting many opportunities for natural ventilation.</p> <p>The single aspect apartments have been designed with a modulated glazed façade with operable elements to create opportunities for natural ventilation. The apartment depth is also limited to improve daylighting and ventilation.</p>	<p>Yes.</p>
<p><b>4B-3 Natural Ventilation</b></p> <p>The number of apartments with natural cross ventilation is maximized to create a comfortable indoor environment for residents.</p> <p>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</p> <p>2. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line</p>	<p>Complies. 37 of 55 apartments (67%) of apartments are naturally cross ventilated in accordance with standard or previously proven design principles:</p> <ul style="list-style-type: none"> <li>- corner apartments</li> <li>- through-apartments</li> <li>- single-aspect apartments with modulated facades and shallow floor plans</li> </ul> <p>Despite the numerical compliance it is noted that single aspect and 1-bedroom apartments are generally not naturally ventilated and will therefore rely on mechanical ventilation. Of concern is that none of the proposed 1-bedroom apartments will be naturally ventilated. This is not considered to be a positive design outcome.</p> <p>Through apartment depths are a maximum of 14.7m from glass line to glass line.</p>	<p>Yes</p>
<p><b>4C-1 Ceiling Heights</b></p> <p>Ceiling height achieves sufficient natural ventilation and daylight access.</p>	<p>All levels provide for 2.7m ceilings. Ground floor commercial is provided with a 3.5m ceiling height.</p>	<p>Yes</p>
<p><b>4C-2 Ceiling Heights</b></p> <p>Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms.</p>	<p>Ceiling heights are provided at 2.7m with few bulkhead intrusions etc.</p>	<p>Yes</p>
<p><b>4D-1 Apartment Size and Layout</b></p> <p>The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity.</p>	<p>All units achieve minimum internal area requirements.</p>	<p>Yes. Condition to confirm that all units are provided with a total minimum glass area of not less than 10% of the</p>

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<p>Apartments are required to have the following minimum internal areas: Studio: 35m<sup>2</sup> 1 Bedroom: 50m<sup>2</sup> 2 Bedroom: 70m<sup>2</sup> 3 Bedroom: 90m<sup>2</sup> The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m<sup>2</sup> each.</p>		<p>floor area of the room.</p>
<p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p>		
<p><b>4D-2 Apartment Size and Layout</b></p> <p>Environmental performance of the apartment is maximized.</p> <p>1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height</p> <p>No.</p>	<p>All bedroom and living areas are located on the face of the building in order to allow for openable windows.</p> <p>The room depths are acceptable.</p>	<p>Yes</p>
<p><b>4D-3 Apartment Size and Layout</b></p> <p>Apartment layouts are designed to accommodate a variety of household activities and needs.</p> <p>1. Master bedrooms have a minimum area of 10m<sup>2</sup> and other bedrooms 9m (excluding wardrobe space)</p> <p>1. Bedrooms have a minimum dimension of 3m (excluding wardrobe space)/.</p> <p>2. Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> <li>• 3.6m for studio and 1-bedroom apartments</li> <li>• 4m for 2- and 3-bedroom apartments</li> </ul>	<p>The open plan designs allow for a range of activities to happen in the kitchen and living spaces. Laundry, bedrooms and bathrooms have been collocated separately.</p> <p>1-bedroom apartment widths are 3.5m - this is marginally under 3.6m. The non-compliance is considered to be marginal and does not impede the usable area of the living rooms and would not likely have a significant detrimental impact on the amenity of the dwelling or resident use of the units impacted. However, it is noted that the design of the single bedroom units is once again impacted by the proposed design.</p>	<p>No.</p>



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3. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts		
<b>4E-1 Private Open Space and Balconies</b>  Apartments provide appropriately sized private open space and balconies to enhance residential amenity.  1. All apartments are required to have primary balconies as follows: Studio: 4m <sup>2</sup> 1 Bedroom: 8m <sup>2</sup> , 2m minimum depth 2 Bedroom: 10m <sup>2</sup> , 2m minimum depth 3 Bedroom: 12m <sup>2</sup> , 2.4m minimum depth 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 area of 15m <sup>2</sup> and a minimum depth of 3m.	All balconies exceed the minimum area for the respective unit types. All balconies have a minimum depth of 2m.  A number of the ground floor units do <u>not</u> provide at least 15sqm (G.04, G.08 and G.09) while other apartments do <u>not</u> provide a minimum depth of 3m (G0.2, G.03, G.04, G.08, G.10).	No.
<b>4E-2 Private Open Space and Balconies</b>  Primary private open space and balconies are appropriately located to enhance liveability for residents.	All balconies are located directly adjacent to living areas and master bedrooms.	Yes
<b>4E-3 Private Open Space and Balconies</b>  Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.	Balconies have been designed to respond to the location and to allow views while maintaining visual privacy.	Yes
<b>4E-4 Private Open Space and Balconies</b>  Private open space and balcony design maximizes safety.	Private open spaces are located to ensure that passive surveillance is maximized to Albatross Road and Kinghorne Street and internal common areas.	Yes
<b>4F-1 Common Circulation and Spaces</b>  Common circulation spaces achieve good amenity and properly service the number of apartments.	Common spaces are provided with solar access, natural ventilation and allow for universal access.  Lobby B services 11 apartments on levels 01, 02, and 10 apartments on Level 03. The corridors have been	No. However, where design criteria 1 is not achieved, no more than 12 apartments should be provided off a

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1. The maximum number of apartments off a circulation core on a single level is eight	designed with light slots to capture natural light and ventilation to maintain a high level of amenity. * Note: Where design criteria 1 is not achieved, no more than 12 apartments should be provided off a circulation core on a single level	circulation core on a single level
2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40		
<b>4F-2 Common Circulation and Spaces</b>  Common circulation spaces promote safety and provide for social interaction between residents.	Circulation spaces are provided to each level of each building in the lift lobby, allowing for interaction of residents.	Yes
<b>4G-1 Storage</b>  Adequate, well designed storage is provided in each apartments.	Storage spaces are provided within units and within the basement. All units meet the minimum requirement for storage space.	Yes
<b>4G-2 Storage</b>  Additional storage is conveniently located, accessible and nominated for individual apartments.	Storage in apartment is located in dedicated built-in cupboards or in zones where future storage furniture could be reasonably provided. Storage cages are also provided in the basement (1 cage per apartment).	Yes
<b>4H-1 Acoustic Privacy</b>  Noise transfer is minimized through the siting of buildings and building layout.	The separation of buildings as well as internal building layouts and materials used restrict noise transfer throughout the site.	Yes
<b>4H-2 Acoustic Privacy</b>  Noise impacts are mitigated within apartments through layouts and acoustic treatments.	The applicant has provided an Acoustic Report prepared by KA Acoustics dated 6 November 2019 (D19/423688) addressing potential impact of road noise associated with the classified regional road (Albatross Road). the submitted <i>Acoustic Report</i> . The recommendations of the report ensure internal noise levels comply with those specified in Subclause 101(2)(c) of ISEPP and are capable of being addressed by appropriate development consent conditions.	Yes
<b>4K-1 Apartment Mix</b>  A range of apartment types and sizes is provided to cater for different household types now and into the future.	The overall proposed development consists of the following units mix:  8 x 1-bedroom unit 31 x 2-bedroom units 16 x 3-bedroom units	Yes

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<p><b>4K-2 Apartment Mix</b></p> <p>The apartment mix is distributed to suitable locations within the building.</p>	<p>The mix of one-bedroom units is not considered to provide an appropriate distribution to suitable locations within the building.</p> <p>The single bedroom units are limited to the southern elevation of the V-shaped building design which has resulted in units with severely compromised solar access, ventilation and private open space that will likely result in units with diminished amenity. The irregular floor plans will also result in odd shaped rooms and the potential loss of the use of usable space within these units.</p> <p>It is considered that the single bedroom units should be spread more evenly throughout the development to enable these units a greater likelihood for increased amenity</p>	No.
<p><b>4L-1 Ground Floor Apartments</b></p> <p>Street frontage activity is maximized where ground floor apartments are located.</p>	<p>Direct street access achieved where feasible (G.09 and G.10 are provided with access from Kinghorne Street). While it would be preferred that the units facing Albatross Road were also provided with pedestrian access it is noted that the grade separation would likely result in a reduction in associated POS areas with the necessity for stairs from street level. A reduction in the POS areas of these units would not result in a better design outcome.</p>	Yes
<p><b>4L-2 Ground Floor Apartments</b></p> <p>Design of ground floor apartments delivers amenity and safety for residents.</p>	<p>All ground floor units are screened with decorative fencing and secure entry gates (G.09 and G.10 are provided with access from Kinghorne Street).</p>	Yes
<p><b>4M-1 Facades</b></p> <p>Building facades provide visual interest along the street while respecting the character of the local area.</p>	<p>A range of building materials and articulation have been used to enhance the appearance of the buildings.</p>	Yes
<p><b>4M-2 Facades</b></p> <p>Building functions are expressed by the façade.</p>	<p>The architectural features ensure that the primary building entrances are well defined and private entrances are less defined (G.09</p>	Yes

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	and G.10 are provided with access from Kinghorne Street).	
<b>4N-1 Roof Design</b>  Roof treatments are integrated into the building designed and positive respond to the streets.	The roof treatments are integrated into the overall built form and massing of the proposal. The roof design is not considered to be a defining or strong element of the design.  Complimentary roof material and façade cladding compliment the remainder of the building. Service elements are concealed from the building frontage behind a parapet wall.	Yes
<b>4N-2 Roof Design</b>  Opportunities to use roof space for residential accommodation and open space are maximized.	N/A. The design does not include rooftop communal open space areas.	N/A.
<b>4N-3 Roof Design</b>  Roof design incorporates sustainability features.	Roof elements and overhangs have been designed to provide suitable shading during the hot summer months while still allowing for good levels of solar access during the winter months.	Yes
<b>4O-1 Landscape Design</b>  Landscape design is viable and sustainable.	The landscape design incorporates and number of plantings that range in scale and height. The proposed landscaping responds to the soil depths and areas provided, as well as functionality for different spaces.  Council's landscape architect has reviewed the submitted landscape design and has provided the following comments: <ul style="list-style-type: none"> <li>The native area planting appears to be overplanted. Planting of 4 large Eucalyptus trees plus other native trees in an area approx. 5 x 10m will cause future issues to the property owner. The proposed understorey planting will not succeed here as there will be too much shade plus the fact that the garden is south facing.</li> <li>The proposed hedge – <i>Metrosideros thomasi</i> will</li> </ul>	Yes

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	require regular pruning to keep it a suitable height as it is a small tree. Perhaps consider the Fuji Fire variety which is smaller in habit	
<b>4O-2 Landscape Design</b>  Landscape design contributes to the streetscape and amenity.	Maintenance schedule provided on plans. Condition is to be imposed requiring adherence to that schedule or as modified.	Yes
<b>4P-1 Planting on Structures</b>  Appropriate soil profiles are provided.	The landscape plans provided demonstrate appropriate soil profiles.	Yes
<b>4P-2 Planting on Structures</b>  Plant growth is optimized with appropriate selection and maintenance.	The landscape plans provided demonstrate appropriate soil depths to facilitate the plantings proposed.	Yes
<b>4P-3 Planting on Structures</b>  Planting on structures contributes to the quality and amenity of communal and public open spaces.	Planting is proposed for the communal spaces resulting in areas of high amenity.	Yes
<b>4Q-1 Universal Design</b>  Universal design features are included in apartment design to promote flexible housing for all community members.	The proposal provides 20% of units the incorporate Liveable Housing Standard and 10% adaptable units.	Yes
<b>4Q-2 Universal Design</b>  A variety of apartments with adaptable designed are provided.	All adaptable apartments have easy access to common areas (via common corridors and lift), and have appropriate parking as required by the relevant standards. Apartment layouts have been designed to ensure that minimal work is required to convert into adaption mode.	Yes
<b>4Q-3 Universal Design</b>  Apartment layouts are flexible and accommodate a range of lifestyle needs.	The open style design and nonloadbearing rooms allow for future adaptations.	Yes
<b>Part 4S – Mixed Use</b>  Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	The commercial component of the proposed development is of a scale and in a located that is appropriate for its location and will provide convenience for the local community. The small-scale nature of the commercial floor area is unlikely to impact on the viability of the Nowra CBD.	Yes.



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<b>Part 4S – Mixed Use</b>  Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents	Residential units are integrated within the development, and safety and amenity is considered to be satisfactory.	Yes.
<b>Part 4T – Awnings</b>  Awnings are well located and complement and integrate with the building design	Complies	Yes.
<b>Part 4T – Awnings</b>  Signage responds to the context and desired streetscape character	No signage proposed as part of the development.	Yes.
<b>4U-1 Energy Efficiency</b>  Development incorporates passive environmental design.	Natural light is provided to all habitable rooms in accordance with 4A, however, solar access to south facing (single aspect) units and single bedroom units which receive restricted solar access and in some cases no solar access during 9am and 3pm in winter.	Yes
<b>4U-2 Energy Efficiency</b>  Development incorporates passive solar design to optimize heat storage in winter and reduce heat transfer in summer.	The use of shading devices, awnings and wall insulation ensure that temperature is controlled during summer and winter.	Yes
<b>4U-3 Energy Efficiency</b>  Adequate natural ventilation minimises the need for mechanical ventilation.	All habitable areas are provided with openable windows to provide natural ventilation.	Yes
<b>4V-1 Water Management and Conservation</b>  Potable water use is minimised.	Water efficient devices. Drip irrigation system proposed as per landscape plans.	Yes
<b>4V-2 Water Management and Conservation</b>  Urban stormwater is treated on site before being discharged to receiving waters.	Rainwater tanks are proposed on the site to be used for irrigation.	Yes
<b>4W-1 Waste Management</b>  Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents.	Waste storage areas and temporary waste storage areas are provided within the building, minimizing the impacts on the streetscape and residents.	Yes
<b>4W-2 Waste Management</b>	Appropriately sized and located waste storage rooms are proposed. Waste collection is to be via a private contractor to be collected	Yes

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Domestic waste is minimised by providing safe and convenient source separation and recycling.	from the basement and accessed off Albatross Road.	
<b>4X-1 Building Maintenance</b> Building design detail provides protection from weathering.	A number of features such as roof overhangs, window hoods, drip groves / lines and cappings have been incorporated into the design to provide protection to areas of the building façade prolonging the need for building maintenance.	Yes
<b>4X-2 Building Maintenance</b> Systems and access enable ease of maintenance.	Awning windows with opening restrictors are used for safety, in accordance with BCA requirements. Window cleaning is envisaged to be performed from balcony areas, accessible ground floor levels or via safety harness system from the building's roof deck areas.	Yes
<b>4X-3 Building Maintenance</b> Material selection reduces ongoing maintenance costs.	The materials proposed are acceptable. The used of render and timber is minimised.  Applicant to provide detail as to how graffiti is to be deterred on the ground floor surfaces or how materials are easily cleaned.	Yes