

JRPP No:	2011NTH009
DA No:	DA 2011/72
PROPOSED DEVELOPMENT:	To Develop an Affordable Rental Housing Estate Under the Provisions of State Environmental Planning Policy (Affordable Rental Housing) 2009 Comprising the Erection of 74 Single and Two Storey Dwellings, Associated Infrastructure Lot 8 DP 1122975, Tallow Wood Place & Lot 11 DP 258095, No. 56 Greenfield Road, Lennox Head
APPLICANT:	Greenwood Grove Estate Pty Ltd
REPORT BY:	Lachlan Sims, Development Assessment Planner, Ballina Shire Council

Assessment Report and Recommendation

1. SUMMARY

Reason for consideration by Joint Regional Planning Panel

The proposal is referred to the Joint Regional Planning Panel pursuant to the provisions of clause 13B(1)(b)(i) of *State Environmental Planning Policy (Major Development) 2005* as the proposal involves affordable housing with a capital investment value that exceeds \$5 million.

State Environmental Planning Policy (Affordable Rental Housing) 2009

The proposed development seeks approval primarily under the provisions of *State Environmental Planning Policy (Affordable Rental Housing)*. At the time of lodgement of the application, Clause 10(1) of this SEPP provided for development of the type proposed. Amendments to this SEPP were gazetted on 20 May 2011 which have had the effect of removing the provisions allowing proposed development of affordable rental housing on the subject site. The amendment also contains savings provisions that allow a consent authority flexibility in determining an application made before the gazettal of the amendments. In this regard, this development application has been assessed against both the provisions of the SEPP as applicable at the time of lodgement as well as the provisions of the SEPP as amended. These considerations are outlined in Section 2.4.1 of this report.

Proposal

This development application seeks consent for the erection of 74 affordable rental dwellings configured across three separate precincts on two parcels of land off the end of Greenfield Road, Tallow Wood Place and Satinwood Place, Lennox Head. The development involves the erection of 13 separate buildings of single and two storey construction and associated ground level car parking areas and communal open space.

Street access is provided to the site via entrances off Tallow Wood Place and Satinwood Place.

Background and Site Description

The subject site is located within an established low-density residential precinct with single dwelling houses located on large allotments adjoining the site to the east and

south. Adjoining the site to the north and west is rural zoned land which is currently subject to a rezoning application. This land is proposed to be zoned for environmental protection and urban purposes.

Permissibility

The site is zoned 2(a) – Living Area pursuant to the *Ballina Local Environmental Plan* 1987 (BLEP). For the purposes of the BLEP, the proposal is defined as a residential flat development and is permissible in the 2(a) – Living Area Zone with development consent.

Consultation

The proposed development was advertised and placed on public exhibition with written notification issued to all adjoining landowners in accordance with the requirements of the *Environmental Planning & Assessment Act* 1979 and Council policy. A total of 226 written submissions were received comprising 212 submissions objecting to the proposal and 14 submissions in support of the proposal. In addition a petition containing 200 names was received in support of the proposal. The primary issues raised in the objections relate to the perceived negative impacts the proposed development will have on the amenity of the surrounding residential locality. The primary reasons for support of the proposal relate to the development filling the shortage of affordable housing in Ballina Shire and the perceived social and economic benefits of the development (through construction and servicing and provision of middle income accommodation).

Main Issues

The main issues arising from the assessment of this application are:

- the deficiencies in the information submitted with the development application that have not allowed a thorough and competent environmental assessment of the proposal;
- whether or not the proposed development is consistent with relevant land use and planning regulations and development controls applicable to the site;
- the design of the proposed development with regard to its bulk and scale and resultant impacts on the surrounding locality; and
- the impacts of the proposed development on the significant environmental features contained within the site.

Conclusion

This application has been assessed having regard to the relevant matters for consideration prescribed by Section 79C (1) of the *Environmental Planning and Assessment Act* 1979.

The proposed development is permissible with development consent in the 2(a) – Living Area Zone and has been submitted for approval under the provisions of *State Environmental Planning Policy (Affordable Rental Housing)* 2009. The proposal has been examined with regard to its environmental, social and economic impacts. This assessment has raised a number of issues with regard to the impacts of the proposed development on the surrounding environment. Detailed consideration has also been given to the comments provided within public submissions in this assessment. Based on the bulk and scale of the proposed development, its expected negative environmental impacts, and the inconsistency of the proposal with relevant land use and planning provisions and development controls it is considered that granting development consent to the proposed development would not be in the public interest.

RECOMMENDATION

In the conclusion of the assessment report are a number of options for determination. Based on the findings of the assessments, it is recommended that Development

Application 2011/72 be refused pursuant to Section 80 of the *Environmental Planning & Assessment Act 1979*.

2. ASSESSMENT REPORT

2.1 Background

The recent development history affecting the subject site is as follows:

No	Description	Status
2004/605	19 lot residential subdivision	Consent issued 24 June 2004. 16 approved allotments registered. Outstanding consent conditions and matters relating to issue of final subdivision certificate remain incomplete.
2007/687	18 lot integrated residential subdivision	Refused 24 April 2008.
2010/677	2 lot boundary adjustment subdivision	Consent issued 26 August 2010

Site description

The subject site is located adjacent (to the south and east) to an established urban environment comprising large-lot residential allotments that contain single dwelling houses. Adjoining the site to the north and west is rural zoned land that is currently subject to a rezoning proposal for urban uses. Access to the site is off Tallow Wood Place and Satinwood Place both of which run off Greenfield Road. The Lennox Head Village Centre is located approximately 2.0km (both walking and driving distance) from the site and the Lennox Head Public School is located 2.5km driving distance or 1.6km walking distance from the subject site. The Ballina Central Business District is located 13km driving distance from the subject site. Plans showing the subject site and its relationship with the surrounding locality are **attached**.

The site can be divided into two separate sections: the western section off the end of Tallow Wood Place and the eastern section that is accessed from both Tallow Wood Place and Satinwood Place. The site contains two separate stands of significant remnant rainforest that has been protected by buffer planting as a result of previous development consent 2004/605. The site gently slopes from south to north and does not contain any permanent watercourses. Existing open stormwater drains traverse the site at 3 locations. Beyond the protected and buffered vegetated areas, the site is largely clear of vegetation. Given its position adjacent to an established urban environment, the site can be adequately provided with essential utility services.

Adjoining the site to the northwest is a large area of coastal wetland. The edge of the wetland is approximately 60 metres from the northwestern corner of the site. An area of wetland declared under State Environmental Planning Policy 14 – Coastal Wetlands also exists in close proximity, located approximately 110 metres from the northwestern corner of the site. The site is also identified as being bushfire prone and is identified as being affected by Class 5 Acid Sulfate Soils under the Acid Sulfate Soils Planning Maps adopted by Clause 36 of the *Ballina Local Environmental Plan 1987*.

2.2 Proposal

This development application seeks consent for 74 affordable rental dwellings configured across three separate precincts within buildings that are a mix of one and two storeys in height. Associated ground level car parking areas, vehicular and pedestrian access and egress points and communal landscaping and recreation space is also provided. Copies of the plans for the proposed development are **attached**.

The proposed development is made under the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009 (AHSEPP)*. The estimated cost of the development is \$7.044 million. As the development involves the erection of affordable rental housing with a capital investment value exceeding \$5 million, the development is classified as regional development in accordance with the provisions of *State Environmental Planning Policy (Major Development) 2005*. As such, the determining authority for the application is the Northern Joint Regional Planning Panel.

The proposed development is to take place over two parcels of land. Lot 8 DP 1122975 (off Tallow Wood Place and Satinwood Place) contains the majority of the development. The development is also proposed over part of Lot 11 DP 258095 which adjoins Lot 8 to the southwest (generally containing Buildings C-F). The inclusion of the subject land into a single parcel was approved by Council in DA 2010/677. The approved subdivision is pending registration with the Land and Property Management Authority.

Specifically, the proposed development includes 13 separate buildings across 3 precincts containing a total of 74 dwellings. The configuration of the dwellings is as follows:

Precinct	Location	Buildings	Dwellings
1	Off western end of Tallow Wood Place	8 (Buildings A-H)	48
2a	Off eastern end of Tallow Wood Place	2 (Buildings I & J)	6
2b	Off northern end of Satinwood Place	2 (Buildings K & L)	14
3	Off western side of Satinwood Place	1 (Building M)	6

Of the 74 dwellings, 40 are proposed on the ground floor with the remaining 34 have ground floor access with living areas located on the first floor

The 13 buildings contain a mix of 1, 2 and 3 bedroom units as follows:

- 18 x 1 bedroom units at or above 50m² gross floor area (GFA)
- 34 x 2 bedroom units at or above 70m² GFA
- 22 x 3 bedroom units at or above 90m² GFA

	1 bed units	2 bed units	3 bed units	TOTAL
Building A	2	2	2	6
Building B	0	4	0	4
Building C	6	0	2	8
Building D	0	4	0	4
Building E	0	0	4	4
Building F	0	0	4	4
Building G	2	3	4	9
Building H	0	5	4	9
Building I	0	2	0	2
Building J	2	2	0	4
Building K	0	6	2	8
Building L	3	3	0	6
Building M	3	3	0	6
	18	34	22	74

The proposed residential flat buildings vary in size with the largest building (Building H) containing 9 dwellings and the smallest building (Building I) containing 2 dwellings. The buildings are primarily located around the edge of the development site with car parking and vehicular access areas centrally located between the buildings. Proposed Buildings A and B are located amidst the car parking and vehicular access within Precinct 1. All dwellings have been issued with BASIX Certification. The exterior of the proposed buildings comprise a mix of brick, cladding and Colorbond finishes.

The proposed development includes the provision of 74 car parking spaces which is consistent with the requirements of the AHSEPP applicable at the time of lodgement of the development application. The proposal also includes the provision of two centralized garbage disposal enclosures. A conceptual landscaping proposal has been submitted with the application that is considered to be of a satisfactory design. Minimal details have been provided with regard to the provision of communal outdoor facilities on the site.

Access to the development is to be obtained via existing road infrastructure. Access to and from Precinct 1 is proposed via two separate driveways off the western end of Tallow Wood Place. 6 dwellings in Precinct 2 are accessed from the eastern end of Tallow Wood Place with the remaining 14 dwellings accessed from the end of Satinwood Place. Precinct 3 has access directly off Satinwood Place. Pedestrian connectivity is provided within the site between the car parking areas and the dwellings. The proposed design does not incorporate any footpath connections between the internal and external footpath networks.

Under the provisions of the AHSEPP, the affordable rental housing dwellings in the development are to be retained as “affordable housing” for a period of 10 years and are to be managed by a registered community housing provider. Although the application indicates that all the dwellings in the proposed development will be retained as affordable housing, no details of the appointment of the required community housing provider to manage the development has been provided. This information was requested from the applicant during the course of the assessment of the development application. In response, the applicant has stated that “a number of community housing providers have been approached but none have been retained to manage the affordable housing component of the development”. In this regard, should the development be favourably considered, suitable

conditions of development consent can be imposed requiring the restriction on use of the dwellings for affordable housing and the details of the appointment of a community housing provider in accordance with the provisions of Clause 17 of the AHSEPP.

2.3 Site Development History

This development application is the second such application for affordable rental housing on the subject site. A previous development application (DA 2010/678) was lodged with Council on 18 June 2010. This application was subsequently assessed and reported to the Northern Joint Regional Planning Panel for a determination hearing scheduled for 6 December 2010. Development application 2010/678 was withdrawn by the applicant on 28 November 2010 and no determination was made.

The submission of an application for affordable rental housing was foreshadowed by the applicant in meetings with Council officers early in 2010. A pre-lodgement meeting was held between the applicant, consultants and Council staff. A brief overview of the proposal was given and advice was generally provided that the development was permissible under the provisions of *State Environmental Planning Policy (Affordable Rental Housing)* 2009. It was also advised, however, that although the AHSEPP contains specific provisions relating to the design of the subject development, the development would still be assessed for its environmental impacts in all areas where the AHSEPP is silent.

The proposed development is to take place over two parcels of land. The majority of the development takes place on land currently identified as being part of Lot 8 DP 1122975. Lot 8 comprises the residue parcel of a subdivision approved by Council in DA 2004/605. This DA was approved by virtue of a deferred commencement consent given by Council on 24 June 2004 “to undertake a 19 Lot Torrens Title Residential Subdivision”.

The landowner submitted a separate application (DA 2007/687) on 20 April 2007 “to Undertake an 18 Lot Community Title or Torrens Title Integrated Residential Subdivision” over the residue parcel. This application was refused by Council on 24 April 2008 for a number of reasons, which included the inconsistency of the proposal with the objectives of the L1 – Low Density (Large Lots) Control Plan Area contained within Chapter 1 of the Ballina Shire Combined Development Control Plan (DCP) and the incompatibility of the development with the character and amenity of the surrounding residential area. A Class 1 Appeal against the above decision was lodged with the NSW Land and Environment Court. At the conclusion of day two of this hearing, the applicant withdrew from the proceedings. In 2009 a Class 1 Appeal was lodged against Council’s refusal of DA 2007/687 and Class 4 proceedings were also commenced in the NSW Land and Environment Court in relation to the deferred commencement consent 2004/605. The Class 1 Appeal was placed on hold pending determination of the Class 4 matter. The Class 4 case specifically related to whether Council was constrained by the conditions of deferred commencement consent 2004/605 in making subsequent resolutions or in the future determination of any development application for community title subdivision in respect of lots in a related aspect of the same proposal. In the judgement of Her Honour Pepper J on 23 August 2010 it is clearly stated that the deferred commencement consent 2004/605 “did not impose conditions binding the Council as to the terms of any future development application concerning the Community Title subdivision of the lots in question”. Accordingly, the Class 4 case was dismissed. The Class 1 Appeal was subsequently withdrawn.

2.4 Environmental Planning and Assessment Act 1979

In determining a development application, the consent authority must take into consideration matters referred to in Section 79C (1) of the *Environmental Planning and Assessment Act 1979* as are of relevance to the development. The following table summarises the relevant matters for consideration under Section 79C (1) and matters identified as being significant in this case are discussed in further detail in the report.

2.4.1 SEPP (AFFORDABLE RENTAL HOUSING)

EP&A Act, Section 79C (a)(i) any environmental planning instrument

State Environmental Planning Policy (Affordable Rental Housing) 2009

This development application was made under the provisions of *State Environmental Planning Policy (Affordable Rental Housing) 2009* (AHSEPP) as applicable at the time of lodgement of the development application. The AHSEPP was amended on 20 May 2011 which affects the permissibility and assessment of the proposed development. Specifically, the amended AHSEPP contains savings and transitional provisions in Clause 54A. Clause 54A(2) of the amended AHSEPP specifies that

If a development application (an existing application) has been made before the commencement of the amending SEPP in relation to development to which this SEPP applied before that commencement, the application may be determined as if the amending SEPP had not been made.

This clause is taken to mean that the consent authority has the option of choosing to determine an application made under the AHSEPP either taking into consideration the provisions of the amendments or determining the application based on the provisions of the AHSEPP applicable at the time of lodgement of the development application.

This assessment takes into consideration the provisions of the AHSEPP applicable at the time of lodgement of the development application and how the application is affected by the amendments to the AHSEPP made on 20 May 2011. It will be the responsibility of the consent authority, in this case being the Northern Joint Regional Planning Panel, to ascertain how the development application will be determined based on the amended provisions of the AHSEPP and, in particular, the savings and transitional provisions in Clause 54A(2) of the amended SEPP.

Clause 6 – Affordable Housing

Clause 6 applies the definition of “affordable housing” as contained in the *Environmental Planning and Assessment Act 1979* as follows:

affordable housing means housing for very low income households, low income households or moderate income households, being such households as are prescribed by the regulations or as are provided for in an environmental planning instrument.

Clause 6 also defines the eligibility requirements for households occupying affordable housing.

Clause 8 – Relationship with other environmental planning instruments

Clause 8 of the AHSEPP provides for this SEPP to prevail over any other environmental planning instrument in the event of an inconsistency between instruments. In this regard, the AHSEPP prevails over the provisions of the relevant SEPPs and the *Ballina Local Environmental Plan 1987* (BLEP) where inconsistencies may occur.

Clause 10 – Land to which Division (In-fill affordable housing) applies

The application is seeking consent for the erection of a multi dwelling housing development comprising 74 dwellings. Clause 10(1) of the AHSEPP as applicable at the time of lodgement of the development application specified that the in-fill affordable housing provisions apply to land within Zone R1 General Residential or its equivalent zone. The Department of Planning has identified BLEP zone 2(a) – Living Area as being equivalent to the R1 General Residential zone.

For the purposes of the AHSEPP, the buildings within the proposed development can be defined as “multi dwelling housing” as contained in the *Standard Instrument – Principal Local Environmental Plan* as follows:

multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land (not being an individual lot in a strata plan or community title scheme) each with access at ground level, but does not include a residential flat building.

The AHSEPP was amended on 20 May 2011. This amendment included changes to the provisions of Clause 10 and development to which Division 1 (In-fill affordable housing) of the AHSEPP applies. Clause 10(1) now specifies that the in-fill affordable housing provisions apply to development for the purposes of multi dwelling housing if “the development concerned is permitted with consent under another environmental planning instrument”.

The use of land within the BLEP 2(a) – Living Area Zone for multi dwelling housing is permissible with consent. The proposed development is therefore considered to meet the requirements of Clause 10(1) under the provisions of the AHSEPP applicable at the time of lodgement of the development application and the amended AHSEPP.

Clause 10(3) of the amended AHSEPP specifies that:

(3) *Despite subclause (1), this Division does not apply to development on land that is not in the Sydney region unless all or part of the development is within 400 metres walking distance of land within Zone B2 Local Centre or Zone B4 Mixed Use, or within a land use zone that is equivalent to any of those zones.*

Under the BLEP there are no equivalent zones to the specified B2 or B4 zones in the vicinity of the site of the proposed development, although the Draft Ballina Local Environmental Plan 2010 has proposed the application of a B2 Local Centre Zone over the Lennox Head village centre. Notwithstanding this proposed zone, the site of the proposed development cannot meet the requirements of being within 400 metres walking distance of the specified zones. The AHSEPP defines walking distance as

walking distance means the shortest distance between 2 points measured along a route that may be safely walked by a pedestrian using, as far as reasonably practicable, public footpaths and pedestrian crossings.

The site of the proposed development is in excess of 400 metres from the Lennox Head village centre and therefore cannot be considered to meet the requirements of Clause 10(3) of the AHSEPP as amended. In this regard, the proposed development is unable to be considered for approval under the provisions of the amended AHSEPP.

Notwithstanding this, given that the development application was lodged prior to the amendments taking effect, this assessment also considers the application under the pre-amended AHSEPP development standards. As previously mentioned, the amended AHSEPP provides the consent authority with discretion as to the determination of an application made before the commencement of the amended AHSEPP. The consent authority may decide whether or not to apply the amended AHSEPP provisions to the determination of an existing application.

In this regard, if it is decided to determine the development application under the provisions of the AHSEPP applicable at the time of lodgement, the proposed development can be considered under Division 1 of the AHSEPP. This report continues the assessment of the proposed development against the applicable AHSEPP provisions.

Clause 11 – Development to which Division applies

Clause 11 as applicable at the time of lodgement of the development application specified in-fill affordable housing development to which Division 1 applies. Clause 11 was repealed by the amendments to the AHSEPP on 20 May 2011. Prior to its repeal, Clause 11 read as follows:

- 11 Development to which Division applies**
This Division applies to the following development on land to which this Division applies:
- (a) development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings where at least 50 per cent of the dwellings in the proposed development will be used for affordable housing, but only if:*
 - (i) the development does not result in a building on the land with a building height of more than 8.5 metres, and*
 - (ii) in the case of development for the purposes of a residential flat building—residential flat buildings are not permissible on the land otherwise than because of this Policy,*
 - (b) development for the purposes of residential flat buildings where at least 20 per cent of the dwellings in the building will be used for affordable housing, but only if:*
 - (i) residential flat buildings are permissible on the land otherwise than because of this Policy, and*
 - (ii) the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register.*

Multi dwelling housing is permissible on the subject land by virtue of the provisions of the BLEP and the applicable 2(a) – Living Area Zone. Therefore, the proposed development is categorised as development that meets the requirements of Clause 11(a) of the AHSEPP as detailed in the following table:

AHSEPP Clause 11(a)	Proposed Development
11(a) Development for the purposes of residential flat buildings where at least 50 per cent of the dwellings in the building will be used as affordable housing.	Complies. The proposed development assigns all 74 of the proposed dwellings as affordable housing.
11(a)(i) the development does not result in a building on the land with a building height of more than 8.5 metres,	Complies. The proposed development comprises a mix of single and two storey buildings all of which are less than 8.5 metres in height.

Clause 12 – Development may be carried out with consent

Clause 12 of the AHSEPP applicable at the time of lodgement of the development application specified that development to which Division 1 of the ASEPP applies may be carried out with consent. This clause was repealed in the amendments to the AHSEPP gazetted on 20 May 2011.

Clause 13 – Residential flat buildings where such buildings permissible

Clause 13 of the AHSEPP as applicable at the time of lodgement of the development application applied to development for the purposes of residential flat buildings. Consequently, this clause did not apply to the proposed development.

Clause 13 was amended on 20 May 2011 and now relates to floor space ratios. This clause, as amended, specifies maximum floor space ratios for development to which Division 1 of the AHSEPP applies. The floor space ratio for the proposed development (where greater than 50% of the dwellings are to be used for affordable housing) is the existing maximum floor space ratio for any form of residential accommodation permitted on the land plus 0.5:1.

The existing maximum floor space ratio for development on the site is specified in Clause 3.2.2 (iv) of Chapter 16 (Lennox Head) of the Ballina Shire Combined Development Control Plan which permits a floor space ratio for dwelling houses and dual occupancies up to 0.5:1. Clause 13 of the AHSEPP allows for an additional 0.5:1 floor space ratio above the existing maximum floor space ratio for any form of residential accommodation permitted on the land. The applicable maximum floor space ratio for the proposed development under the provisions of the AHSEPP is therefore 1:1.

The subject site contains substantial areas that will remain undeveloped due to environmental constraints. Although the actual areas proposed for the dwellings will be relatively dense, the overall floor space ratio for the site is 0.24:1 and consequently complies with the standard specified in Clause 13 of the AHSEPP as amended.

Clause 14 – Standards that cannot be used to refuse consent

Clause 14 contains standards that cannot be used to refuse consent to an application for development referred to in Clause 11(a) of the AHSEPP prior to its amendment. These standards have the effect of prevailing over any other development controls contained in an Environmental Planning

Instrument. Clause 14 was amended on 20 May 2011 and changed some of the standards that cannot be used to refuse consent. The proposed development has been assessed against both the provisions of Clause 14 in effect at the time of lodgement of the development application and the provisions of Clause 14 as amended as follows:

AHSEPP Standard	Original AHSEPP Requirement	Amended AHSEPP Requirement	Proposed Development
CI 14(1)(a) Density and scale	For development application lodged before 30 June 2011, density and scale of buildings when expressed as floor space ratio is not more than 0.75:1	Repealed.	Complies. The density and scale of the development when expressed as a floor space ratio is 0.24:1. Not applicable under amended AHSEPP.
CI 14(1)(b) Site area	Site area is at least 450m ²	Site area is at least 450m ²	Complies. The subject site has an area of 2.513ha.
CI 14(1)(c) Landscaped area	30% of site is to be landscaped	30% of site is to be landscaped	Complies. Extensive areas of the development site are available to landscaping in excess of 30% of the site area.
CI 14(1)(d) Deep soil zones	Provision of specified deep soil zones	Provision of specified deep soil zones	Complies. Adequate deep soil zones satisfying the provisions of this clause are provided.
CI 14(1)(e) Solar access	Solar access: 70% of dwellings having 3 hours direct sunlight: 9.00am-3.00pm in mid-winter	Solar access: 70% of dwellings having 3 hours direct sunlight: 9.00am-3.00pm in mid-winter	Complies. More than 70% of the dwellings have the required solar access.
CI 14(2)(a) Parking	0.5 car parking spaces per dwelling	0.5 spaces/1 bedroom dwelling; 1 space/2 bedroom dwelling; 1.5 spaces/3 or more bedroom dwellings	A total of 74 spaces is provided achieving compliance with the AHSEPP prior to its amendment. Under the amended parking requirements, the proposed development is deficient 2 car parking spaces.
CI 14(2)(b) Dwelling size	Each dwelling to have at least 50m ² /1 bedroom dwelling; 70m ² /2 bedroom dwelling; 95m ² /3 or more bedroom dwelling	Each dwelling to have at least 50m ² /1 bedroom dwelling; 70m ² /2 bedroom dwelling; 95m ² /3 or more bedroom dwelling	Complies. Each of the proposed dwellings have floor areas that exceed the minimum floor areas specified.

The proposed development, therefore, meets the requirements of the above standards as contained in Clause 14 of the AHSEPP current at the time of lodgement of the development application. In this regard, where the development application is assessed and determined under the AHSEPP prior

to its amendment, the proposed development cannot be refused on grounds of density and scale, site area, landscaped area, deep soil zones, solar access, parking or dwelling size.

As detailed above, the proposed development cannot be approved under the amended AHSEPP provisions as the subject site is not located within 400 metres of a local centre.

Clause 15 – Design requirements

The provisions of Clause 15 were applicable at the time of lodgement of the development application and remain applicable under the amended AHSEPP provisions. This clause requires that a consent authority must not consent to development for in-fill affordable housing unless it has taken into consideration the provisions of *Seniors Living Policy: Urban Design Guidelines for Infill Development* to the extent that those provisions are consistent with this policy. The proposed development is assessed against the provisions of these guidelines in the table below.

Seniors Living Policy – Urban design guidelines for infill development	
1. Responding to Context	
	<p>Analysis of neighbourhood character</p> <p>The Guidelines require new development to contribute to the overall character of the area and fit within the existing character of the neighbourhood. The existing neighbourhood character is defined by single dwelling houses on larger than normal (>1200m²) lots. There are currently no medium density developments within the locality. The current development controls contained in the DCP preserve this standard through a minimum lot size of 1200m² and a restriction on development to single dwelling houses and dual occupancies. The desired future character, as evidenced in Council's DCP, Draft LEP and strategic planning documents applicable to the neighbourhood is for this to remain, allowing for infill development on large allotments that can achieve a subdivision standard of lots with a minimum area of 1200m². The proposed development involves the erection of 74 dwellings within a small footprint that in this regard is not compatible with the existing or desired future character of the neighbourhood. This character is reinforced by the provisions of the Draft LEP.</p>
	<p>Street layout and hierarchy</p> <p>The Guidelines require that new development should be of an appropriate scale and character to reinforce the existing street layout and hierarchy pattern. The proposed development is located off two short cul-de-sac roads in an established urban area and does not propose to make any changes to the existing street layout. Medium density multi dwelling housing developments of the scale proposed are typically unsuitable in localities such as this where access is only gained off the end of short and narrow cul-de-sac roads.</p>
	<p>Block and lots</p> <p>This section of the Guidelines relates to the placement of buildings on lots and their relationship to the subdivision pattern (block) having regard to the configuration of the lots for particular uses and building types. The site can be considered a greenfield site that would be expected to be subject to future urban subdivision in accordance with Council's subdivision guidelines. The site adjoins lots that are designated as low density lots in accordance with Council's DCP controls for the L1 – Low Density Large Lots Control Plan Area. Land adjoining the northern boundary of the site is subject to a rezoning proposal that would designate any future urban components as large low</p>

	<p>density lots also. As a consequence of the above, the buildings established on the adjoining lots have been designed and located based on the expectation that this low-density, large-lot development style will be replicated on the surrounding land. The proposed development is inconsistent with this low density urban style and the proximity of the proposed buildings in relation to the adjoining low-density lots is considered inappropriate.</p>
	<p>Built environment</p> <p>The Guidelines refer to residential neighbourhoods with consistent terms of built form including the size and shape of buildings and the spaces between them. New built form should, as far as possible, follow these patterns. The development pattern on land adjoining the site contains a mix of single and two storey dwelling houses situated on large allotments with extensive open space, landscaping and vegetation between buildings. The proposed development comprises predominantly two storey closely spaced residential flat buildings within a relatively small footprint. These buildings are situated in close proximity to boundaries of existing low density dwellings. In this regard it is considered that the proposed development is not in character with the built form of the existing surrounding neighbourhood.</p>
	<p>Trees</p> <p>The Guidelines emphasise the importance of trees and vegetation in the creation of neighbourhood character. Although the proposal plans indicate the conceptual placement of trees between buildings, it is considered that this may not be practicable at landscaping stage. The concentration of the proposed buildings and associated infrastructure will provide limited opportunities for the planting of trees and shrubs between the buildings. This would be inconsistent with the established and establishing character of the Greenfield Road locality where houses on larger than normal lots have allowed space for substantial vegetation to be established between neighbouring buildings.</p>
	<p>Policy environment</p> <p>The Guidelines reference Council's LEP and DCP with regard to identifying elements that contribute to the character of an area. Council's DCP designates the subject site and locality as a low density, large lot residential precinct with preferred land uses being dwelling houses and dual occupancies. The proposed development has been assessed against the provisions of the LEP in Section 2.4.9 and DCP in Section 2.4.11 of this report.</p>
	<p>Site analysis</p> <p>A site analysis plan has been provided as part of the development application. This plan identifies the constraints of the site such as vegetation, slope and infrastructure. The site analysis plan also identifies the existing adjoining low density single dwelling allotments. The site analysis has not specifically addressed issues or constraints relating to conflicts with, and incompatibilities between, existing adjoining development.</p>
<p>2. Site Planning and Design</p>	
	<p>Design principles and better practice – general</p> <p>The Guidelines require site design to achieve optimum internal amenity while minimising impacts on neighbours. It is considered that the site design achieves a satisfactory level of internal amenity for the type of development proposed. Given the low density nature of the locality and the proximity of some of the proposed two storey buildings to property boundaries (ie. Buildings C-F, I, J and L), it is considered that this is likely to result in an undesirable amenity impact on adjoining properties as a result of imposing bulk, overlooking and privacy impacts. The development meets the requirements of the Guidelines by providing a mix of dwelling sizes although the homogenous design of the development (all buildings essentially the same) results in minimal variation in the massing and scale of the built form within the development. It is acknowledged, however, that this effect is lessened by the linear layout, site contours and vegetation on the site.</p>
	<p>Design principles and better practice – built form</p> <p>The subject site is irregular in shape and does not conform to the standard</p>

	<p>layout of a suburban allotment. Consequently matters relating to the street front orientation are not straightforward in terms of this site. The development proposes extensive bulk and form of buildings within close proximity to the rear of existing low density allotments (generally containing rear yards with minimal built form). This potentially results in conflict between the private open space areas of adjoining low density allotments and the two storey, medium density structures of the proposed development that are out of character with the existing and desired built form in the locality. This is particularly evident with the placement and form of proposed Buildings C-F and J-L. In this regard, the development does not comply with the Guidelines' requirement to achieve a more modest scale to parts of the development at the rear of the site to limit the impacts on adjoining properties. The Guidelines also require the design and orientation of dwellings to respond to environmental conditions. The internal designs of the dwellings generally comply with this requirement although Units 13 and 17 are fully oriented to the south and west and consequently do not have desirable solar access. The site contains adequate quiet areas, away from noise generating activities.</p>
	<p>Design principles and better practice – trees, landscaping and deep soil zones</p> <p>The Guidelines generally require that existing patterns and character of gardens and trees be maintained. It is also required that extensive areas of the site are to be landscaped and that deep soil zones are provided. In general, the proposed development complies with these requirements. The site is unusual in that it contains two large, significant stands of rainforest vegetation that are required to have setbacks and buffers from the proposed buildings. As a result, the areas exceed that which would normally be required. Minimal provision has been made for adequate landscaping within the developable footprint of the site for landscaping and deep soil areas.</p>
	<p>Design principles and better practice – parking, garaging and vehicular circulation</p> <p>The proposed development complies with the Guidelines by providing centralised car parking courts wherever possible and allowing for the minimal requirement for driveway crossings.</p>
<p>3. Impacts on Streetscape</p>	
	<p>Design principles and better practice – general</p> <p>The Guidelines require that the development be located and designed to be sympathetic to the existing streetscape and provide a front setback that relates to adjoining development. It should be noted that this is a greenfield site on an irregularly shaped allotment and as such there are generally no issues with front setbacks given the site's minimal street frontage. The proposed dwellings located to directly front Satinwood Place are sufficiently set back, consistent with other dwellings on the street. The proposal includes two garbage enclosures located in close proximity to the street frontage at both Satinwood Place and Tallowood Place. These structures are located within the designated 6m front setback to the site and represent inappropriate siting and an unreasonable bulk in their current location and are not compatible with the current and desired future character of the locality. The proposed buildings (with the exception of Units 69-74 and the garbage enclosures) are generally separated from the street frontages.</p>
	<p>Design principles and better practice – built form</p> <p>The Guidelines contain requirements for reducing the visual bulk of the development. The proposed development does not involve extensive frontage to the street and thus there is minimal direct impact on the streetscape. It is considered, however, that the bulk and scale of the proposed development and the visual impacts of its inconsistency with the existing built form of the locality will result in an overall undesirable impact on the character of the locality, notwithstanding the mitigation afforded by the sloping topography of the site.</p>
	<p>Design principles and better practice – trees, landscaping and deep soil</p>

	<p>zones</p> <p>The submitted plans contain references to conceptual landscaping of the street frontages of the development, however, given the minimal street frontages of the development site and the requirement for provision of infrastructure and utilities, it is considered there are few opportunities for adequate street frontage landscaping.</p>
	<p>Design principles and better practice – residential amenity</p> <p>The Guidelines require the provision of clearly defined private or communal open space. Dwellings at the front of the site should address the street and a high quality transition should be provided between the public and private domains. Given the configuration of the allotment and its multiple frontages, the majority of the development is located away from the street frontages. The street frontages of the site are mostly occupied by driveways or car parking. The design allows for the adequate separation between public and private space through fencing and landscaping. No specific details regarding the fencing and landscaping of the site have been provided. Given the configuration of the allotment, few of the dwellings are able to front the street. Proposed Building M, which fronts Satinwood Place, is the only building in the development which directly fronts the street. This frontage is predominantly occupied by car parking spaces. The Guidelines require high quality transition between the public and private domains that is to include pedestrian entries directly off the street and that provide access to rear dwellings, fencing that is consistent with the adjoining properties, orientation of mailboxes and sufficient treatment of garbage storage areas. The development plans do not provide pathways from the street frontages to access the rear dwellings. It is therefore recommended, should the application be supported, that the proposal plans be amended to incorporate sufficient pathway access from the street frontage to access all dwellings. No fencing has been specifically proposed as part of this application, however if approval is granted, it is recommended that consent be conditioned to provide details on the required landscaping plans. Mailboxes have been proposed for both the Tallowwood Place and Satinwood Place (Buildings L and M) frontages. No details for letterboxes are shown on the plans for Buildings I or J. Should approval be granted, it is recommended that the development consent be conditioned to adequately provide letterboxes in accordance with these guidelines.</p>
	<p>Design principles and better practice – parking, garaging and vehicular circulation</p> <p>The proposed development achieves the intent of the Guidelines through not proposing unrelieved, long and straight driveways that are visually dominant. The proposed driveways and parking areas for Precincts 1 and 2 generally meet the requirements of this section of the Guidelines. Precinct 3 (directly off Satinwood Place) does not satisfy the requirements of the Guidelines due to car parking spaces being proposed directly off the street. These proposed car parking spaces occupy the majority of the building frontage and will not be screened to prevent visibility from the street. This leaves insufficient space for softening the impact of proposed Building M on Satinwood Place and reduces opportunities for beautifying the street frontage of this part of the development site.</p>
	<p>“Rules of thumb”</p> <p>The Guidelines contain “rules of thumb” with regard to impacts on the streetscape. These require that the design respond to Council planning instruments that specify the character or desired character for the area. An assessment of the proposal against the provisions of Council’s DCP is contained in Section 2.4.11 of this report where the proposed development is considered to be inconsistent with the desired future character of the locality.</p>
<p>4. Impacts on Neighbours</p>	
	<p>Design principles and better practice – built form</p> <p>The design of the proposed development has not maintained a consistency with the orientation of surrounding dwellings as required in the Guidelines.</p>

	<p>This is largely due to the irregular configuration of the site and the scale of the development. As a consequence, greater emphasis has therefore been placed on the requirement to minimise impacts on the amenity of neighbouring properties. The Guidelines require that the development protect neighbours' amenity by designing the bulk and scale of the development to relate to the existing residential character and to design second storeys to reduce overlooking of neighbouring properties. The design of the proposed development has attempted, to some extent, to minimise the impacts of the bulk and scale of the buildings through broken roof forms, articulated facades and separation of buildings. Additionally, the nature of the site is that it falls away from existing residences. This has the effect of mitigating the issues of bulk and dominance to a substantial degree. Notwithstanding, it is considered that the bulk, scale and relative density of the proposed development is not in character with the existing and desired future urban form of the locality and therefore does not comply with these requirements. The Guidelines require that buildings should be designed to minimise overlooking of adjoining properties by designing second storeys with greater setbacks and appropriate positioning of openings. The proposed development attempts to achieve this and the buildings generally achieve an adequate setback from the boundaries of adjoining properties. The locations, setbacks and openings on some of the buildings, however, are considered to result in undesirable impacts on adjoining properties due to bulk and scale and overlooking. Buildings C-F, J and L are located close to the boundary of adjoining allotments and represent an unacceptable bulk and scale relative to the existing and desired future built form of the locality comprising single dwellings on large allotments surrounded by substantial areas of open space. Buildings C, H, J and L will result in an undesirable overlooking of adjoining private open space from second storey openings. The design of the development does not comply with this aspect of the Guidelines.</p>
	<p>Design principles and better practice – trees, landscaping and deep soil zones</p> <p>No specific details have been provided with regard to the landscaping, mature planting and screening of the development in the interface between it and adjoining properties. Given the separation between buildings and the setbacks from the adjoining residential properties, it is considered that limited opportunities exist for the adequate planting of mature trees and for sufficient screen planting. If the application is supported, a degree of screen planting could be provided through consent conditions requiring appropriate details on the landscaping plans.</p>
	<p>Design principles and better practice – residential amenity</p> <p>The Guidelines require that solar access and ventilation is maintained to adjoining buildings. The proposed development is sufficiently setback from the property boundaries so as to not negatively impact on the solar access and ventilation of adjoining properties. The Guidelines require that dwellings are to be designed so that there is no overlooking of neighbours' private open space. Buildings C, H, J and L are configured such that undesirable overlooking will result on the private open space of adjoining allotments. In this regard the proposal does not meet the design requirements.</p>
	<p>Design principles and better practice – parking, garaging and vehicular circulation</p> <p>The proposed development generally complies with the requirements of this section. No driveways are located adjacent to side fences.</p>
5. Internal Site Amenity	
	<p>Design principles and better practice – built form</p> <p>The Guidelines require that dwellings be designed to maximise solar access to living areas. The proposed development generally achieves this, although the siting of Units 13, 17, 31 and 44 do not provide adequate north-easterly solar</p>

	access for living areas in accordance with this requirement. The development has been designed with clear and identifiable building entries. All dwellings (both ground and first floor) have entries at ground level.
	<p>Design principles and better practice – parking, garaging and vehicular circulation</p> <p>The length of travel between car parking and units at the extremities of the development (units in Buildings C, F, G and J), which exceeds 40m for some units is considered undesirable. It is unclear whether this matter could be adequately addressed through redesign given the environmental constraints of the site. A number of the habitable rooms of the proposed dwellings are located adjacent to car parking areas and pathways. The Guidelines require that these rooms be located away from these areas, but acknowledges that where this cannot be achieved, physical separation, planting, screening and other measures should be utilised to adequately achieve a separation. No detail of separation screening is provided in the plans for the proposed development. Should the development be approved, consent can be conditioned to require adequate additional details to satisfy these requirements. A rule of thumb in this section of the Guidelines specifies that a separation of 1.2m should be achieved between habitable rooms and a driveway or car park of other dwellings. The proposed development generally achieves this with the exception of Unit 44 which proposes habitable rooms located closer than 1.2m from the driveway. This non-compliance can be rectified through a condition of consent should approval be granted. The car parking areas shown on the plans for the proposed development incorporate articulation areas and separation between large paved areas suitable for landscaping. The proposal contains a number of communal car court areas which has the effect of minimising the amount of vehicle circulation areas required. This has the effect of meeting the requirements of the Guidelines in this regard.</p>
	<p>Design principles and better practice – residential amenity</p> <p>The proposed development provides sufficient pathway accesses from car parking areas to dwelling entries and therefore satisfies the requirements of the Guidelines in this regard. No provision is made on the submitted plans for the provision of separate pedestrian access paths connecting the internal network to the street. The Guidelines require that a separate pedestrian pathway connection be provided and recommends an alternative where this is not possible. Should approval be granted, consent can be conditioned to require that the development satisfies these requirements. The Guidelines require that adequate consideration be given to safety and security by achieving clear separation between public and private space and minimising concealment opportunities. An assessment has been provided with the application addressing the principles of Crime Prevention through Environmental Design (CPTED). The proposed development is considered to generally meet CPTED requirements and minimises concealment opportunities. The proposed development provides private open space areas for each dwelling that generally comply with the requirements of the Guidelines. The development provides extensive areas of unstructured communal open space that are generally accessible to all residents. No details have been provided with regard to the provision of structured communal open space areas such as shared garden beds, seating areas, barbecues, play areas, etc. Additional information was requested from the applicant in this regard on 11 April 2011. Some details were provided in response detailing locations within the development for communal open space areas, screened clothesline areas and bicycle storage areas. It would appear that minimal thought has been given to the placement of these areas as they are proposed to be located in poorly accessible areas at the rear of the buildings and in some cases located on areas designated as stormwater bioretention basins. Should the application be approved, consent can be conditioned to provide further, more substantial details for these facilities which are considered essential to achieve an appropriate amenity to the</p>

<p>development. The Guidelines require that garbage storage and collection areas be designed and sited to minimise their visual prominence. The proposed development contains two large and bulky garbage storage buildings located on the Tallowood Place and Satinwood Place frontages close to the property boundary. The bulk, scale and location of these structures is considered inappropriate and represents an unreasonable amenity impact both internal and external to the site. This matter was raised with the applicant in a letter requesting further information dated 11 April 2011. In this letter it was requested that these structures be relocated to a more suitable location on the site. No details were provided as to an alternative location for these structures that might better address the design requirements. Given the significant effect the relocation of these structures may have on the design of the development, it may be difficult to condition the relocation of the structures without resulting in a substantial re-design of the entire proposal. Consequently, the proposed development cannot be supported in this regard.</p>

Whilst a number of aspects of the development comply with the Guidelines or can be conditioned to comply, it is considered that the proposed development as a whole does not adequately meet the design requirements of *Seniors Living Policy: Urban Design Guidelines for Infill Development* and therefore does not satisfy the requirements of Clause 15 of the AHSEPP.

Clause 16A & Clause 54A(3) – Character of local area

The amendments to the AHSEPP on 20 May 2011 require that a consent authority must not consent to a development to which the SEPP applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area. The savings provisions introduced with the 20 May 2011 amendment to the AHSEPP (Clause 54A(3)) include this requirement for existing applications made prior to the AHSEPP amendment.

The proposed development involves the erection of multi dwelling housing containing 74 affordable rental housing dwellings within 13 buildings. The subject site is within an area that is designated under Council's Development Control Plan (DCP) for low density residential development on large allotments. These matters are addressed further in Section 2.4.11 of this report.

The existing neighbourhood character is defined by single dwelling houses on larger than normal (>1200m²) lots. There are currently no medium density developments within the locality. The current development controls contained in the DCP preserve this standard through a minimum lot size of 1200m² and a restriction on development to single dwelling houses and dual occupancies. The desired future character, as evidenced in Council's DCP, Draft LEP and strategic planning documents applicable to the neighbourhood is for this to remain, allowing for infill development on large allotments that can achieve a subdivision standard of lots with a minimum area of 1200m². The proposed development involves the erection of 74 dwellings within a small footprint that in this regard is not compatible with the existing or desired future character of the neighbourhood. This character is further reinforced by the provisions of the Draft LEP.

In this regard, the proposed development is considered to not be compatible with the current and desired future character of the local area and is thus not supported.

Clause 17 – Must be used for affordable housing for 10 years

Clause 17 requires that where consent is granted to development to which Division 1 applies it must be conditioned that the development is to be retained as affordable housing (in accordance with the AHSEPP) for 10 years from the date of issue of an occupation certificate and that the housing will be managed by a registered community housing provider. The applicant was requested to provide additional information with regard to the above on 11 April 2011. In response, the applicant has advised that “a number of community housing providers have been approached but none have been retained to manage the affordable housing component of the development”. Should the development application be favourably determined, consent can be conditioned to require a restriction on title detailing all the approved dwellings as affordable housing and managed by a community housing provider in accordance with Clause 17 of the AHSEPP.

Clause 54A – Savings and transitional provisions – 2011 amendment

This clause contains savings provisions relating to existing applications made under the AHSEPP prior to the 20 May 2011 amendment. Subclause 54A(2) specifies that

*If a development application (an **existing application**) has been made before the commencement of the amending SEPP in relation to development to which this SEPP applied before that commencement, the application may be determined as if the amending SEPP had not been made.*

It is Council's interpretation of this subclause that the consent authority has discretionary power in determining an existing application made under the AHSEPP. The consent authority has the power to determine the application either under the provisions of the AHSEPP prior to its amendment on 20 May 2011 or under the provisions of the amended AHSEPP.

It is the conclusion of this assessment, based on the details above, that the proposed development does not meet the requirements of the AHSEPP as current at the time of lodgement of the development application. The development application is therefore not supported and is recommended for refusal.

Having regard for the provisions of the amended AHSEPP, the proposed development fails to meet the essential criteria as specified in Clause 10 of the AHSEPP and is therefore not supported and recommended for refusal.

2.4.2 SEPP (BASIX)

EP&A Act, Section 79C (a)(i) any environmental planning instrument

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

The provisions of this SEPP apply to the proposed development. The application has been accompanied by BASIX Certificates for all the proposed dwellings as required by this SEPP which demonstrated that the development is capable of achieving the building sustainability targets contained in this SEPP.

2.4.3 SEPP (INFRASTRUCTURE)

EP&A Act, Section 79C (a)(i) any environmental planning instrument

State Environmental Planning Policy (Infrastructure) 2007

The proposed development is not classified in Schedule 3 of this SEPP as being a traffic generating development requiring referral to the Roads and Traffic Authority.

2.4.4 SEPP (MAJOR DEVELOPMENT)

EP&A Act, Section 79C (a)(i) any environmental planning instrument

State Environmental Planning Policy (Major Development) 2005

The proposed development, being affordable housing with a capital investment value of over \$5 million, is classified as Regional Development in accordance with clause 13B. The proposed development, being Regional Development, is subject to determination by the Northern Joint Regional Planning Panel in accordance with the provisions of Clause 13F.

2.4.5 SEPP 14 – COASTAL WETLANDS

EP&A Act, Section 79C (a)(i) any environmental planning instrument

State Environmental Planning Policy 14 – Coastal Wetlands

The subject site is located approximately 110m from a wetland identified under the provisions of this SEPP. Although direct consideration of SEPP 14 is not required (as the site does not contain SEPP 14 wetland) the assessment of this application will have regard to potential impacts on the wetland that may result from the development. Further discussion on the impacts of the development on the adjoining wetlands is discussed in Section 2.4.14 of this report.

2.4.6 SEPP 55 – REMEDIATION OF LAND

EP&A Act, Section 79C (a)(i) any environmental planning instrument

State Environmental Planning Policy 55 – Remediation of Land

Clause 7 of this SEPP requires an assessment of any potential contamination of the land:

7(1) A consent authority must not consent to the carrying out of any development on land unless:
(a) it has considered whether the land is contaminated, and
(b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and
(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.

Investigations into the potential contamination of the subject site have been undertaken as part of previous development applications (specifically DA 2004/605 and DA 2010/678). These investigations have concluded that there are no significant contamination issues on the subject site.

2.4.7 SEPP 71 – COASTAL PROTECTION

EP&A Act, Section 79C (a)(i) any environmental planning instrument

State Environmental Planning Policy 71 – Coastal Protection

The site is located within the Coastal Zone and therefore the provisions of SEPP 71 are applicable to the proposed development. The site is not considered to be a sensitive coastal location (cl. 3) nor is it defined as significant coastal development (cl. 9).

Part 4 of SEPP 71 specifies a number of development controls to be considered in the assessment of a development application. Clause 8 of SEPP 71 contains Matters for Consideration that are to be incorporated into an assessment of the impact of a proposal on the coastal environment. Clause 16 (Stormwater) also applies to the proposed development. Stormwater issues are addressed in further detail later in Sections 2.4.11 and 2.4.14 of this report.

Note: The subject site is not located adjacent to the coastal foreshore and as such there are a number of clause 8 matters that do not apply to the subject development. The following clause 8 matters are considered applicable in the assessment of the proposed development.

<i>(a) the aims of [SEPP 71] set out in clause 2</i>
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As the site is located away from the coastal foreshore, a number of the aims are not applicable to the proposed development. Those aims (as contained in clause 2 of the SEPP) that are considered to apply to the proposed development are:

<i>(a) to protect and manage the natural, cultural, recreational and economic attributes of the New South Wales coast, and (e) to ensure that the visual amenity of the coast is protected, and (g) to protect and preserve native coastal vegetation, and (j) to manage the coastal zone in accordance with the principles of ecologically sustainable development (within the meaning of section 6 (2) of the <u>Protection of the Environment Administration Act 1991</u>), and (k) to ensure that the type, bulk, scale and size of development is appropriate for the location and protects and improves the natural scenic quality of the surrounding area.</i>

The proposed development is located within an existing and established low density urban environment and as such can be considered to generally result in a minimal impact on the attributes and visual amenity of the New South Wales coast. Ecologically sustainable development is referenced in Section 6(2) of the *Protection of the Environment Administration Act 1991* the relevant parts being:

(2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

(i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and

(ii) an assessment of the risk-weighted consequences of various options,

(b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,

(c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

The proposed development, in its current form, is not considered to be consistent with the principles of ecologically sustainable development (j) in that the application has not adequately addressed the likely impacts of the development on the sensitive littoral rainforest present on the site (refer to the assessment of impacts on flora and fauna in Section 2.4.14 of this report). The proposed development is considered to have inadequately provided for the protection and preservation of native coastal vegetation given the scale and proximity of the proposed development to the littoral rainforest on the site.

(d) the suitability of development given its type, location and design and its relationship with the surrounding area,

The proposed development involves the erection of multi dwelling housing comprising 74 medium density dwellings within an established low density residential precinct. The location is considered inappropriate for the development given its bulk and scale. The development is incompatible with the existing established low density, large lot residential area adjoining the site. Further assessment and discussion of the proposed development with regard to its design, location, relationship with the surrounding area and suitability for the site is made in the assessment of the development against land use regulations, development controls and the likely impacts of the development in Sections 2.4.11 and 2.4.14 of this report.

(g) measures to conserve animals (within the meaning of the Threatened Species Conservation Act 1995) and plants (within the meaning of that Act), and their habitats,

The proposed development and documentation supporting the development application are considered to have inadequately assessed and responded to the environmental constraints of the site. This matter is discussed further in the assessment of likely impacts of the development on flora and fauna contained in Section 2.4.14 of this report. The rainforest vegetation on the

site is known to contain and provide habitat for plants and animals within the meaning of the *Threatened Species Conservation Act 1995*.

(o) *only in cases in which a council prepares a draft local environmental plan that applies to land to which this Policy applies, the means to encourage compact towns and cities,*

Comment: The *Draft Ballina Local Environmental Plan 2010* (Draft LEP) applies to the subject land. The proposed development is to occur on land proposed to be zoned R2 – Low Density Residential for the purposes of the Draft LEP. An assessment of the proposal against the provisions of the Draft LEP is contained in Section 2.4.10 of this report. Council's land use planning controls, developed with community input, have identified limits to the facilities and services available in the Lennox Head village and have sought to establish and retain a small coastal village character. In this regard, Council's planning control standards allow for medium density residential development of appropriate scale in the immediate vicinity of the established village centre and in closer proximity to the Ballina township. The outer areas of the village are predominantly set aside for low density, single dwelling/dual occupancy uses only. In this regard, given the distance of the site from the Lennox Head village centre, it is considered that the proposed development is not consistent with the planning intent of the Draft LEP in this regard.

It is considered that the proposed development does not adequately address the matters for consideration contained in Clause 8 of SEPP 71.

2.4.8 NORTH COAST REGIONAL ENVIRONMENTAL PLAN

EP&A Act, Section 79C (a)(i) any environmental planning instrument

North Coast Regional Environmental Plan 1988 (deemed SEPP 1 July 2009)

Clause 15 Development control – wetland or fishery habitats

The subject site is located approximately 110m from land identified as wetland under the provisions of State Environmental Planning Policy 14. It has been demonstrated that the quality of the water leaving the site will be of such a standard that this wetland will not be adversely affected by it.

Council's engineers have raised concerns relating to the adequacy of the treatment and velocity control of the water exiting the site onto the adjoining property (upon which the wetland is located). Further discussion of this issue is detailed under 'Stormwater' in Section 2.4.14 of this report.

Clause 32B Development control – coastal lands

This clause regulates the environmental impacts of development within the area regulated by the NSW Coastal Policy 1997 (the coastal zone). The subject site is located within the coastal zone and as such, this clause requires the development to take into account the provisions of:

- a) the NSW Coastal Policy 1997
- b) the Coastline Management Manual, and
- c) the North Coast: Design Guidelines.

An assessment of the proposal in accordance with the relevant provisions of these documents is included in Sections 2.5 and 2.6 of this report.

Clause 43 Development control – residential development

The relevant parts of Clause 43(1)(a) & (b) state:

- (1) *The council shall not grant consent to development for residential purposes unless:*
(a) *it is satisfied that the density of the dwellings have been maximised without adversely affecting the environmental features of the land*

Comment

The proposed development seeks approval to construct multi dwelling housing comprising 74 medium density dwellings under the provisions of the AHSEPP. The AHSEPP as current at the time of lodgement of the development application contains specific density provisions for the site for which the development complies. The subject land is located within the 2(a) – Living Area Zone pursuant to the provisions of the BLEP. Consistent with the provisions of Clause 43(1)(a) and the LEP, Chapter 1 - Urban Land of Council's DCP establishes a range of residential densities within the 2(a) Zone based on the environmental features and characteristics of the land and its locality. The subject site is within the L1 – Low Density (Large Lots) Control Plan Area for the purposes of the DCP, which specifies a maximum residential density of one dwelling house or one dual occupancy per lot with a minimum lot size of 1200m². This development proposal involves the clustering of medium density residential buildings in close proximity to the boundaries of the site which adjoin existing low density residential development. The topography of the site has the effect of minimising this impact to a certain extent. However, it is considered that the proposed development overall is incompatible with the built environmental features of the immediate locality in the context of existing neighbourhood character and is inconsistent with the applicable planning controls for the site as specified in the DCP.

The site also contains significant stands of high quality, rehabilitated littoral rainforest. The proposed development includes the clustering of buildings in close proximity to these vegetated areas. This aspect of the development is further assessed under "flora and fauna" in Section 2.4.14 of this report. The proposed development is considered to have inadequately addressed the constraints of the natural environmental features of the land.

It is therefore considered that the proposed development is inconsistent with the provisions of Clause 43(1)(a) of the NCREP in that the density of the proposed development will have an adverse impact on both the built and natural environmental features of the land.

- (d) *it is satisfied that the road network has been designed so as to encourage the use of public transport and minimise the use of private motor vehicles*

Comment

The proposed development is located amidst an established low density residential environment. No changes are proposed to the existing road system. The site is serviced by regular school bus services; however the nearest bus stop serviced by a regularly scheduled public transport route

(Blanchs Bus Company, Route 640) is located approximately 1.2km walking distance from the site (at the corner of The Coast Road and North Creek Road). It is possible, should the development proceed, that public transport services may be extended to better service the site. It is considered, however, given limited turning and manoeuvring facilities for large vehicles, such as buses, that the site may not be serviceable in this regard. Further to the above, given the distance of the site from likely centres of employment and limitations on bus servicing to these centres it is concluded that the majority of households within the proposed development will be reliant on private motor vehicles for transport for a high proportion of trips. The locality of the proposed development has been planned and developed primarily for the purposes of low density residential development. Consequently, the local road network has been designed to reflect this. Although it can be considered that the existing road infrastructure in the locality can adequately accommodate the traffic generated by the proposed development, it is considered that given the intensity and scale of the proposed development in a low density residential area, the existing road network does not encourage the use of public transport or minimise the use of private motor vehicles.

2.4.9 LOCAL ENVIRONMENTAL PLAN

EP&A Act, Section 79C (a)(i) any environmental planning instrument

Ballina Local Environmental Plan 1987

Clause 2: Aims, objectives, etc.

The aims and objectives of the BLEP are as follows:

- (1) *The general aims of this plan are to encourage the proper management, development and conservation of natural and man made resources, to promote the social and economic welfare of the community and to provide a better environment.*
- (2) *The particular aims of this plan are:*
 - (a) *to divide land into the zones referred to in clause 8 and to achieve in respect of land within each of those zones the objectives specified for that land in the Table to clause 9,*
 - (b) *to encourage the council to make development control plans regulating the carrying out of development in any zone:*
 - (i) *by restricting the carrying out of that development to a specified area within the zone, or*
 - (ii) *by fixing standards or specifying requirements in respect of any aspect of that development,*
 - (c) *to promote the efficient utilisation of land, services and support facilities in existing urban areas and to provide for the orderly growth of new urban areas which promise a high level of residential amenity,*
 - (d) *to recognise and provide for the variety of agricultural, recreational, residential, natural and other land uses which form the rural environment of the Shire of Ballina,*
 - (e) *to contribute to continued economic growth of the Shire of Ballina by encouraging a pattern of development which will help to diversify and increase local employment opportunities,*
 - (f) *to take account of the physical nature of the environment of the Shire of Ballina so that development is in harmony with scenic and ecological resources,*
 - (g) *to co-ordinate the economic and equitable provision and utilisation of community facilities and services,*

- | |
|---|
| <ul style="list-style-type: none">(h) <i>to provide for appropriate and efficient transportation and utility services, and</i>(i) <i>to encourage further development of tourist and recreational activities within the Shire of Ballina, while minimising its adverse impact on the natural attractions and amenity enjoyed by permanent residents.</i> |
|---|

It is acknowledged that there is a need for affordable housing in Ballina Shire. However, when considering the site, the submitted design of the proposed development and its interaction with the surrounding natural and built environments, the proposal is considered to be incompatible with the character of the existing surrounding built environment, is inappropriately located with regard to adequate access to essential services for the intensity and scale of the development proposed. Additionally, it does not adequately address the environmental constraints of the site. In this regard, it is considered that the proposed development is unable to meet the Objective 2 above. These aspects of the development are expanded upon and discussed further under 'Likely impacts of the development' in Section 2.4.14 of this report.

Clause 6: Adoption of model provisions

This clause adopts sections of the *Environmental Planning and Assessment Model Provisions* 1980. The proposed development is defined as a "residential flat development" under the provisions of the BLEP. The BLEP adopts Clause 5(2) of the Model Provisions and requires that

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|--|
| <p>(2) <i>The consent authority shall, in respect of an application under the Act for its consent or approval to development for the purposes of commercial premises, shop, residential flat building, hotel, motel, service station, car repair station, place of assembly, industrial premises or caravan park or to the carrying out of any other development likely to cause increased vehicular traffic on any road in the vicinity of that development, take into consideration:</i></p> <ul style="list-style-type: none">(a) <i>whether adequate vehicular exits from and entrances to the sites have been provided so that vehicles using those exits and entrances will not endanger persons and vehicles using those roads,</i>(b) <i>the provision of space on the site or on land adjoining the site, other than a public road, for the parking or standing of such number of vehicles as the council may determine, and</i>(c) <i>(Repealed)</i>(d) <i>whether adequate space has been provided within the site of the building or development for the loading, unloading and fuelling of vehicles and for the picking up and setting down of passengers.</i> |
|--|

The design plans for the proposed development provide for adequate vehicular exits from and entrances to the site that can be constructed to current civil engineering standards. Parking is provided on site, however the quantity of spaces provided does not comply with Council's car parking requirements (see the assessment in Sections 2.4.11 and 2.4.14 of this report for further discussion). The application is made under the provisions of the AHSEPP which contains specific car parking provisions and identifies that where a development meets these requirements, parking provision cannot be used as grounds to refuse consent. The proposed development meets the car parking standards specified in the AHSEPP as applicable at the time of lodgement of the development application. The amended AHSEPP that took effect on 20 May 2011 specifies an increased car parking provision for which the proposed development is deficient two (2) spaces. Adequate space is provided on the site for the loading and unloading of vehicles and for the picking up and setting down of passengers.

Clause 9: Zone objectives and development control table

The development site is located within the 2(a) – Living Area Zone pursuant to the provisions of the BLEP. The proposed development is defined as a “residential flat development” which, for the purposes of the BLEP, means “a building or development containing 2 or more dwellings on a single parcel of land.” Residential flat developments are permitted with consent in the 2(a) – Living Area Zone.

The objectives of the 2(a) – Living Area Zone are as follows:

- A. The primary objectives are:*
- a) to regulate the subdivision and use of land to permit housing and ancillary development where the scale, type and traffic generating characteristics of the ancillary development are compatible with the character and amenity of the surrounding residential area,*
 - b) to permit development which is considered by the council to be an essential land use within the urban living area, but not including a shop (other than a general store), and*
 - c) to allow detailed provision to be made, by means of a development control plan, to set aside specific areas within the zone for varying housing densities as well as other associated urban and tourist facilities.*
- B. The secondary objective is to allow a variety of housing types and designs and to encourage greater visual amenity by requiring site landscaping.*
- C. The exception to these objectives is development of land within this zone for public works and services, outside the parameters specified in the primary objectives.*

Having specific regard for the BLEP provisions, the proposed development involves the provision of a residential flat development for the purposes of affordable rental housing. The proposal therefore complies generally with the objectives of the 2(a) – Living Area Zone. The primary objectives allow for the provision of a development control plan that designates specific areas for varying housing densities. Chapter 1 – Urban Land and Chapter 16 – Lennox Head of the Ballina Shire Combined Development Control Plan (DCP) contains further regulatory requirements with regard to housing densities on the site. An assessment of the proposal against the provisions of the DCP is included within this report.

Clause 17 Building height

Clause 17 of the BLEP regulates building height and nominates a maximum building height of 6.4 metres. For the purposes of this clause, building height is defined as

- (1) In this clause **height**, in relation to a building the topmost floor of which has a ceiling, means the distance measured vertically from any point on the ceiling of the topmost floor of the building to the ground level immediately below that point.*

Three of the proposed buildings exceed the nominated 6.4 metre height: Building A, 6.6m at east elevation, Building C, 7m at west elevation and Building K, 6.6m at south elevation.

- (2) Except as provided by subclauses (2A), (4), a person shall not, only on any land to which this plan applies, erect a building taller than 6.4 metres in*

- height unless the council is satisfied that the building will not:*
- (a) adversely affect the existing or future amenity of adjoining properties by overshadowing or causing loss of privacy,*
 - (b) significantly obstruct views from adjacent buildings and public places,*
 - (c) have an adverse impact on the scenic or landscape quality of the locality, or*
 - (d) exceed 2 storeys.*

None of the buildings in the proposed development exceed two (2) storeys. Given the topography of the site and the location of the three (3) buildings that exceed the 6.4 metre height limit, it is considered that there will be no adverse affect on the existing or future amenity of adjoining properties, that there will be no significant obstruction of views from adjacent buildings and public places and that there will not be any adverse impact on the scenic or landscape quality of the locality as a result of the excess in building height.

Building height addressed further under the provisions of Chapter 16 of Council's Development Control Plan which is discussed further in Section 2.4.11 of this report.

Clause 36: Development on land identified on Acid Sulfate Soils Planning Maps

The northern section of the site contains land identified as Class 5 on the Acid Sulfate Soils Planning Maps. Given the location of the proposed development on the site and the requirements for this class of land, Council's technical officers are satisfied that no additional investigations with regard to acid sulfate soils will be necessary.

2.4.10 DRAFT LOCAL ENVIRONMENTAL PLAN

EP&A Act, Section 79C(a)(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority

Council's Senior Strategic Planner advises that "the Draft Ballina Local Environmental Plan 2010 (Draft LEP) was certified for public exhibition on 2 March 2010. The Draft LEP was subsequently publicly exhibited between 15 March 2010 and 4 June 2010. In this regard, Council has completed the submissions review phase and has resolved to re-exhibit an amended Draft LEP. The adopted amendments do not involve any change to the zoning arrangements proposed for the subject land.

The Draft LEP proposes to apply an R2 Low Density Residential Zone to the Greenfield Grove locality. This is accompanied by the proposed application of a 1200m² minimum lot size standard for subdivision. Both the R2 Zone and 1200m² minimum lot standard for subdivision are proposed to apply to the land the subject of the development application.

The zoning and associated development standards are proposed to be applied to the land with intent to recognise and preserve the existing character of the locality; namely being low density residential living on larger allotments. This approach is consistent with Council's current planning framework applicable to the locality, and particularly the L1 Low Density (Large Lots) Control Plan Area designation under the Ballina Shire

Combined Development Control Plan. As a general principle, the transition to a new LEP under the Standard LEP Instrument has sought to establish a planning framework for existing residential areas in the Shire that is consistent with the currently planned character of such areas.

Specifically, the R2 Zone objectives promote housing outcomes within a low density residential environment and development that is compatible with the character and amenity of the surrounding neighbourhood. On this basis, several forms of more intensive residential development are prohibited in the R2 Zone under the Draft LEP, including residential flat buildings and multi dwelling housing. In this regard, the provisions of the AHSEPP as applicable at the time of lodgement of the development application appear to be in conflict with the intent of supporting the application of the R2 zone in the locality.

Following the amendments to the AHSEPP on 20 May 2011, these conflicts have been removed and the development of in-fill affordable housing is now restricted to locations within 400 metres of local centres and mixed use zones which are generally better serviced and more appropriate for medium density residential development.

Assessment

Assessment of the proposed development against the provisions of the Draft LEP is as follows.

1.2 Aims of the Plan

Assessment of the proposed development against the aims of the Draft LEP is contained in the table below.

<i>Draft Ballina Local Environmental Plan 2010 – Aims of Plan</i>	<i>Proposed Development</i>
<p>(a) <i>Provide for a sustainable Ballina Shire that recognises and supports community, environmental and economic values through the establishment and maintenance of the following:</i></p> <ul style="list-style-type: none"> (i) <i>a built environment that contributes to health and wellbeing;</i> (ii) <i>a diverse and prosperous economy;</i> (iii) <i>a healthy natural environment;</i> (iv) <i>diverse and balanced land use;</i> (v) <i>healthy, resilient and adaptable communities; and</i> (vi) <i>responsible and efficient use of resources.</i> 	<p>The proposed development involves the provision of affordable rental housing in accordance with the AHSEPP. The provision of affordable housing, in principle, is supported and is considered to contribute to the health and wellbeing of the community, a diverse and prosperous economy and provides for healthy, resilient and adaptable communities. The proposed development in the context of its location, relationship with adjoining land uses and built forms and distance from essential community services is, however, considered inconsistent with the aims of the Draft LEP as it will not result in a built environment that contributes to the wellbeing of the community, a healthy natural environment nor is it a responsible and efficient use of resources in the circumstances. In an overall sense, the proposed development is considered to not adequately satisfy</p>

<i>Draft Ballina Local Environmental Plan 2010 – Aims of Plan</i>	<i>Proposed Development</i>
	the aims of the Draft LEP as it is inappropriate for the site. The application and proposed design has not adequately addressed the environmental constraints of the site and the proposal constitutes an overdevelopment of the site. These matters are further discussed in the assessment of the proposed development against Council's DCP provisions and the 'likely impacts' of the development contained in Sections 2.4.11 and 2.4.14 of this report.
<i>(b) Provide for development that is consistent with Council's established strategic planning framework for the shire.</i>	The proposed development is not consistent with Council's established strategic planning framework as detailed in Sections 2.7 and 2.8 of this report. In this regard, the proposed development does not adequately satisfy this aim.
<i>(c) Achieve the objectives of the land use zones set out in Part 2 of this Plan.</i>	The subject land is proposed to be zoned R2 – Low Density Residential for the purposes of the Draft LEP. The proposed development does not adequately address the objectives of the R2 Zone as detailed below and therefore fails to satisfy this aim.
<i>(d) Promote the orderly and efficient use of land having regard for the social and environmental characteristics of the land and the shire.</i>	The proposed development, in the context of its existing adjoining land uses and built form is not considered to be an orderly use of the land. The development has not adequately addressed the environmental constraints of the site. The development is considered socially inappropriate given its scale and distance from essential community services. In this regard, the development does not satisfy this aim.
<i>(e) Provide for the development of public services and infrastructure.</i>	Not applicable. The development does not relate to the provision of public services or infrastructure nor does it propose to provide for any, other than essential utility services.

2.3 Zone objectives and land use table

The subject land is located within the R2 – Low Density Residential Zone for the purposes of the Draft LEP. The proposed development, being defined as “multi dwelling housing”, is prohibited development in accordance with the land use table for the R2 Zone. The subject application is made under

the provisions of Division 1 (In-fill affordable housing) of the AHSEPP (*State Environmental Planning Policy (Affordable Rental Housing)* 2009). Clause 8 of the AHSEPP specifies that its provisions prevail over other environmental planning instruments where an inconsistency occurs. Clause 10(1) as current at the time of lodgement allowed for the proposed development in the equivalent BLEP zone. Following the amendment to the AHSEPP gazetted on 20 May 2011, the subject site is now no longer eligible for In-fill affordable housing as it is not within 400 metres walking distance of a local centre as specified in Clause 10(3) of the AHSEPP (as amended).

Although there is a level of uncertainty with regard to the final adopted provisions of the Draft LEP, the proposed development has been assessed against the Draft LEP provisions. With regard to the objectives of the R2 – Low Density Residential Zone, the proposed development is assessed in the table below.

<i>Draft Ballina Local Environmental Plan 2010 R2 – Low Density Residential Zone Objectives</i>	<i>Proposed Development</i>
<i>To provide for the housing needs of the community within a low density residential environment.</i>	The proposed development does seek to provide the housing needs of the community through the provision of affordable rental housing. The proposed development is not, however, of a low density nature and does not respect the existing and desired future low density residential character and environment of the locality. In this regard, the proposed development does not meet the requirements of this objective.
<i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i>	Not applicable. The proposed development is a residential land use.
<i>To provide for development compatible with the character and amenity of the surrounding neighbourhood.</i>	Notwithstanding the site being down slope and on the edge of the other development in the precinct, the bulk, scale and density of the proposed development is not compatible with the character and amenity of the surrounding neighbourhood. The proposed development therefore does not meet the requirements of this objective.
<i>To provide for development that meets the social and cultural needs of the community.</i>	The provision of affordable housing can be considered to provide for the social and cultural needs of the community. Given the location of the development and the isolation of the site from essential social and community services, the subject site is not considered to be the most appropriate for affordable rental housing. This type of development is expected to require a high level of accessibility to social services such

<i>Draft Ballina Local Environmental Plan 2010 R2 – Low Density Residential Zone Objectives</i>	<i>Proposed Development</i>
	as employment, education, recreation and other community facilities that are not available near the locality. In this regard, the proposed development does not adequately satisfy the requirements of this objective.
<i>To encourage development that achieves the efficient use of resources such as energy and water.</i>	Minimal details have been provided with regard to energy efficiency and water conservation. As the proposal involves residential development, it has been supported by BASIX certificates which have the effect of achieving the requirements of this objective.

Having regard to the above assessment, it is concluded that the proposed development does not adequately satisfy the objectives of the currently proposed R2 – Low Density Residential Zone pursuant to the provisions of the Draft LEP.

4.3 Height of buildings

This clause specifies maximum building heights in accordance with the Height of Buildings Map. The subject land has a maximum building height of 8.5m. None of the buildings in the proposed development exceed this height; therefore in this regard the development complies with the provisions of this clause.

4.4 Floor space ratio

The Floor Space Ratio Map identified in this clause does not nominate a specific Floor Space Ratio for the subject site. Floor space ratio provisions for the proposed development are further addressed in the assessment against the provisions of Councils DCP as contained in Section 2.4.11 of this report. There are no objections to the floor space ratio

5.5 Development within the coastal zone

This clause contains development controls that seek to regulate and control development within the coastal zone to provide adequate protection for the coastal environment. The relevant issues contained in this clause have been assessed under the provisions of SEPP 71 – Coastal Protection as addressed earlier and in Section 2.5 (Coastal Policy) of this report.

2.4.11 DEVELOPMENT CONTROL PLAN

EP&A Act, Section 79C(a)(iii) any development control plan

The proposed development is subject to a number of provisions as contained in the Ballina Shire Combined Development Control Plan (DCP). Whilst the DCP is not an environmental planning instrument, Clause 8 of the AHSEPP is interpreted as having the effect of overriding any provisions of the DCP that are inconsistent with those of the AHSEPP. However, any

provisions of the DCP that have no specific provision in the AHSEPP will apply to the proposed development. Consequently, an assessment of the proposed development against these provisions is detailed below.

Chapter 1 – Urban Land

The provisions of this chapter are applicable to the proposed development. Generally, the aims and objectives of this chapter provide for the efficient use of urban land and seek to create a desirable urban environment. They also seek to minimise land-use conflicts and to provide guidelines for the development potential of land and the relevant development standards.

The DCP establishes a range of housing density locations throughout the 2(a) – Living Area Zone from the L1 – Low Density (Large Lots) to H1 (High Density) precincts. The subject site and surrounding residential locality is located within the L1 – Low Density (Large Lots) Control Plan Area. The objectives of these Control Plan areas are:

- *To make provision for low density living options with single dwellings being the predominant form of housing on larger than normal lots.*
- *To prevent the fragmentation of large lot estates which are important components in the range of housing types available in the Shire.*
- *To permit dual occupancy developments.*

The preferred land uses for the L1 – Low Density (Large Lots) Control Plan Area are dwelling houses and dual occupancies. The proposed development involves the erection of 74 medium density dwellings in a mix of single and double storey buildings over three separate precincts. In this regard, the proposed development is not consistent with the objectives of the L1 Control Plan Area in that it does not comprise low density living options. The subject site is located on the edge of the existing urban and L1 Control Plan areas. It is expected that any future components of the adjoining rural land to the north of the site that are rezoned for urban purposes will also be designated for large lot low density residential use. The proposed development is therefore considered to be inconsistent with the current and desired future urban character of the locality and would commence the fragmentation of an area planned to be developed as a large lot residential estate.

Chapter 1 specifies a number of development standards for development within the L1 Control Plan Area. An assessment of the proposed development against these standards is contained in the table below.

L1 – Low Density (Large Lots) Development Standards			
Development Standard	DCP Requirements & Provisions	Proposed Development	
Floor Space Ratio	N/A	Not applicable - FSR provisions are detailed in DCP Chapter 16 – Lennox Head as detailed in Section 2.4.11 of this report.	
Building Height	2 storeys (6.4m)	Does not comply. Several buildings within the proposed development exceed 6.4m in height (ie Building A, 6.6m at east elevation, Building C, 7m at west elevation and Building K, 6.6m at south elevation). The BLEP contains provisions relating to building height which is addressed further in	

L1 – Low Density (Large Lots) Development Standards		
Development Standard	DCP Requirements & Provisions	Proposed Development
		Section 2.4.9 of this report. In addition, DCP Chapter 16 has the effect of overriding the Chapter 1 building height standards for this site. See further comments in the assessment of the proposal against the provisions of DCP Chapter 16 – Lennox Head as detailed in Section 2.4.11 of this report.
Maximum Density	One dwelling house per lot or one dual occupancy per lot >400m ²	Does not comply - the proposed development involves the erection of a medium density residential flat development comprising 74 dwellings within 13 separate buildings. The proposed development does not comply with the density provisions of the L1 Control Plan Area.
Site Coverage	Not specified	Not applicable - the site coverage for the development proposed is not specified for this Control Plan Area, given that the preferred land uses for the L1 Control Plan Area are dwelling houses and dual occupancies only.
Landscaping	Not specified	Insufficient detail provided. Appropriate consent conditions to require adequate landscaping can be imposed should the application be supported.
On-site Parking	On merit	Does not comply. Car parking rates for multiple dwellings are specified in Policy Statement 2 of DCP Chapter 1 (see assessment below). It is noted, however, that the under the AHSEPP provisions current at the time of lodgement of the development application, parking is one of the grounds that cannot be used for refusal should the parking provided on the site comply with the AHSEPP provisions.
Minimum Setback	None specified.	Not applicable - setback requirements are specified in Policy Statement 1 of DCP Chapter 1. See assessment below.
Building Line	Generally 6.0m	Does not comply. The proposed development includes two (2) buildings to be utilised for the storage/handling of garbage that are located within the 6m building line to respective street frontages. Consequently, the proposed development is not supported in this regard. This matter was brought to the attention of the applicant in the letter requesting additional information dated 11 April 2011 requesting that the development be redesigned to better accommodate the subject garbage enclosures. In response, the applicant has inadequately responded to this request. Building J does not comply with the specified 6m building line to the narrow stub off Tallow Wood Place. Given the

L1 – Low Density (Large Lots) Development Standards		
Development Standard	DCP Requirements & Provisions	Proposed Development
		configuration of both the lot and Tallow Wood Place at this location, it is considered this encroachment is not a significant issue.
Subdivision	Minimum lot size 1200m ²	Not applicable. No subdivision proposed.

- **Policy Statement 1 – Multiple Dwellings**

The DCP provisions specify that multiple dwellings are not a preferred land use within the L1 – Low Density (Large Lots) Control Plan Area. The subject application is for multi dwelling housing comprising 74 medium density dwellings for the purposes of affordable rental housing. The application was submitted under the provisions of the AHSEPP which, at time of lodgement of the development application, allowed this type of development on the subject land. Notwithstanding that the AHSEPP provisions have the effect of overriding local development controls; the development proposal has been assessed against Council's multiple dwellings standards as contained within Policy Statement 1.

The general objectives of this Policy Statement are:

To make efficient use of residential land consistent with the social and economic aspirations of the community and the preservation of the existing and future amenity of the localities in which they are developed.

The proposed development involves the erection of multi dwelling housing comprising 74 medium density dwellings in single and two storey buildings across 3 precincts. The development is inconsistent with the existing and desired future land uses and built form in the locality as previously stated in this report and does not contribute to the preservation of the existing and future amenity of the locality.

Policy Statement 1 contains a number of desirable amenities for multiple dwelling developments. An assessment of the proposal against these is contained in the table below.

Policy Statement 1	Proposed Development
CI 5(d) – Desirable Amenities: Conservation of the Urban Character - Council will have regard to the protection of the neighbourhood in terms of building height, form and spacing, and the preservation of views where the topography warrants, for example, in coastal areas.	The proposed development does not comply with the development standards for the locality. Further assessment of the height, form and spacing of the buildings is detailed in the assessment of the development under the provisions of DCP Chapter 16 below. The proposed development is not expected to significantly affect views and is generally appropriate for the topography of the site. However, as addressed elsewhere in this report, the proposed development in its context is not

Policy Statement 1	Proposed Development
	considered to be compatible with the existing and desired future character of the surrounding locality.
<p>CI 5(e) Desirable Amenities: Amenity - In any application Council will consider the impact of residential privacy, overshadowing and noise.</p>	<p>There are no issues with overshadowing or an unreasonable increase in noise levels. Some of the proposed dwellings will result in undesirable privacy and overlooking impacts on adjoining properties particularly from dwellings located in Buildings C, H, J and L.</p>
<p>CI 6. Density The density level in each area has been determined by such factors as the available facilities and services, the existing or desired local character, and the topography.</p>	<p>The development is inconsistent with the existing and desired local character which comprises single dwellings on large allotments surrounded by large areas of open space and landscaping. Further assessment and discussion of the density of the proposed development is contained in Section 2.4.14 of this report. This assessment contains details of the relative density of the proposed development. While the FSR for the development is well below the maximum FSR allowed for under the AHSEPP requirements, the density of dwellings per square metre for the proposed development is a substantial deviation from the current standard for the locality. The minimum lot size established in the locality and upon which a single dwelling house or dual occupancy may be erected is 1200m². The proposed development has a density of one dwelling per 339m² when considering the site as a whole. When considering the developable portion of the site (separate from the vegetated areas) the density is one dwelling per 233m². Based on this the development is inconsistent with the desirable density provisions of Policy Statement 1. In accordance with the AHSEPP provisions current at the time of lodgement of the development application (Clause 14), the application cannot be refused on grounds of density and scale. The amended AHSEPP that took effect on 20 May 2011 removed density and scale as</p>

Policy Statement 1	Proposed Development										
	grounds that cannot be used to refuse consent.										
<p>CI 7. Landscaped Open Space This is provided for the recreation and enjoyment of the residents on the site, either privately to a particular dwelling, or in common with a number of dwellings. A specified area of the site must be uncovered and, more importantly, usable by the people who live there. Reconstituted areas, as they are sometimes called - roofs of out buildings, terraces, decks, balconies etc are credited wherever they are usable in the manner defined.</p>	<p>The proposed development includes extensive areas of open space comprising both protected vegetated areas and managed open space areas. In accordance with Policy Statement 1 (Clause 7.2), the development requires a minimum area of open space as follows:</p> <table border="1"> <thead> <tr> <th>Number of Units</th><th>Open Space Required</th></tr> </thead> <tbody> <tr> <td>1 – 10</td><td>1000m²</td></tr> <tr> <td>11-20</td><td>500m²</td></tr> <tr> <td>21-74</td><td>1620m²</td></tr> <tr> <td>TOTAL</td><td>3120m²</td></tr> </tbody> </table> <p>The supporting documentation for the proposed development states that a total of 18,333m² of landscaped open space area is provided. This includes the areas of protected littoral rainforest vegetation and associated buffers. It is noted from the landscaped open space requirements that this space is identified as being intended to be provided for the “recreation and enjoyment of the residents” and is to be “useable by the people who live there”. An estimate of the area of the site occupied by the protected rehabilitated vegetation and associated buffers on the site is approximately 7840m², which results in approximately 1737m² of useable landscaped open space surrounding the developable portion of the site. In this regard, it is considered that the development proposes a substantial deviation from the landscaped open space requirements of Policy Statement 1.</p>	Number of Units	Open Space Required	1 – 10	1000m ²	11-20	500m ²	21-74	1620m ²	TOTAL	3120m ²
Number of Units	Open Space Required										
1 – 10	1000m ²										
11-20	500m ²										
21-74	1620m ²										
TOTAL	3120m ²										
CI 8 Height Restrictions	The proposed development complies with applicable height limitations in the locality.										
CI 9 Building Heights and Setbacks	Building heights and setbacks for Lennox Head are specified in DCP Chapter 16 for which further assessment is contained in Section 2.4.11 of this report. Chapter 16 has the effect of overriding the building height and										

Policy Statement 1	Proposed Development
	setback requirements of Policy Statement 1.
<p>CI 10 Car Parking and Access Desired amenities: Adequate parking and traffic facilities shall be provided on individual sites.</p>	<p>The proposed development has provided parking and access facilities that generally satisfy the provisions of the AHSEPP as applicable at the time of lodgement of the development application. These requirements specified a provision of 0.5 car parking spaces per dwelling or a minimum requirement of 37 car parking spaces. The proposed development provides a total of 74 car parking spaces (1 for each dwelling). Under the amended AHSEPP provisions car parking provisions are based on 0.5 spaces for each 1 bedroom unit, 1.0 spaces for each 2 bedroom unit and 1.5 spaces for each unit containing 3 bedrooms or above. Further assessment of Council's car parking requirements is contained below. It is noted that the provisions of the AHSEPP specify that parking is a ground that cannot be used to refuse consent, as long as the development complies with the parking requirements of the AHSEPP. The application complies with the requirements of the AHSEPP as current at the time of lodgement of the development application. The proposed development is deficient two (2) car parking spaces if assessed against the amended AHSEPP requirements. Should the development be determined favourably, it is considered that a condition of consent could be imposed to require the provision of these additional spaces.</p>

- **Policy Statement 2 – Car Parking and Access**

The proposed development was submitted in accordance with the provisions of the AHSEPP as current at the time of lodgement of the development application. The AHSEPP contains car parking standards for the development and specifies parking as a ground that cannot be used to refuse consent where the development complies with the parking standards contained in the AHSEPP.

- **Policy Statement 3 – Urban Building Lines**

The proposed development contains two relatively bulky garbage enclosures located within the 6m setback to two of the site's street frontages. It is considered that these structures represent an unreasonable imposition of bulk and scale and represent an undesirable amenity impact. Consequently, the applicant was notified of this in Council's request for additional information letter dated 11 April 2011. In this letter it was requested that these structures be relocated to a more suitable site. No additional information was provided by the applicant in this regard. Consequently, the proposed development is not supported in this regard. Building J located off the eastern end of Tallow Wood Place is also located within the 6m front building setback. In this location Tallow Wood Place consists of narrow single lane construction. The subject encroachment over the building line is also located off the end of the laneway. It is considered the proposed siting of this building forward of the 6m building line to the Tallow Wood Place eastern access laneway would be acceptable.

- **Policy Statement 6 – Landscaping Guidelines**

The proposed development is supported with conceptual landscaping details. Should approval be granted, appropriate consent conditions would need to be imposed requiring the submission of a full landscaping plan in accordance with Council's requirements.

- **Policy Statement 7 – Building Height**

Chapter 16 of the DCP specifies a building height plane for development in Lennox Head. Several of the proposed buildings exceed this height plane. A further assessment of the proposal against the provisions of Chapter 16 is contained in later in this section of the report.

Chapter 11 – Mosquito Management

The development application is supported by a Mosquito Management Operational Manual (MMOM) submitted in accordance with the provisions of this chapter. The subject site is identified in Chapter 11 as being located in close proximity to an area of high mosquito risk and a known breeding area. The MMOM supporting the development application contains survey and trapping details confirming the significant presence of mosquitoes on the site including the recording of six (6) "threat" species that have a recognised status as vectors of arboviruses.

Clause 4.2 of Chapter 11 states that the establishment of open buffer areas around breeding areas is the most effective action that can be taken to minimise mosquito nuisance. The MMOM recommends a programme of Integrated Mosquito Management (IMM) to mitigate against the impacts of the high threat mosquito species. The proposed IMM approach includes, amongst other measures, the implementation of seasonal application of approved outdoor residual insecticide to plants around each dwelling unit.

Additional information was requested from the applicant on 11 April 2011 about mosquito management issues specifically in relation to the potential ecological impacts of the proposed chemical control of mosquitoes on the site and on the sensitive ecology of the site in the long term. Information was also requested with regard to matters not addressed in the MMOM such as rainwater tank management, bioretention basin management for mosquitoes and an assessment of the impact of mosquitoes on proposed Building M.

In response, while acknowledging Council's request, the applicant failed to provide any additional information as requested. The response contained a peer review report of the originally submitted MMOM and the request that specific issues be addressed via conditions of consent.

Council officers have reviewed the submitted peer review report which supports the originally submitted MMOM. Council accepts the points raised in relation to the proposed barrier treatments on the site which are expected to afford residents some protection against mosquitoes that disperse widely. It is also agreed that vegetation free buffers are impractical against such species and that the barrier treatments may be more effective than the buffers in some other instances provided they are effectively maintained.

The peer review evaluates the originally submitted mosquito assessment (MMOM) from a scientific point of view and primarily comments on whether the proposed methodology will work to control mosquitoes. It also proposes that this development could be a good opportunity for a local authority to trial the narrower zone with the supplementary barrier treatment and have it scientifically evaluated with careful monitoring. This would provide a future option when/where a wider zone is not practical. It is the opinion of Council officers that this particular location is not one to conduct what could be termed an experiment where the sustainability of the proposal cannot be guaranteed.

It is not questioned whether the proposals contained in the MMOM would work to control mosquitoes if undertaken strictly in accordance with the proposed operation manual. Council's concerns relate to the ongoing availability of suitable chemicals for the purpose and how the proposed treatments can be effectively regulated and implemented in perpetuity and sustainably in the long term. The other concern which has not been addressed by the applicant is the risk presented by the application of chemicals and its impacts on the environment.

The peer review of the MMOM confirms that concerns relating to the effective ongoing maintenance (sustainability) of the treatment program are legitimate, that chemical sensitivity to the insecticidal agent by one or more member/s of the community cannot be ruled out, and that meteorological conditions may occasionally preclude applications. Considering the rainfall likely to be experienced in the locality during the mosquito breeding season and the need for the drying of the proposed chemical applications until they are rain-fast, it can be expected that this would be a more frequent than occasional occurrence.

The information submitted with the development application in support of the proposed mosquito management for the site does not mention that

bifenthrin, the proposed insecticide treatment, has been withdrawn from use in the UK as a result of a determination by the European Commission. Whilst this is not relevant in Australia yet, it casts doubt on the future availability of bifenthrin based products.

The peer review of the MMOM claims the letter from the applicant's consultant dated 13 September 2010 should allay the concerns regarding non target and biodiversity impacts, environmental contamination, and potential for the development of insecticide resistance. This submission confirms that the barrier treatment as proposed is less damaging to the environment than broadcast spraying. Council officers are in agreement with this statement; however the barrier treatment is active 24 hours a day for up to 6 weeks and is not selective for mosquitoes. The Material Safety Data Sheet (MSDS) for the proposed insecticide product indicates toxicity to bees for instance. Other insects that alight on the insecticide deposits will also presumably be affected. The peer review doubts there are valid concerns associated with non target impacts and chemical resistance if the applications are applied "per label" and strategically restricted to limited surfaces in the target zones. This is taken to mean the less the better.

The consultant provides assurances by way of the Australian Pesticides and Veterinary Medicines Authority approvals and correctly states that these chemicals have approval for use anywhere in Australia in accord with the label directions. It is further assured that licensed pest controllers will conduct the spraying. It is clear however, that the product is "toxic to aquatic animals". The label addresses this, and it is noted that a three hour application period is recommended to ensure the treatment has dried and is rain-fast. Given the proximity of significant sensitive ecosystems and SEPP 14 wetlands at this site there is little margin for error.

Council officers remain committed to the position that the proposed application of the insecticide in this location should not be supported. The with the exception being that if the peer review of the proposed mosquito management procedures remains confident that resistance is unlikely to develop at the chemical concentrations proposed, this is accepted.

Having regard to the above, Council officers are of the view that the proposed mosquito management procedures for the development should not be supported. Concerns that have not been adequately addressed by the applicant relate to the potential impacts of the insecticide on significant threatened species' habitat on the site and potential ongoing issues relating to the implementation, operation and enforcement of the proposed IMM plan. There are also a number of uncertainties inherent in allowing the implementation of such a programme such as ramifications of the withdrawal of registration of the nominated insecticide product or the prevention of the use of the insecticide due to chemical sensitivities of future residents. Concerns are also raised with regard to cumulative impacts and the precedent set for other similar developments in the area. For what is a 'greenfield site', the provision of an appropriate buffer is the most prudent means of addressing this issue. In this regard, Council officers therefore do not

support the alternative means proposed for addressing mosquito impacts.

Chapter 13 – Stormwater Management

The proposed development has been assessed with regard to stormwater management by Council's engineers. This aspect of the development is discussed under "stormwater" in Section 2.4.14 of this report.

Chapter 16 – Lennox Head

The proposed development is subject to the provisions of DCP Chapter 16. This chapter sets out Council's expectations for development in Lennox Head and provides parameters by which the expectations might be achieved.

Clause 2.2 - Objectives

Clause 2.2 contains objectives for development within Lennox Head. An assessment of the development against these objectives is contained in the table below.

Clause 2.2 Objective	Proposed Development
<i>a. To preserve and enhance the seaside village atmosphere as the Lennox Head community continues to grow and develop;</i>	Whilst the establishment of affordable housing developments would be desirable in the broader Lennox Head area, in context, given the existing and desired future character of this locality, it is considered that the bulk and scale of the proposed development is inconsistent with the precinct in which the development is proposed to be located. Whilst the site is well separated from the 'seaside village' component of Lennox Head (approximately 2.2km driving distance) it is considered that the proposed development does not seek to preserve and enhance the low density atmosphere of this residential component of the Lennox Head village.
<i>b. To achieve well designed developments which relate to the landscape and character of the locality</i>	The proposed development has been professionally designed. The site of the proposed development is within an identified low density large lot precinct consisting of large allotments containing single dwellings separated by extensive areas of open space and vegetation. Therefore, in context, and having regard to the character of the surrounding locality, it is considered that the design, bulk and scale of the development does not relate well with the landscape and character of the locality.

Clause 2.2 Objective	Proposed Development
<i>c. To control the bulk, scale and traffic generation of development, consistent with the Community Vision for Lennox Head</i>	It is acknowledged there is a need for affordable housing in the community. However, given the constraints of the subject site, the character of the locality and the concepts within the Lennox Head community vision (refer to assessment in Sections 2.4.11 and 2.7 of this report), it is considered that the bulk, scale and traffic generation of the proposed development is inappropriate for the site and is inconsistent with the Community Vision for Lennox Head.
<i>d. To ensure the consolidation and development of medium density uses around the traditional village centre is appropriate to maintaining the existing coastal character</i>	Council's development controls have nominated specific areas within the Lennox Head village as suitable for medium density development. Other areas have been set aside for low density, single dwelling uses based on environmental constraints and in the interests of preserving the character of Lennox Head as a coastal village. The bulk and scale of the submitted development proposal located amidst an extensive low density large lot precinct is considered inappropriate and does not satisfy the intent of this objective.
<i>e. To ensure new development protects the amenity of adjoining premises</i>	The subject site is within a low density large lot residential precinct. The bulk and scale of the proposed development is considered to be incompatible with the existing and future character of the surrounding land uses and if approved would result in an undesirable impact on the amenity of adjoining premises through overlooking, loss of privacy, in some places imposing bulk of adjoining structures and overflow parking and traffic impact in the streets servicing the site.
<i>f. To improve pedestrian and cycle linkages both within the residential areas and to adjacent commercial and open space areas</i>	The subject site is relatively isolated from commercial and open space areas. The site is currently not adequately connected to these facilities by pedestrian or bicycle infrastructure, nor is such proposed. Should the development be approved it is recommended that consent is

Clause 2.2 Objective	Proposed Development
	conditioned to require the provision of adequate pedestrian and cycle infrastructure to connect the site with the village centre.

Clause 2.3 – Design Principles

Clause 2.3 of Chapter 16 specifies a number of design principles to which the design, function and appearance of new development in Lennox Head is to be based. An assessment of the proposed development against the design principles is contained in the table below.

Clause 2.3 Design Principle	Proposed Development
1. Village Character: <i>Development design is to be appropriate to preserving the coastal village character, and sympathetic to the built and natural characteristics of the site's surroundings.</i>	The subject site is within an area characterised by low density dwellings on large allotments separated by extensive areas of vegetation and open space. This low density precinct has been recognised as an important part of the character of Lennox Head as a seaside village and appropriate density controls have been implemented. The proposed medium density residential flat development is considered to be inconsistent with these controls, out of character with the locality and is unsympathetic to the built and natural characteristics of the site's surroundings.
2. Housing Principle: <i>All residential development is to exhibit a built form, scale and streetscape appearance that is appropriate to the desired future character of the neighbourhood within which it is situated.</i>	The subject site is within an area identified as a low density large lot residential precinct. The proposed development represents a bulk and scale that is incompatible with the existing and desired built form, streetscape and appearance of the neighbourhood.
3. Accessibility Principle: <i>Residential and tourist development and subdivision within Lennox Head must incorporate appropriate linkages and pedestrian environments in their design to encourage travel by a range of transport modes and to optimise 'walkability' opportunities within the village.</i>	The subject site is relatively isolated and is considered inappropriate for the development as designed given the scale and location of the proposal. The subject site is situated approximately 2.3km from the nearest commercial conveniences in the village centre of Lennox Head and, school bus services aside, is approximately 1.2km from the nearest regularly serviced passenger bus route. These distances are considered inappropriate for an affordable housing development of this scale. The isolation of the site does not

Clause 2.3 Design Principle	Proposed Development
	encourage walking and each resident will be highly car-dependent for access to services.
4. Built Form Principle: <i>The design of new residential development is to incorporate visual and functional characteristics that are appropriate to the desired village character of Lennox Head.</i>	The submitted, materials and finishes of the proposed development are consistent with the requirements of Chapter 16. Should the application be supported, consent can be conditioned to require the submission of a colour palette for approval prior to construction.
5. Environment and Natural Character Principle: <i>New development must be designed to respect the ecological values of the site and its surroundings, and be sensitive to the terrain and landscape character, whilst also preserving views and vistas to and from the prominent landscape features, such as the escarpment, ridgelines, headlands, and beaches.</i>	The proposed development is to take place on a site that contains two significant stands of high quality littoral rainforest vegetation and is home to a number of threatened species. The proposed buildings and associated infrastructure are located in close proximity to the edge of rehabilitated vegetation areas. It is considered that the placement of a relatively high concentration of dwellings in close proximity to an environmentally sensitive location will place unnecessary strains and pressures on the integrity of these areas. It is further considered that, although the design is generally sensitive to the terrain of the site and will not unreasonably interfere with views and vistas, the scale of the development is inappropriate with respect to the environmental constraints of the site.
6. Cultural Heritage Principle: <i>All new development projects must ensure that appropriate investigations are carried out to identify any cultural heritage values that may be affected by the development, and incorporate appropriate measures to preserve and respect such values.</i>	Previous recent development proposals for the subject site have undertaken assessments of the cultural heritage of the site and have not identified the presence of any cultural heritage values.

Clause 2.3 Design Principle	Proposed Development
<p>7. Sustainability Principle: <i>All new development must incorporate design elements which respond appropriately to the climatic conditions of the Far North Coast of New South Wales, adopt features that facilitate water saving and minimise reliance upon mechanical heating, cooling and ventilation devices, and conserve and rehabilitate ecological values.</i></p>	<p>The proposed development has been professionally designed and generally incorporates these principles into the internal design of the proposed dwellings. Being residential development, it is subject to the provisions of BASIX. Adequate provision of eaves and window shading is provided in the building design. The majority of units have achieved a satisfactory level of solar access with the exception of proposed Units 13 and 17 which enjoy no northern aspect. Should the development be supported, it is recommended that the development plans be amended to ensure all proposed units are provided with adequate solar access through a northerly aspect. No information has been provided with regard to energy provision for the development and whether solar, gas or electric services or a mix thereof will be provided. All clothes washing and drying facilities are contained within each unit although some provision has been made for outdoor clothes drying. The design of the development is considered to have inadequate regard for the ecological values of the site as discussed in Section 2.4.11 of this report.</p>

Clause 3.2 Building Design and Landscape Design

The proposed development generally complies with the basic building design and landscape outcomes specified in Clause 3.2.1.

Clause 3.2.2 specifies a building envelope standard which requires progressive setbacks in building height. An assessment of the proposed development against this standard has revealed 12 instances where the proposed buildings' second storeys exceed the specified height plane as detailed in the following table. In addition, Building J proposed for the eastern end stub of Tallow Wood Place is located well inside the front setback. The height plane excesses are identified in the following table.

Proposed Building	Exceeds Height Plane
Building A	From eastern boundary (Tallow Wood Place)
Building C	From eastern boundary
Building D	From southern boundary
Building E	From southern boundary
Building F	From southern boundary
Building F	From western boundary
Building I	From western boundary
Building I	From northern boundary
Building J	From northern boundary
Building J	From western boundary
Building J	From southern boundary
Building M	From eastern boundary (Satinwood Place)

The proposed development therefore does not comply with the building design requirements of this clause with regard to the building envelope standard. It is considered, however, that amendments to the design of the proposal could ensure compliance with the building envelopes by achieving greater setbacks from the property boundaries in accordance with the provisions of this clause.

Clause 3.2.3 specifies requirements for building appearance and contains objectives that seek to achieve a built environment that is complementary to the location and seaside character of Lennox Head. It also provides colour schemes for development that will respect the coastal landscape. The proposed development has not been submitted with conceptual external colour schemes, however should the application be supported, development consent can be conditioned to provide for the approval of a colour palette prior to construction commencing.

The proposed dwellings are contained within 13 separate buildings that are of varying size and comprise a mix of single and two storey construction. A number of the proposed buildings are, in general, of a size that reflect the size of a single dwelling or duplex development (proposed Buildings I and J and detached Units 31 and 44) and may, as stand alone structures, be considered appropriate and complementary to the existing and desired future style for dwellings in Lennox Head. The remaining proposed buildings are, however, of a size that is considered inappropriate for the subject site and do not complement the location. In this regard, and on the whole, the proposed development does not satisfy the design requirements of Clause 3.2.3.

Clause 3.2.4 relates to landscape design and requires developments to achieve a satisfactory level of landscaping appropriate to the locality. Conceptual landscaping design details have been submitted with the application that would achieve the requirements of this clause. Should development approval be granted, it is recommended that consent be conditioned to require a site specific landscape design in accordance with the requirements of DCP Chapter 16.

Part 4 of Chapter 16 contains neighbourhood specific development controls that have been adopted to achieve the desired future character

of various physical elements of the Lennox Head landscape. The subject site is located within the “village neighbourhood” as identified in Section 4.3 of Chapter 16. The nominated desired future character of the village neighbourhood is that of a seaside village dominated by beach and coastal landscapes. In describing the pattern of development for the village neighbourhood, residential flat buildings are listed as a preferred land use and that “non-government developers may also provide affordable housing in some circumstances.” It should be noted, however, that the “village neighbourhood” primarily covers the established higher density areas close to the village centre and Council’s DCP only provides controls for medium density development in certain nominated areas within close proximity to the village centre and Seven Mile Beach. The subject site is not within an area identified by Council as favourable for medium density development. Although the bulk and scale of the proposed development is incompatible with the surrounding low density residential locality, the design elements of the proposal generally comply with the requirements of Chapter 16.

Chapter 18 – Rural Land

The subject site is located directly adjacent to land zoned 1(d) – Rural (Urban Investigation) Zone and consequently the provisions of DCP Chapter 18 apply to the proposed development.

Although the proposed development directly adjoins land zoned for rural purposes on its northern boundary, it is acknowledged that the adjoining site is currently subject to a rezoning proposal for urban use and it is expected that this land will be zoned for urban and environmental protection uses in the near future. It is expected that any areas of the adjoining land rezoned for urban purposes will be for low intensity large lot residential uses consistent with the existing and desired future character of the locality. Notwithstanding the above, the adjoining land is still used for low scale grazing purposes and as such, it is considered that minor impacts may result on the proposed development as a consequence of these activities.

The proposed buildings are located between 5.0m and 3.6m from the northern boundary. The majority of this area cannot be extensively landscaped due to bushfire and mosquito risk issues and therefore it is expected that this area will remain as managed mown open space. The applicant is also proposing an asset protection zone (APZ) for bushfire mitigation over part of the adjoining property. This APZ will comprise a managed grass area where no substantial vegetation will be present.

Given the current low scale grazing activities undertaken on the adjoining land and the likely future urban use, it is considered that there is no potential for substantial land use conflicts in the circumstances.

2.4.12 REGULATIONS

EP&A Act, Section 79C(a)(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)

Clause 92 of the *Environmental Planning & Assessment Regulation 2000* prescribes the provisions of the *NSW Coastal Policy 1997* are to be taken into consideration by a consent authority in determining a development application. Further assessment of the proposal against the provisions of the *NSW Coastal Policy 1997* is provided in Section 2.5 below.

2.4.13 BUILT ENVIRONMENT

EP&A Act, Section 79C(1)(b) the likely impacts of development

Context and Setting

The proposed development involves the erection of multi dwelling housing containing 74 dwellings within 13 buildings for the purposes of affordable rental housing. The existing development style in the locality consists of low density large lots occupied by single dwellings separated by extensive vegetated areas and open space. The proposed development has been assessed with regard to its consistency with the applicable land use regulations and development controls as detailed above. It is concluded that due to its bulk and scale, the proposed development is inconsistent with the existing and desired future character of the locality and is therefore considered an inappropriate development given the context and setting of the site.

Density

The proposed development is on a site within an established low density large lot precinct. The existing and desired future character of the neighbourhood comprises single dwellings on large allotments separated by extensive areas of vegetation and open space. The subject site contains areas of significant and protected native vegetation which are not useable for urban development. The result is that although the site has an overall area of 25130m² (2.513ha), it contains approximately 7840m² of undevelopable vegetated area making the actual developable area of the site approximately 17,290m² (1.729ha). A comparison of the density of the proposed development with existing development density is contained in the table below.

	Dwellings/m ²
Current Greenfield Rd precinct ¹	1 per 1790m ²
Proposed development (total area = 2.513ha)	1 per 339m ² (FSR 0.23:1)
Proposed development (developable area = 1.729ha)	1 per 233m ² (FSR 0.33:1)

1. Greenfield Road area west of Ocean Breeze Dr and including The Grove, Stonehenge Place, Angus Kennedy Close, Satinwood Place, Rosewood Place and Tallow Wood Place.

The comparison above highlights the fact that although the proposed development is under the maximum allowable Floor Space Ratio (FSR)

requirements of the AHSEPP, it represents a significant deviation from the current overall residential density of the surrounding locality. In this regard the proposal is inconsistent with the density of current residential development in the locality and, having regard for the substantial difference between the two, is incompatible with the existing and desired future character of the locality. It is noted that under the provisions of the AHSEPP current at the time of lodgement of the development application, density and scale are specified as grounds that cannot be used to refuse consent. The amendment to the AHSEPP of 20 May 2011 removed density and scale as grounds that cannot be used to refuse consent.

It is the view of Council officers that the relative density of the proposed development is unsuitable for the site and is incompatible with that of the surrounding locality. In this regard, the proposed development is not supported. However, in accordance with the above, if the application is assessed and determined under the AHSEPP provisions current at the time of lodgement, density and scale are grounds that cannot be used to refuse consent.

Visual Amenity

The proposed development will result in the development of land currently zoned for urban purposes. Due to the proximity of the buildings to the property boundaries, the bulk and scale of these structures, and the concentration of the development in certain areas of the site, a significant visual impact is expected on properties directly adjoining the site. Given the current built form in the locality, the current development controls applicable to new development and the desired future character of the locality, it is considered that the negative visual impacts expected as a result of the proposed development make it inappropriate in the circumstances.

Roads and Traffic

A Traffic Impact Assessment has been submitted with the development application. This assessment investigated the following: existing conditions, immediate impact and 10 year projected growth for the surrounding street network. It is considered by Council's engineer that the existing road network is of a design capacity to have the ability to cater for the additional demand generated by the proposed development. Notwithstanding the above, it is also considered that due to the increased demand, Rosewood, Tallow Wood and Satinwood Places, currently quiet residential culs-de-sac, will become busy residential streets. It is concluded that these streets will still be classified as "access streets" based on traffic volumes.

Impacts on The Coast Road have also been considered. The intersection performs to an adequate level of service and has the ability to cater for the additional traffic flows generated by the proposed development.

Also contained within the applicant's traffic report is a turning path analysis of the Tallow Wood Place cul-de-sac. Based on the turning path analysis for a service vehicle, the cul-de-sac necessitates the need for parking controls to be implemented. Should the application be supported, this matter will be presented to Council's Traffic Advisory Committee at construction stage for consideration and implementation.

It is the assessment of Council's engineers that the existing external road network has been constructed to a standard that would service the proposed development.

Pedestrian and Cycle Access

The proposed development has been assessed with regard to its level of accessibility by pedestrians and cyclists. It is considered that inadequate pedestrian and bicycle facilities have been incorporated into the development. In this regard the development fails to satisfy some of the required design guidelines specified in the *Seniors Living Policy: Urban Design Guidelines for Infill Development* under which the development has been assessed in accordance with the provisions of the AHSEPP (see assessment of the AHSEPP provisions earlier in this section of the report). It is therefore considered that the design of the proposed development should be amended to incorporate a satisfactory level of infrastructure both internally to allow the adequate circulation of pedestrian and bicycle traffic to, from and within the development. The applicant has advised in the Statement of Commitments submitted with the development application of the agreement to provide a series of additional concrete footpaths within the public roads surrounding the development. Should favourable support for the proposed development be considered, it is recommended that development consent be conditioned to require the provision of these additional footpaths to connect the active frontages of the site to the existing footpath network and also the requirement for the provision of a suitable footpath/cycleway network on Greenfield Road from Rosewood Place to connect with the existing pedestrian underpass at The Coast Road.

Internal Roads and Traffic

The internal road layout has been designed in accordance with AS2890 and the Roads and Traffic Authority (RTA) Guide to Traffic Generating Developments. The internal network has provided aisles and circulation roadways larger than specified to enable easier access/egress to the car spaces. The roadways are also compliant for service vehicles and have been designed to have multiple exit points.

The internal layout complies with the requirements of AS 2890 (all parts) and the RTA Guide to Traffic Generating Developments. No additional modifications are required.

Site access, internal driveways and Parking Design

The applicant has designed the internal driveways and car parking in accordance with AS 2890 at an appropriate level for the number of car parks served. The entry and exit widths have been designed accordingly and comply with the requirements of the Australian Standard. No additional modifications are required.

Provisions for Service and Delivery Vehicles

The circulation roadways have made provision for service vehicles. If a vehicle is servicing the site, the residents are not precluded from exiting their dwellings due to vehicular obstruction. The proposed development has been designed in accordance with AS 2890 and no additional modification is required. Additional information has been submitted by the applicant to allow for the adequate manoeuvring of waste disposal vehicles proposed to service the development. As detailed earlier in this report, this technical assessment does not support the locations of the proposed garbage storage

enclosures on the site. Should the application be considered favourably, appropriate conditions of consent will need to be imposed to adequately address these issues.

Car Parking

Council's parking requirements are detailed in Policy Statement 2 of the DCP. These requirements are implemented to ensure adequate levels of off-street car parking spaces are provided within the development site to minimise the impact of a development on the surrounding street system. The proposed development was made under the provisions of the AHSEPP which at the time of lodgement of the development application specified a car parking rate of 0.5 spaces per dwelling. The AHSEPP was amended on 20 May 2011 which specifies additional car parking requirements. As detailed above, the proposed development cannot be considered under the amended AHSEPP requirements as it is not located within 400 metres of a local centre.

The proposed development includes the provision of 74 car parking spaces (one space per dwelling) which complies with the AHSEPP provisions as applicable at the time of lodgement of the development. The car parking on the site has been designed to comply with the applicable Australian standards. The proposed development, being residential, is not required under Australian Standards to provide car parking spaces that are accessible for disabled persons (see further discussion under Accessibility below).

Concern is raised with regard to the potential impacts of car parking on the surrounding street system. The proposed development proposes one car parking space per dwelling. A comparative assessment against Council's car parking requirements in Policy Statement 2 of Chapter 1 of the DCP, which are as follows:

- 1 space for each 1 bedroom unit
- 1.2 spaces for each 2 bedroom unit
- 1.5 spaces for each 3 bedroom unit
- 1 space for each 5 units or part thereof for visitor parking

The car parking calculation for the development is as follows:

Unit Size	Number of Units	Car Spaces Required
1 bedroom	16	16 (16 x 1)
2 bedroom	40	48 (40 x 1.2)
3 bedroom	18	27 (18 x 1.5)
+ visitor spaces	1 space per 5 units	15
TOTAL	74 units	106

A total of 106 car parking spaces would be required if Council's policy applied.

The proposed development allocates one car parking space per unit. No visitor car parking spaces are provided. It is expected that the majority of the units will be occupied by at least two adults. Given the location of the subject site and its distance from essential community facilities, services and places of employment, the proposed development will be highly car-

dependent. Any future occupants of the development will likely have high levels of car ownership. The Australian Bureau of Statistics Census details for 2006 indicate that 42% of households in Lennox Head owned 2 vehicles and 13% owned 3 or more vehicles. This indicates that more than 50% of Lennox Head households own more than one vehicle. Given the configuration of the street layout, there are limited opportunities for on street parking with capacity to handle additional vehicles for each unit and car parking for visitors. With the proposed development providing only one car space per dwelling and given the limited availability and accessibility of on-street parking in the vicinity of the development, it is clear that additional vehicles generated as a result of the proposal will have to be parked in the street. Although car parking cannot be used as grounds for refusal under the provisions of the AHSEPP, the proposed development is expected to result in an undesirable negative impact on the amenity and character of the surrounding locality with regard to deficiencies in car parking.

The proposed development is to have access off the end of Tallow Wood Place and Satinwood Place, both of which are narrow culs-de-sac built to minimum AMCORD standards with minimal on-street parking opportunities. No opportunities are provided for overflow parking on the site and as such any additional vehicles will be required to park within the surrounding street system. Notwithstanding the compliance of the development with the AHSEPP standards, given the physical constraints of the access streets and the demonstrated likelihood of high levels of vehicle ownership, it is considered that the proposed development will result in a substantial impact on the surrounding locality due to parking pressures on the surrounding street system. In this regard, the overflow parking from the proposed development is expected to have a negative impact on the character of the surrounding locality that would be unacceptable to local residents.

While it is considered that the proposed development is substantially deficient in the provision of on-site car parking, if the proposed development is considered under the provisions of the AHSEPP applicable at the time of lodgement, it cannot be refused on grounds of parking.

Water and Sewer

The development has been assessed by Council's engineers with regard to water and sewer servicing. It has been concluded that the proposed development can be adequately serviced by connection to the existing water and sewer systems.

A sewer connection would be able to be made to the existing pump station off Tallow Wood Place which has the capacity to service the demand generated by the proposed development. The application is proposing that sections of the proposed development are to be pressure sewer systems due to the design of the development. Council's engineers have advised that it is preferred that the entire development be designed to allow connection of all dwellings to the sewer system by gravity sewer lines. Given the geographic constraints of the site, it is understood that some dwellings may have to be serviced by an appropriately designed pressure sewer system. Should the development be supported, development consent will need to be conditioned to require the adequate provision of sewer services at no cost to the local community to in accordance with Council's requirements.

2.4.14 NATURAL ENVIRONMENT

EP&A Act, Section 79C(1)(b) the likely impacts of development

Flora and Fauna

The subject site contains specific areas of significant vegetation and habitat. These have been identified and are afforded a level of protection deemed appropriate for the scale of development consented to under DA 2004/605. The proposed development, including the submitted flora and fauna assessment, has been assessed with regard to its expected impacts on the natural environment. Council requested additional information from the applicant in relation to vegetation and threatened species on 11 April 2011. The applicant subsequently responded to the request on 31 May 2011.

Council's Environmental Scientist has undertaken an assessment of the information submitted and comments as follows:

Statutory Requirements

Under the provisions of Section 5A(1)(b) of the *Environmental Planning and Assessment Act 1979* (EP&A Act), any assessment guidelines must be taken into account in deciding whether there is likely to be a significant effect on threatened species, populations or ecological communities, or their habitats. For the purposes of Section 5A(1)(b), 'assessment guidelines' is taken to mean those guidelines issued and in force under Section 94A of the *Threatened Species Conservation Act 1995* (TSC Act). Thus, for the purposes of assessing the impact of the proposed development, the relevant applicable guidelines are the *Threatened Species Assessment Guidelines: the assessment of significance guidelines* (DECC 2007) as gazetted by the Minister 25 January 2008.

An examination of the submitted Flora and Fauna Report (FFR) reveals that the Section 5A assessments have not been undertaken in accordance with the approved Guidelines and are therefore considered inadequate as they fail to satisfy the requirements of Section 5A of the Act.

Fauna Surveys

No systemic fauna surveys were conducted as part of the assessment submitted with the development application. Whilst the FFR indicates that opportunistic fauna surveys were conducted the report does not detail what areas were surveyed and how much survey effort was expended at the site.

To predict threatened species usage of the subject site, the submitted FFR has undertaken a limited NPWS database search and relied on previous work undertaken on the adjoining property (Henderson Farm) in October 2003. This report identifies a total of twenty-six (26) threatened fauna species potentially occurring on the Henderson Farm. The FFR submitted with the subject application, DA 2011/72, identifies that nine (9) threatened fauna species have the potential to occur on the site. The FFR provides no justification as to why the additional seventeen (17) threatened fauna species identified in the 2003 report were not considered likely to occur on the subject site for DA 2011/72. Eleven (11) of the seventeen (17) threatened species identified in the 2003 report are species known to be directly associated with rainforests and are consequently considered likely to occur on the subject site. It is also considered that any conclusions drawn

from the 2003 survey work to predict fauna usage on the subject site would be of limited value as the survey methods used to detect fauna species are not considered to have been rigorous.

In determining what fauna species should be subject to assessment under Section 5A of the Act, the Guidelines state:

The assessment of significance is applied to species, populations and ecological communities listed in Schedules 1, 1A and 2 of the TSC Act and Schedules 4, 4A and 5 of the Fisheries Management Act 1994 (FM Act). The applicant/proponent should develop a list of threatened species, populations and ecological communities which may be affected directly or indirectly by the proposed action, development or activity. Adequate reasons should be provided to show how the list was derived.

A species does not have to be considered as part of the assessment of significance if adequate surveys or studies have been carried out that clearly show that the species:

- does not occur in the study area, or*
- will not use on-site habitats on occasion, or*
- will not be influenced by off-site impacts of the proposal.*

Otherwise all species likely to occur in the study area (based on general species distribution information), and known to use that type of habitat, should be considered in the rationale that determines the list of threatened species, populations and ecological communities for the assessment of significance"

Given that no detailed fauna surveys have been undertaken on the site, an assessment of significance for all fauna species with the potential to occur on the site was required.

The submitted FFR is considered inadequate in relation to fauna due to the following reasons;

- whilst a database search was undertaken, the search is considered too narrow to identify what threatened fauna species have been recorded in the surrounding locality and thus have the potential to occur within the Study Area;
- the relevant FFR prepared by Aspect North Pty Ltd. for the earlier approved 19 lot subdivision (DA 2004/205) was not reviewed;
- the FFR refers to the work of Parker (1996) however, the subject work was conducted in 2003;
- a lack of knowledge of fauna usage of the site is clearly demonstrated by the fact that although Brush Turkey nests occur within the rainforest, the FFR only identifies the Brush Turkey as "expected to occur";
- the FFR fails to address the indirect impacts of the development on fauna species. e.g. lighting and noise are well documented as having an adverse impact on a range of bats and avifauna species;
- the predicted threatened species lists contained within the FFR are inconsistent with the 2003 report and no reasoning for these differences is presented;
- the FFR fails to address indirect impacts of the development on reclusive species which may inhabit the adjacent wetland habitats e.g. Bush Hen, Black Bittern, Australasian Bittern and Brolga;
- the submitted 7 part tests have not been undertaken in accordance with the published Guidelines; and

- the Section 5A assessment refers to a “*draft plan for the rabbit*” however no such plan occurs under the TSC Act (1995).

Flora Surveys

Whilst it would appear that some survey work was undertaken on the site by the flora and fauna consultant, it remains unknown what vegetation communities on the subject site were subjected to detailed survey work. Furthermore, an independent ecological report has identified that the rainforest remnants growing on the subject site are much more diverse than as indicated within the submitted FFR. To address this inconsistency Council’s letter to the applicant on 11 April 2011 contained the following:

“An independent ecological report (Warren 2010) identified that the rainforest remnants growing on the subject properties are more diverse than are described within the submitted FFR. In particular Warren (2010) found that 127 native plants were growing within the largest rainforest remnant growing on the subject property. If this is correct, the subject remnant would be one of the most diverse littoral rainforest remnants growing within surrounding locality.

Consequently, due to the discrepancies between the two (2) reports Council requires further details on how much time was spent surveying each of the subject rainforest remnants and why the submitted FFR failed to detect the additional species”.

In response, the applicant failed to address this request and instead submitted a peer review of the FFR commissioned by the applicant which has confirmed that the plant species list contained within the FFR was incomplete. The true diversity of the rainforests growing on the subject site remains unknown given the peer review failed to contain a plant species list. Despite the missing plant species, the peer review report considers the methods used to detect flora species on site are adequate.

At a number of locations the development application proposes to alter the existing hydrology of the site by directing urban stormwater runoff into littoral rainforest EEC and threatened species habitat. In relation to this issue Council’s letter to the applicant on 11 April 2011 contained the following:

“Annexure B of the Stormwater Management Plan shows a number of locations where stormwater is to be directed directly into the littoral rainforest (endangered ecological communities) and areas of known Hairy Joint Grass habitat. The submitted FFR fails to assess the impacts of altered hydrology on the subject rainforest EECs and Hairy joint Grass habitat. Consequently, it is requested that further information be submitted containing an adequate assessment of the impacts of the stormwater discharge on the EECs and Hairy Joint Grass habitat”.

Despite this request the applicant failed to provide any robust information to address the abovementioned concerns. These issues remain of relevant concern given that the existing stormwater outlets installed on the site as part of the 19 lot subdivision (DA 2004/605) have caused significant downstream scouring. The development is proposing the relocation of this infrastructure onto the adjacent land (Lot 1 DP 829277) which has the potential to transfer these adverse impacts closer to known threatened species habitat.

The submitted FFR is considered inadequate in assessing the impacts of the proposed development on the flora of the site for the following reasons:

- it contains no accurate threatened species mapping despite Council requesting that this information be submitted;
- it incorrectly maps the extent of the Littoral Rainforest EEC;
- it is identified on Page 6 of the FFR that five (5) threatened plant species were detected within the rainforest remnants at the site which is in conflict with the threatened species mapping contained on page 13 of the FFR.
- it remains unknown how many threatened plants occur on the site;
- it does not accurately map the extent of threatened species and EECs occurring on the adjoining land;
- it is inconsistent in identifying whether the vegetation adjacent to proposed Building M is littoral rainforest EEC;
- the submitted 7 part tests have not been undertaken in accordance with the published Guidelines;
- despite claiming to have undertaken targeted surveys of the proposed bushfire Asset Protection Zone (APZ) on adjoining lots (Lot 1 DP 829277 & Lot 99 DP 755684), the submitted FFR fails to detect that the vulnerably listed Hairy Joint Grass occurs within the nominated APZ;
- it fails to detect the occurrence of Hairy Joint Grass growing adjacent to the proposed siting of Building G;
- the submitted FFR fails to review and/or include threatened species records contained in other ecological reports prepared by Aspect North 2003, Melaleuca Group 2008 and Joseph Consulting 2009 which relate to the site; and,
- the flora species list contained within the FFR is inconsistent with species lists contained in Aspect North 2003, Joseph Consulting 2009 and Warren 2010.

Assessment of submitted Section 5A assessments against the Threatened Species Assessment Guidelines – Assessment of Significance

The following text addresses the deficiencies associated with the applicant's submitted Section 5A assessments.

Note: Text from the Assessment Guidelines is provided in italics. The technical assessment of the adequacy of the FFR and additional information in addressing section 5A is not in italics.

Legislative Framework

Threatened species impact assessment is an integral part of environmental impact assessment. The objective of s. 5A of the Environmental Planning and Assessment Act 1979 (EP&A Act), the assessment of significance, is to improve the standard of consideration afforded to threatened species, populations and ecological communities, and their habitats through the planning and assessment process, and to ensure that the consideration is transparent.

Scope of Assessments

These guidelines clarify the specific terminology of the relevant legislation and provide clear interpretations of the factors of assessment. The assessment of significance should not be considered as a 'pass or fail test'

but a system allowing applicants/proponents to undertake a qualitative analysis of the likely impacts, and ultimately, whether further assessment needs to be undertaken through a species impact statement ... where there is reasonable doubt regarding the likely impacts, or where detailed information is not available, a species impact statement should be prepared.

Definitions in the guidelines

Subject site means the area directly affected by the proposal.

Study area means the subject site and any additional areas which are likely to be affected by the proposal, either directly or indirectly. The study area should extend as far as necessary to take all potential impacts into account.

Direct impacts are those that directly affect the habitat and individuals...when applying each factor, consideration must be given to all of the likely direct impacts of the proposed activity or development.

Indirect impacts occur when project-related activities affect species, populations or ecological communities in a manner other than direct loss. Indirect impacts can include loss of individuals through starvation, exposure, predation by domestic and/or feral animals, loss of breeding opportunities, loss of shade/shelter, deleterious hydrological changes, increased soil salinity, erosion, inhibition of nitrogen fixation, weed invasion, fertiliser drift, or increased human activity within or directly adjacent to sensitive habitat areas. As with direct impacts, consideration must be given, when applying each factor, to all of the likely direct impacts of the proposed activity or development.

The reason for a local focus is that the long-term loss of biodiversity at all levels arises mainly from the accumulation of losses and depletions of populations at a local level.

The factors of assessment

(a) in the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction

The following comments are related only to the inadequacies and omissions in the assessment provided for each factor for the six threatened flora species which were considered in the assessment of significance in the FFR.

Interpretation of key terms used in this factor

Life cycle: the series or stages of reproduction, growth, development, ageing and death of an organism.

Viable: the capacity to successfully complete each stage of the life cycle under normal conditions.

Local population: the population that occurs in the study area. In cases where multiple populations occur in the study area, each population should be assessed separately. The assessment of the local population may be extended to include individuals beyond the study area if it can be clearly demonstrated that contiguous or interconnecting parts of the population continue beyond the study area, according to the following definitions.

- The local population of a threatened plant species comprises those individuals occurring in the study area or the cluster of individuals that extend into habitat adjoining and contiguous with the study area that

could reasonably be expected to be cross-pollinating with those in the study area.

- The local population of resident fauna species comprises those individuals known or likely to occur in the study area, as well as any individuals occurring in adjoining areas (contiguous or otherwise) that are known or likely to utilise habitats in the study area.
- The local population of migratory or nomadic fauna species comprises those individuals that are likely to occur in the study area from time to time.

Risk of extinction: the likelihood that the local population will become extinct either in the short-term or in the long-term as a result of direct or indirect impacts on the viability of that population.

Application

The key assessment is risk of extinction of the local population. The risk of extinction will increase if any factor operates to reduce population size or reproduction success. The components of the life cycle of a species are dependent on its habitat and affected by threats to the species. The applicant/proponent not only has to have an understanding of the species' life cycle, but also an understanding of the way in which a species makes use of its habitat, the way this may change at particular times or in certain seasonal conditions, and whether the life cycle is dependent on a particular disturbance. Any known or presumed local population should be assumed viable unless the contrary can be conclusively demonstrated through analysis of local ecological information, records, references and knowledge of species' behaviour and habitat or through a comprehensive on-site ecological study. The removal or modification of habitat or changes to the nature of important periodic disturbances such as fire or flood may affect the survival of that species.

General Comments

The FFR confirms the "study area and/or local population" as the area occurring within a 1km radius of the subject site. Whilst this description is considered generally consistent with the definition contained within the Guidelines the FFR does not assess the indirect impacts of the development on the adjoining and/or receiving environments. In this case, the FFR should have addressed the impacts of the development on threatened species within the proposed APZs and downstream ecosystems arising from stormwater discharge from the development and other indirect impacts.

Threatened Plant Species

The FFR concludes that because the Littoral Rainforest will be retained and buffered, threatened plant species will not be adversely impacted. The approach taken in the submitted information to addressing this aspect of the assessment is considered deficient as it does not:

- identify what threatened plant species are subject to a 7 part test;
- map and/or define the abundance of each threatened species within the Study Site and/or Study Area;
- identify the key components of the life cycle for each of the identified flora species;
- demonstrate that genetic exchange occurs between the individuals

- within the Study Site and other individuals which are known to occur throughout the surrounding habitats;
- address indirect impacts such as hydrological changes, weed invasion, chemical drift, increased human activity, clearing of the vegetated buffer, etc.; nor,
- identify the importance or rarity of the individual threatened plant species.

The issue of identifying the importance of a local population is best demonstrated by the occurrence of *Xylosma terrae-reginae* on the site. *Xylosma terrae-reginae* is listed as Endangered under the TSC Act (1995). Reasons for its listing include:

2. *it has a restricted distribution north from near Ballina, in littoral and subtropical rainforests.*
3. *Individual populations are small and the best estimate of the total population in New South Wales is less than 250 mature individuals.*
4. *Rainforest in north-east New South Wales has been substantially reduced in extent since European settlement. The stands in which *Xylosma terrae-reginae* occur are small, and with the exception of the two conservation reserves, are vulnerable to further fragmentation. Major threats to the integrity of the stands are posed by weed invasion and fire incursion.*
5. *In view of 3 and 4 above, the Scientific Committee is of the opinion that *Xylosma terrae-reginae* is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate, and is eligible for listing as an endangered species on Part 1 of Schedule 1 of the Threatened Species Conservation Act.*

Whilst no detailed surveys have been undertaken on the site, based on knowledge of the site from 2004 observations, only one (1) *Xylosma terrae-reginae* occurs on the subject site. In 2004 the specimen was approximately 1 metre in height growing within the core of the largest rainforest remnant on the site.

Xylosma is a dioecious (separate male and female plants) species and requires pollination by another individual species of the opposite sex. According to Kooyman and Rossetto (2008) information on the breeding mechanisms, genetic diversity and structure of *Xylosma* is not available. The submitted FFR fails to identify and/or address any of these issues.

Furthermore, the according to the Department of Environment, Climate Change and Water database, the closest *Xylosma* record occurs approximately 7km from the site. In the absence of other records the “local population” consists of the one (1) *Xylosma* growing on the site.

Threatened Fauna Species

The local population should be considered in terms of each of the predicted fauna species’ home ranges, distances travelled, and include individuals that utilise the subject site and study area within those ranges. Given that the Study Area includes the SEPP 14 wetlands on land directly north of the subject site, impact assessment should have included those fauna species identified as likely to occur within those adjacent wetland habitats. This is especially relevant given the close proximity of a number of the proposed dwellings (eg. proposed Building G) to these habitats.

The FFR identifies that an endangered species, the Mitchell's Rainforest Snail, is considered likely to occur on the subject site. An examination of Section 3 of the FFR confirms that species was **not** the subject of any targeted surveys. In concluding that the species does not occur on the subject site, the FFR states that *"It is unlikely that the proposed development will affect this species as its conspicuous shell has not been recorded at the site, despite many hours of restoration works being undertaken in its potential habitat"*. This method to determine the presence or absence of the species on site is considered inadequate given the following:

- the species is a nocturnal species whereas all bush regeneration activities are conducted during daylight;
- it relies on bush regenerators searching and reporting on this rare species whilst undertaking their normal bush regeneration activities;
- it relies on bush regeneration workers being qualified to identify the species shell from other common native snails; and;
- it appears to rely on a findings of 2009 bush regeneration monitoring report even though that report provides no information on any fauna usage of the site.

As with flora species the submitted FFR has given no consideration to the indirect impacts of the development on fauna. Overseas studies have confirmed that a range of bat species are affected by artificial lighting and noise. Issues such as the likely disturbance by incoming residents on threatened bird species have not been addressed.

(b) in the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction

There are no listed endangered populations within Ballina Shire. Therefore this factor requires no further consideration.

(c) in the case of an endangered ecological community or critically endangered ecological community, whether the action proposed:

(i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or

(ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction

Interpretation of key terms used in this factor

Local occurrence: the ecological community that occurs within the study area. However the local occurrence may include adjacent areas if the ecological community on the study area forms part of a larger contiguous area of that ecological community and the movement of individuals and exchange of genetic material across the boundary of the study area can be clearly demonstrated.

Risk of extinction: similar to the meaning set out in factor (a), this is the likelihood that the local occurrence of the ecological community will become extinct either in the short-term or in the long-term as a result of direct or

indirect impacts on the ecological community, and includes changes to ecological function.

Composition: *both the plant and animal species present, and the physical structure of the ecological community. Note that while many ecological communities are identified primarily by their vascular plant composition, an ecological community consists of all plants and animals as defined under the TSC and FM Acts that occur in that ecological community.*

Application

Determining the risk of extinction of an ecological community is difficult. Critical thresholds of remnant size, and species and structural composition required to maintain ecological functioning will vary from ecological community to ecological community.

When evaluating the significance of the impact, consideration must be given to whether the life cycles of the species which make up the ecological community will be disrupted in a similar manner to the consideration of individual species described in factor (a).

Loss of individual species from a community may simplify faunal, floristic or vegetation structure and have flow-on effects to other plant and animal species. This may increase its susceptibility to extreme events and decrease its resilience. An assessment of ecological functioning is critical to this factor.

General Comments

This question is not adequately addressed within the submitted FFR. Issues relating to critical thresholds of remnant size, species and structural composition required to maintain ecological functioning of the three littoral rainforest remnants are not addressed. The test of assessment draws no conclusion on whether the development will affect the life cycles and/or the ecological functioning of the plant species which make up the three littoral rainforest communities currently growing on the site. The FFR also fails to assess the impacts of:

- applying the residual spray “*bifenthrin*” for mosquito control and how this may impact on insects pollinating the adjacent rainforest communities;
- changes in hydrology associated with the proposed stormwater system and how this may affect the EECs;
- having stormwater bioretention basins located immediately adjacent to the buffer plantings;
- changes in hydrology due to increased stormwater entering downstream EECs; and
- conflicts between the vegetated buffer plantings and proposed dwellings.

(d) in relation to the habitat of a threatened species, population or ecological community:

(i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and

(ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and

(iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological community in the locality

Interpretation of key terms used in this factor

Habitat: the area occupied, or periodically or occasionally occupied, by any threatened species, population or ecological community and includes all the different aspects (both biotic and abiotic) used by species during the different stages of their life cycles.

Extent: the physical area removed and/or to the compositional components of the habitat and the degree to which each is affected.

Importance: related to the stages of the species' life cycles and how reproductive success may be affected.

Locality: the same meaning as ascribed to local population of a species or local occurrence of an ecological community.

Application

When applying this factor, consideration must be given to all short- and long-term impacts (direct and indirect) on habitat which are likely to support threatened species, populations and ecological communities regardless of whether the habitat occurs on the subject site. This applies to both occupied and unoccupied habitat because the recovery of threatened species, populations and ecological communities relies on them having access to suitable habitat to move into as numbers increase.

The extent to which habitat is likely to be removed or modified should be determined by estimating the total area of habitat to be directly and indirectly impacted by the proposed development, activity or action. This may be an estimation of the surface area of land to be affected, and/or in some cases the number of key habitat components to be affected.

When deciding whether an area of habitat is likely to become fragmented or isolated from other areas of habitat, it is necessary to identify and assess the patterns and extent of habitat connectivity. The affected habitat may form part of a habitat corridor, cul-de-sac or an isolated area. The dispersal and genetic exchange mechanisms of individual species should be considered. For example, will the isolation of habitat for threatened species, populations or ecological communities that are currently connected or near to each other adversely affect the maintenance of gene flow and the ability to sustain viable populations. It should also be noted that isolation can occur through a variety of habitat modifications and is not confined to the clearing of vegetation.

When assessing the importance of the habitat likely to be removed, modified, fragmented or isolated in the locality, a quantitative and qualitative approach should be adopted as follows:

- an assessment of the area and quality of habitat of the threatened species, population or ecological community that occurs within the locality from recent Landsat imagery, vegetation mapping, topographic maps, air photos and in some cases data obtained from on-ground investigations
- an estimate of the area and quality that the habitat of the study area represents in relation to the area and quality of that habitat within the locality
- an assessment of the role of the habitat to be affected in sustaining habitat connectivity in the locality

- *an assessment of the ecological integrity of the habitat to be affected in the study area, in relation to the ecological integrity, tenure and security of the habitat which will remain both in the study area and in the locality.*

The submitted 7 part test does not address the requirements of the assessment guidelines in that there has been no quantitative or qualitative approach, patterns and extent of habitat connectivity have not been explored, and the potential modifications to the habitat have not been investigated.

The FFR did not consider the importance of the habitat in this factor. This is considered to be an important issue given that Warren (2010) identified that 127 native rainforest species occur within one (1) remnant on the site. If this is correct, based on the work of Landmark (1999) this would make the remnant one of the most diverse littoral rainforest remnants growing on Krasnozern soils within Ballina Shire. The importance of the rainforest remnant is further emphasized by the density of threatened plant species known to occur within the remnant. Adding to the conservation significance of the littoral rainforest remnants on the site are the occurrence of seeding *Cryptocarya foetida* trees which, in the local context, are considered to be rare. The FFR has failed to address these issues.

(e) whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly)

There is no critical habitat listed in the Ballina LGA. Therefore this factor requires no further consideration.

(f) whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan

Application

Applicants/proponents must consider all relevant approved recovery plans and threat abatement plans. In addition, it is recommended that they refer to draft recovery plans and draft threat abatement plans, and threatened species profiles and related guidelines. Priorities action statements set out the measures required to promote the recovery of each threatened species, population and ecological community to a position of viability in nature and for managing each key threatening process. In applying this factor, consideration should be given to measures outlined in the priorities action statements as well as existing recovery plans and threat abatement plans which will remain in place.

General Comments

The FFR addresses this factor by stating a number of recovery threat abatement plans may apply if the site is developed. The FFR has not considered the Priorities Action Statements or threatened species profiles available for most of the predicted threatened species and associated EECs as is required by the assessment guidelines. The submitted FFR also refers to a “draft plan for the rabbit” although no such plan occurs under the TSC Act.

(g) whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process

Application

In addition to deciding whether the action/activity constitutes a KTP, consideration must also be given to whether the proposal is likely to exacerbate a KTP. Species listed in the determination as being 'at risk' warrant particular consideration if these species are known or likely to occur within the study area of the development or activity.

The FFR concludes that the development will not result in an increase in key threatening processes. However, it is considered that it is likely that the development will result in the increase of a number of key threatening processes being:

- Bushrock removal;
- Invasion and establishment of exotic vines and scramblers; and,
- Predation by the feral cat (*Felis catus*).

Making an assessment of significance

All factors should be considered as well as any other information deemed relevant to the assessment. The assessment of significance should not be used as a substitute for a species impact statement. Proposed measures that mitigate, improve or compensate for the action, development or activity should not be considered in determining the degree of the effect on threatened species, populations or ecological communities, unless the measure has been used successfully for that species in a similar situation. In many cases where complex mitigating, ameliorative or compensatory measures are required, such as translocation, bush restoration or purchase of land, further assessment through the species impact statement process is likely to be required. In determining the nature and magnitude of an impact, it is important to consider matters such as:

- *pre-construction, construction and occupation/maintenance phases;*
- *all on-site and off-site impacts, including location, installation, operation and maintenance of auxiliary infrastructure and fire management zones*
- *all direct and indirect impacts*
- *the frequency and duration of each known or likely impact/action*
- *the total impact which can be attributed to that action over the entire geographic area affected, and over time*
- *the sensitivity of the receiving environment*
- *the degree of confidence with which the impacts of the action are known and understood.*

Recovery and threat abatement plans, priorities action statements, threatened species profiles and other fact sheets prepared by DECC and DPI may provide further guidance on whether an action or activity is likely to be significant.

Application of the precautionary principle requires that a lack of scientific certainty about the potential impacts of an action does not itself justify a decision that the action is not likely to have a significant impact. If

information is not available to conclusively determine that there will not be a significant impact on a threatened species, population or ecological community, or its habitat, then it should be assumed that a significant impact is likely and a species impact statement should be prepared.

Conclusion

The FFR concludes that the development will not have a significant impact on flora and fauna and thus it considers that a Species Impact Statement (SIS) is not required.

While some of the definitions from the guidelines were included in the applicant's documentation, it does not appear that they were applied in consideration of the identified factors. The considerations provided were limited to mostly generalised and unsubstantiated statements that had little or no relevance to the species, the proposal and the direct and indirect on and off site impacts.

The Section 5A assessment of significance is considered deficient in its consideration to threatened flora and fauna, both in the species selected and the consideration to the factors in relation to the assessment guidelines.

In cases such as this the Assessment Guidelines state;

<i>where there is reasonable doubt regarding the likely impacts, or where detailed information is not available, a species impact statement should be prepared</i>
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Due to the quality of the submitted FFR and the unsatisfactory response to Council's request for additional information dated 11 April 2011, it is concluded that the proposed development cannot be supported when having regard to the matters for consideration as required under Section 5A of the EPA Act 1979.

Additional Flora & Fauna Issues

Rehabilitation Works Required by DA 2004/605

In granting consent to the creation of the 19 Lot subdivision in DA 2004/605, Council required the landowner to undertake a range of restoration works to protect the existing rainforest vegetation for a period of five years. To satisfy the Deferred Commencement Conditions of Consent the applicant submitted to Council an Ecological Restoration Management Plan (ERMP) -Stage 1.

The ERMP addressed the first year of required rehabilitation works on proposed Lots 4 and 8 (DA 2004/605). The Greenwood Grove Management Plan (GGMP) was submitted to address years 2-5 of the proposed rehabilitation program. Both management plans provide underlying principles for the ecological restoration and long-term management of the larger littoral rainforest remnants growing on the subject site.

During the course of the rehabilitation program Council has been in disagreement with the applicant and considers that the applicant has failed to rehabilitate all of the areas required. This issue is relevant to the current development application given that proposed Buildings I, J and K and parts

of the proposed access driveway and parking bays are located within Council's identified rehabilitation area.

To minimise the impacts of the development on the threatened Hairy Joint Grass, the applicant has proposed to establish a Hairy Joint Grass restoration area in the far north western corner of the subject site. This area, however, is already required to be revegetated in accordance with the terms of approval in DA 2004/605. As such, the current proposal offers nothing additional beyond what is already required to be undertaken to comply with previous development application approvals on the site. No consideration has been made of the intensification of use and the additional impacts this may have on the natural environment of the site.

Buffer separation

Putting aside the difference of opinion between the applicant and Council in relation to the extent of rehabilitation area surrounding the rainforest remnants required under DA 2004/605, this application (DA 2011/72) is a new application and must be assessed on its own merits. A key merit issue in the assessment of this application relates to the impact the development will have on threatened species, populations or EECs. The current application does not propose any additional vegetation plantings surrounding the remnant rainforest stands beyond that already established in response to DA 2004/605. The current application also proposes to remove some of the existing buffer plantings. To further address this matter, Council requested additional information from the applicant on 11 April 2011 as follows:

"Based on the outcomes of DA 2004/605 a minimum of a 10m restoration buffer zone was to be established from the drip line of the remnant rainforest communities. The site plans submitted with the development application indicate that the planted buffers around the stands of remnant rainforest are less than 10m in depth at various locations. It is noted that this reduced rainforest buffer zone is below that recommended in the supporting documentation submitted for DA 2004/605.

Consequently, it is requested that additional ecological information be provided that confirms the reduced buffer depth will not result in the development having an adverse impact on the stands of remnant rainforest on the site and their associated threatened plant species").

While the applicant did not specifically respond to the above requests, a peer review report commissioned by the applicant was submitted confirming that a number of indirect adverse impacts can be expected due to human settlement being established adjacent to native vegetation.

In dealing with these expected adverse impacts the peer report states that *"The threats can be addressed through the design of the edges of vegetation remnants and through ongoing management".*

Despite the abovementioned statement, the peer review report concludes that the erection a strong steel fence adjacent to the proposed residences could mitigate the adverse impacts arising from human occupation adjacent to the rainforest vegetation onsite. This solution does not address issues relating to the ongoing management of these areas for purposes of bushfire risk minimisation and mosquito control. Furthermore, some of these areas

are identified as part of the communal open space for the proposed development. The peer review also recommends the introduction of local education program to inform adjacent residents as to the ecological importance of the subject vegetation communities. This outcome is supported.

Whilst it remains unknown what is meant by the term “*design of the edges of vegetation remnants*”, it is considered that any further manipulation of the buffer plantings by way of reduction or mosquito management spraying is likely to have a long-term adverse impact on the adjacent remnant littoral rainforest vegetation. The action would also be inconsistent with the Vegetation Management Plans previously submitted for previous development applications.

Edge effects have been identified as having widely variable ingress distances. The degree of the edge effect is dictated by vegetation types, shape, landform, ecological attributes, climate, threats and abutting land uses, all of which influence the size of the necessary buffers. Different studies have identified that edge effects can occur from 12.7m up to 500m. Planted buffer widths between 20-50m are commonly required to protect EECs, such as those on the subject site, from edge effects. It is noted that the establishing vegetated buffers on the site are well below these thresholds.

In addition to establishing adequate vegetation buffers surrounding the remnant, careful consideration must be given to the separation distance between the outer edge of the plantings and any proposed buildings and/or associated infrastructure.

In this respect the submitted plans show that a number of buildings inclusive of the eaves (proposed Buildings G, I, J and K) are less than 7.1m from the outer edge of the buffer plantings. The vegetation within this buffer planting area consists of rainforest species which have the potential to grow to heights of between 9m and 57m.

In the opinion of Council's Environmental Scientist, an inadequate buffer separation has been provided between these buildings and the existing rainforest buffer plantings. Given the climatic conditions (exposure to salt laden air) reduced growth could be expected, however, the vegetation within the buffer areas is expected to at least grow to the height of the existing rainforest remnant on the eastern portion of the site, which is currently approaching a height of 20m. These predicted growth rates are further emphasised by the fact that the many of the existing plantings have grown to a height of 4 metres within a 4 year period.

The location of the dwellings immediately adjacent to the buffer plantings prevents the compliance of the development with Australian Standard 2870-1996 *Residential slabs and footings—Construction*.

Council's Environmental Scientist has advised that as the vegetation matures, lateral growth will naturally occur thus reducing the separation distance between the plantings and adjacent dwellings.

The location of dwellings immediately adjacent to the restoration areas is expected to have the following impacts:

- Shading of houses;
- Root damage to dwellings and other infrastructure;
- Damage to dwellings from branches and/or tree falls during storm events;
- Significant mosquito issues associated with the dense understorey;
- Ongoing requests and direct action from residents to remove vegetation as it becomes a threat to people and dwellings; and,
- Damaging incursions into the restoration areas by residents.

In relation to this issue, in Council's letter of 11 April 2011 it was stated that:

"The proposed development includes a number of buildings that are located in close proximity to the existing littoral rainforest buffer plantings, including those surrounding the Moreton Bay Fig tree adjacent to Satinwood Place (particularly buildings F, G, I, J, K and M).

No information has been submitted with the application demonstrating that the buildings will be able to comply with Annexure B of Australian Standard 2870-1996. Consequently, it is requested that additional information be submitted detailing how the proposed building setbacks comply with the abovementioned Australian Standard and how compliance with this standard will be ensured. To adequately address this issue, it is requested that the information submitted contain details identifying all buffer plants growing around the outer edge of the rehabilitation area, the predicted mature growth heights of those trees and required setbacks distances to comply with Annexure B of Australian Standard 2870-1996. This assessment should also include setbacks to significant trees such as the fig tree adjacent to Building M and the large tuckeroo located to the south of Buildings C and D)."

No information was submitted by the applicant in response to this request. Furthermore, it would appear that the applicant's flora and fauna consultant has mistakenly confused the requested Australian Standard 2870-1996 *Residential slabs and footings*—Construction for AS4970: Protection of trees on development sites.

Notwithstanding the above, it is considered that should the development application be supported, these issues could be sufficiently addressed through conditions of consent. It is unknown however, what effects this might have on the design and layout of the proposed development.

Bushfire Protection (Asset Protection Zone on Adjoining Land)

The FFR advises that surveys of the threatened Hairy Joint Grass were undertaken on the adjoining land (Lot 1 DP 829277 and Lots 99 DP 755684). Parts of these lots are identified in the development application as forming part of the bushfire APZ for the proposed development. Whilst the FFR failed to detect the species, a subsequent Council survey found that the subject species did in fact occur within the proposed APZ. Consequently, in Council's letter to the applicant dated 11 April 2011 it was stated that:

"It is noted that an Asset Protection Zone (APZ) is proposed over the adjoining property in order to comply with the requirements of the NSW

Rural Fire Service and to ensure compliance with Planning for Bushfire Protection (2006). On page 33 of the FFR it is identified that the proposed APZ was subjected to targeted flora surveys which failed to detect the occurrence of the vulnerably listed Hairy Joint Grass. Council surveys have in fact identified that the subject species does occur within the nominated APZ. Consequently, the FFR is to be revised to address this issue. In addition, the required ecological assessment should also consider what impacts of the proposed stormwater infrastructure may have on this section of land and other downstream habitats.

As detailed below, the establishment of the APZ on the adjoining land is not supported by Council. The suitability of locating the APZ on the adjoining Lots 1 and 99 is further questioned given that the draft rezoning proposal proposes to apply an Environmental Protection Zone to the part of Lot 99 where it intersects with the northwest corner of your property. Due to issues associated the occurrence of the threatened species Hairy Joint Grass Lots 1 and 99 have been deferred from the current rezoning proposal. Consequently, it remains unknown when and whether the subject land parcels will be rezoned for residential purposes. Attached for your convenience is a copy of the proposed zone boundaries."

In response, while the applicant did not directly respond to this request, it was stated that the flora and fauna consultant provided advice during the preparation of the submitted bushfire report. Neither of these reports submitted with the development application refer to any such interactions. Furthermore, the submitted bushfire assessment report does not identify species any threatened species or threatened species issues listed pursuant the Threatened Species Conservation Act (1995).

The FFR does assess the impact of the construction of the APZ on threatened species and concludes that the winter slashing of the grassland may promote the ongoing establishment of Hairy Joint Grass within the APZ. Council officers do not support this conclusion given that to maintain minimised fuel loads the APZ will require regular slashing. This slashing is expected to increase during the peak summer fire season which is also the species primary growing and seeding season (November – May). As a result, the construction of the APZ is expected to have an adverse impact on the species.

In relation to this issue the NSW Rural Fire Service provides Development Control Note 02 which establishes the circumstances in which easements can be established on adjoining land parcels. Section 3 of the Development Control Note states;

"Easements should not be considered where the adjoining land is used for a public purpose where vegetation management is not likely or cannot be legally granted (eg national park, Council bushland reserve), where the adjoining zoning is not compatible with vegetation management (eg environmental protection, endangered ecological communities, etc) or where the onus for management rests other than with the benefiting land holder".

Given that part of the APZ is located within known threatened species habitat and is on land which is currently proposed for rezoning to an Environmental Protection Zone under a current planning proposal, the establishment of the APZ on adjoining Lots 1 and 99 is not supported.

Ecological issues associated with proposed Mosquito Management Program

To provide for the adequate control of mosquitoes on the site, a Mosquito Management Operation Manual has been submitted. This manual proposes, amongst other things, to apply an outdoor residual insecticide (bifenthrin) to designated garden shrubs planted around each dwelling. Due to the potential risk of adverse environmental impacts arising from this proposal, Council's letter of the 11 April 2011 stated that:

"It is noted that while this manual provides specific detail about the area to be treated with bifenthrin and contains some suggestions in relation to the protection of pollinating insect species, it does not go into the broader aspects of the environmental impacts of this product when used in this manner. The Mosquito Report then concludes that as the plants detailed within the Landscaping Plan are winter flowering plants no adverse impacts are expected. However, the conclusion is questioned given that some of the plants referred to in the Mosquito Report such as Alocasia brisbanensis and Crinum pedunculatum flower in summer.

The Mosquito Management Operation Manual also fails to address a more important issue of what impact the residual spray may have on the insects pollinating the adjacent rainforest communities. Concern is raised in relation to potential impact on the broader range of non target species including those that are expected to be present in the nearby rainforest remnants and aquatic organisms in nearby wetland which could be impacted in the event of rainfall following application.

It also appears that the vegetated bioretention basins intrude into the identified open space mosquito buffer areas identified in the report as being free of such vegetation. As bifenthrin is known to be toxic to aquatic organisms Council considers it is highly likely that bifenthrin could be transported into adjacent watercourses and downstream wetlands via the stormwater treatment areas.

In addition to the above, it is noted that the Mosquito Impact Assessment does not address impacts related to the vegetation community adjoining the southern edge of Building M off Satinwood Place.

Additional information is therefore requested about the ecological impacts of chemical application over other options for managing mosquitoes especially in the long term, rainwater tank management, bioretention basin management for mosquitoes and an assessment of impacts on Building M'.

In response, the applicant failed to provide any robust information to address the abovementioned concerns. A review of the Mosquito Management Operation Manual identified a range of issues. It concludes that in order to reduce adverse impacts to non target species, the residual insecticide should only be applied to winter flowering garden plantings. It is highly questionable whether personnel applying the residual insecticide would be firstly able to identify winter flowering plants and secondly, be able to limit spraying activities to specific plants.

The Manual also states that the Open Space buffer between the rainforest buffer plantings and the adjacent dwellings should consist of mown grass

and/or hard surfaces with minimal shrub cover. As a consequence, if the residual insecticide is applied in accordance with the Manual there would no mosquito control undertaken between the main mosquito harbourage areas (EECs and buffer plantings) and the adjacent dwellings, thus rendering the program ineffective in these areas.

In reality, it is expected that as mosquito numbers become an issue, residual insecticide is likely to be applied to the rainforest buffer plantings and possibly even the associated EEC rainforests. Given that the residual insecticide (bifenthrin) is highly toxic to bees and toxic to other fauna species, the spraying of these environments is not supported.

The Mosquito Management Operations Manual also contains reference to the *“Maintenance of the clear open space buffers between the dwelling units and retained vegetation standing on the site”*. Though not clearly stated, it is expected that the outer edge of the buffer plantings which were established to protect the adjacent threatened species and rainforest EECs will require ongoing lopping and trimming in order to comply with this recommendation of the Manual. The ongoing works to the subject vegetation are not supported and are considered to be inconsistent with the Vegetation Management Plans previously submitted and approved in previous development applications for the site.

Peer Review

As previously stated, the applicant engaged a consultant to undertake a peer review of the original FFR to verify its adequacy. The peer review concluded that the FFR was rigorous enough to allow Council to determine that development application did not require the preparation of a Species Impact Statement (SIS). Due to the reasons provided above the conclusions reached in the peer review cannot be supported.

Furthermore, the conclusions reached in the peer review are considered limited because, amongst other things, it has not:

- reviewed or referenced documentation submitted for previous development applications approved for the site (including DA 2004/605);
- reviewed the FFR prepared for the adjacent Henderson Farm planning proposal;
- reviewed other technical reports (bushfire, stormwater and mosquito reports) that accompanied the subject development application;
- reviewed the independent ecological report by Warren (2010) that applies to the subject land;
- reviewed Council's letter requesting additional information dated 11 April 2011;
- assessed the impact the future growth of the buffer plantings may have on the adjacent dwellings; nor,
- undertaken any research and/or database searches to determine whether additional threatened species of flora or fauna have the potential to occur within the Study area.

Conclusion

In its current configuration, it is considered, based on the above, that the subject development application cannot be supported. It should be noted, however, that the majority of the ecological issues may be able to be

addressed through the incorporation of adequate building setbacks to significant stands of vegetation and through ensuring that ancillary infrastructure, such as stormwater management infrastructure, does not result in adverse ecological impacts on the known threatened species habitats. The current proposal would require a significant redesign to achieve this.

Bushfire

The subject site is identified as being bushfire prone with the western end of the site within the buffer zone of Category 1 (High Risk) bushfire prone land. Section 79BA of the *Environmental Planning and Assessment Act 1979*, development consent cannot be granted for the carrying out of development for any purpose on bushfire prone land unless the consent authority is satisfied that the development conforms to the specifications and requirements of the document entitled *Planning for Bush Fire Protection*, prepared by the NSW Rural Fire Service in co-operation with the Department of Planning. The development application is supported by a Bushfire Threat Assessment Report which provides an assessment of the proposed development for compliance with the requirements of *Planning for Bushfire Protection*. The proposed development is not classified as integrated development and has not been referred to the NSW Rural Fire Service.

The Bushfire Threat Assessment Report identifies Asset Protection Zones (APZs) for the buildings in the proposed development in accordance with the requirements of *Planning for Bushfire Protection* and the identified vegetation on the site that represents a bushfire threat. The report also establishes Bushfire Attack Levels (BALs) for the buildings in accordance with Australian Standard 3959:2009 based on the identified APZs. The BAL for each building is determined based on the distance from the edge of the outer wall of the building to the vegetation. The buildings identified as being at most risk of bushfire attack are Buildings F, G, I, J and M.

It should be noted that Australian Standard 3959:2009 is silent on the method of determining the width of an APZ and the assumption is made that the width of an APZ should be determined by a measurement between the building and the outer edge of the canopy. In the case of the proposed development, the Bushfire Threat Assessment Report identifies the APZs as being measured from the edge of the building to the edge of the vegetation at surface level. Proposed Buildings F and G are those closest to the highest bushfire risk on the site and the applied APZ has been measured from the buildings to the "line of existing vegetation" as detailed on the plans for the proposed development. This line of existing vegetation represents the outer extent of the rainforest planting zone (buffer areas) required as a condition of consent in DA 2004/605. The trees planted in this rainforest planting zone comprise an ecological buffer. These trees have not yet reached maturity and present a potential risk as they mature in time and increase the vegetation canopy closer to the proposed buildings minimizing the effects of the proposed APZ. In normal circumstances APZs are maintained to comply with specified standards. Concern is raised in this instance with regard to potential future conflicts resulting from the requirement to trim and/or lop the buffer plantings to maintain the APZ and how this may affect the integrity of the required rainforest buffer plantings.

The proposed development has been assessed with regard to bushfire risk by Council's building surveyor. This assessment, in consideration of the issues raised above, offers the following options as potential solutions:

1. that the author of the Bushfire Threat Assessment Report re-assess the nominated BALs having regard for the likely extent of the future canopy cover either prior to the determination of the development application or prior to the issue of a Construction Certificate,
2. allow the applicant to identify and obtain consent for the removal of some of the established vegetation within the rainforest planting zone to limit the future extent of the canopy into the APZ, or
3. determine the application with a consent condition requiring that the applicable buildings be constructed to the highest BAL standard.

It is recommended that should the proposed development be supported, development consent should be conditioned to incorporate the requirements of option 1 above. This option is considered to be the most practical means of addressing the issue of the APZ and BAL to the buildings concerned.

The proposed development is also seeking approval for the creation of a 10m wide easement parallel to the northern boundary of the site on the adjoining land. This easement is for the purposes of establishing an APZ to manage the bushfire risk to the site from the wetland and grassland north and west of the site. The development application is supported by a Deed of Grant of Easement executed by the owner of the subject land.

The submitted deed is primarily for the purposes of establishing the easement on the adjoining land for the purposes of reducing the bushfire hazard to the subject site. The purpose of the easement is to relieve the requirement for the APZ to be incorporated within the site containing the proposed development. The submitted deed provides for the release of any obligations on the adjoining landowner with respect to the proposed APZ easement should the adjoining land be rezoned for residential purposes.

This adjoining land is currently zoned 1(d) – Rural (Urban Investigation) under the current BLEP provisions and is also subject to an exhibited planning proposal for the rezoning of the land. This planning proposal is seeking approval to rezone the majority of the land adjacent to the northern boundary of the subject site for urban residential purposes (ie. 2(a) – Living Area Zone) with the remaining adjoining land to be designated 7(a) – Environmental Protection (Wetlands) Zone.

Council officers have raised a number of issues relating to the establishment of an easement burdening the adjoining land specifically for the benefit of the development of the subject site. In general terms, this relates to standard merit assessment issues that are applied to any development where development should:

- be fully contained within the boundaries of the subject site;
- not unnecessarily burden adjoining land; and,
- not result in the overdevelopment of the site.

In addition to the above, when the NSW Rural Fire Service requirements are taken into account, the placement of the easement on the adjoining land for the Asset Protection Zone is not supported based on the following:

- *Planning for Bushfire Protection* 2006 - Section 4.1.3
"Bush fire protection measures that are essential to a development should occur on the site of the proposed development unless exceptional circumstances apply."
- *Planning for Bushfire Protection* 2006 - Section 3.3
"The DA must demonstrate that exceptional circumstances apply to the land to be developed prior to approval for the establishment of an easement", and
- *Standards for Asset Protection Zones* 2005 (p 4)
"The asset protection zone should be located wholly within your land."

The "exceptional circumstances" referenced above are further detailed in the NSW Rural Fire Service Development Control Note 002 (Version 1.0, Dated 16 September 2004), which establishes principles for determining what are exceptional circumstances and the methodology for providing APZs on easements beyond the proposed developed land. The Development Control Note, in identifying exceptional circumstances, states that an easement for an APZ can be considered "where it can be demonstrated that there is a strong likelihood of the adjoining land being developed for future residential or other compatible purposes."

As detailed above, some of the adjoining land is identified as having a strong likelihood of being developed for future residential purposes as part of the rezoning planning proposal. However, the section of the adjoining property containing the highest bushfire risk, being closest to the forested wetland and identified high risk bushfire prone land, is proposed to be zoned for environmental protection purposes under the currently exhibited planning proposal for the adjoining land.

The RFS Development Control Note specifically states that easements for APZs should not be considered where the adjoining land is not compatible with vegetation management (eg. environmental protection). It also states that easements should not be considered where the adjoining land is used for a public purpose. In this regard, and in consideration of the current planning proposal for the adjoining land, it is uncertain as to what the future status of the adjoining land will be, particularly at the higher bushfire risk western end of the site.

In consideration of the above, Council officers are of the opinion that exceptional circumstances do not apply to the land and therefore, in accordance with the RFS requirements, the APZ should be appropriately contained within the subject site. Consequently, the proposed development in its current form is not supported in this regard.

Stormwater Quality and Quantity

A Stormwater Management Plan has been submitted with the development application dated 27 January 2011. Council's engineers have assessed the Stormwater Management Plan and have found it to be generally acceptable. The plan provides for a mix of rainwater tanks, level spreaders (to dissipate concentrated flows), permeable paving, swales, buffer strips and bioretention areas. The report proposes 278m³ of storage on site.

There are two main water catchments for this development. One catchment is located in the area of the site off the western end of Tallow Wood Place

(Precinct 1) and the other is located off the southern end of Satinwood Place (Precinct 2). The flows in the Precinct 1 section are to be managed via 2 x reinforced concrete pipes of 900mm diameter. The flows in Precinct 2 are to be diverted to the side boundary through a pipe network.

It is proposed to reroute stormwater from the external catchments through Precinct 1 via the above pipe network and discharge directly onto the adjoining property (Lot 99 DP 755684). The discharge point on the adjoining property is not a watercourse and would comprise uncontrolled concentrated flow causing nuisance flooding of the area. It is a requirement that this flow be managed, controlled and conveyed into a suitable receiving body such as a detention basin. No details of such are included in the proposal plans and consequently the application is considered to be deficient in this regard. In order to support the development, the proposal plans would need to be amended to incorporate this stormwater receiving body within the development site.

It is proposed to undertake similar stormwater management practices for Precinct 2, however this catchment has a notation specifying that the applicant has approached the adjoining land owner for consent to establish a 10m x 10m scour protection zone on the adjoining land parcel. Council does not support the establishment of this private stormwater infrastructure on the adjoining allotment and the proposed development is not supported in this regard. All stormwater flows from Precinct 2 are to be conveyed and contained within an appropriate point of discharge that is a suitable receiving environment or legal point of discharge within the subject site. In their assessment, Council's engineers are satisfied that should the application be supported, this requirement can be adequately achieved via conditions of development consent.

The remaining catchments are to be diverted and realigned to the existing drain on the eastern boundary of the site. While this is considered to be suitable practise, no stormwater calculations have been provided quantifying the size of the existing drain and its suitability to accommodate the increased flows. Additionally, the receiving environment is required to be stable enough to contain and convey the flows without causing nuisance flooding in the area. The sizing of this drain could be determined at detail design stage, however the velocities must be controlled for erosion mitigation and public safety purposes. It is considered that this requirement can be achieved via appropriate conditions of consent, should the application be supported.

The plans attached to the submitted conceptual stormwater management plan show bio-retention basins in close proximity to some of the proposed dwellings. It is considered that this may result in difficulties in building the basins to the size shown on the stormwater management layout plans.

In addition to the above, Council's engineers have advised that the stormwater treatment requirements as contained in the deferred commencement conditions for DA 2004/605 have not yet been satisfied. The accepted stormwater proposal satisfying the deferred commencement conditions for DA 2004/605 requires the provision of 900m³ of stormwater detention areas which have not yet been provided and are not shown on the submitted plans for DA 2010/678. This particular aspect of stormwater management on the site is considered to be significant and has the potential to substantially affect the design and layout of the proposed development.

Council requested additional information from the applicant in the letter requesting further information dated 11 April 2011. Specifically, it was requested in this letter that additional details be submitted detailing how the required 900m³ of stormwater detention as required as part of DA 2004/605 would be incorporated into the development proposal and that the Stormwater Management Plan submitted with the development application be amended to reflect these requirements. The applicant failed to address these requirements in their response.

Additional information was also requested in response to concerns raised by Council's assessing officers with regard to the adequacy of the proposed stormwater detention basins to fit within the dimensions provided in the locations proposed. The applicant, in response, refused to provide any additional information in this regard and requested this matter be addressed through conditions of consent. Council officers' concerns relate to the ability of the design to accommodate the stormwater treatments as specified and the effects this may have on the overall design of the development. Consequently, it is considered that due to the potential impacts on the design of the development and the uncertainty as to the ability of the proposed stormwater detention basins to fit within the locations specified, the development as proposed cannot be supported in this regard.

Based on the stormwater issues raised in this assessment, including the outstanding stormwater issues relating to DA 2004/605, this development application (2011/72) does not adequately address the management of stormwater on the site and is not supported in this regard.

2.4.15 SOCIAL IMPACTS

EP&A Act, Section 79C(1)(b) the likely impacts of development

It is acknowledged that there is a need for affordable rental housing in Ballina Shire and that it can be expected that positive social impacts can result from the provision of affordable housing. Council has adopted an Affordable Housing Strategy which further addresses this issue. An assessment of the Affordable Housing Strategy is contained below in Section 2.9 of this report. In considering development for the purposes of affordable housing, it is also essential to assess the suitability of the site for that use and negative social impacts that may result from unsuitable locations.

The subject site is located on the suburban edge of Lennox Head approximately 2.2km driving distance to the Lennox Head Village Centre. The site is located a considerable distance from essential community services, facilities and employment centres which may have undesirable social accessibility impacts on incoming residents or discourage candidate affordable housing tenants given the expected heavy reliance on car ownership.

Crime Prevention

The applicant submitted an assessment of the proposal against the principles of Crime Prevention Through Environmental Design (CPTED). The development is generally supported with regard to CPTED, however

minor issues were raised with regard to inadequate pedestrian/cycle access, insufficient details regarding illumination of common areas, insufficient details regarding proposed fencing, and concerns relating to potential concealment areas resulting from design, landscaping and privacy screening. It is considered that these matters can be adequately accommodated through conditions of consent should the proposed development be supported.

Accessibility

The proposed development was referred to Council's Access Reference Group who provided comments relating to the accessibility of the development for the disabled or mobility impaired. Some of the issues raised by the Access Reference Group include:

- The topography of the site and its distance from the commercial centre of Lennox Head will limit the ability of people with disabilities to access local services and amenities without some form of personal support. The ability to access amenities and services will play an important role in encouraging social inclusion.
- Proximity to public transport is also an issue as the closest point at which a person could access a regular passenger bus service is in excess of a kilometre away.
- Of the seventy four (74) units, only seven (7) will be able to be accessed by people with disabilities; however the plans reviewed do not provide details in terms of the size and accessibility of bathrooms.
- Whilst a number of the parking bays have fixed awnings over them, there are no undercover walkways from the car parking areas to the entrances of the units.
- There is no indication if there are to be allocated disability parking spots.
- Do the proposed parking bays meet disability standards?
- No details are provided in the plans with regard to the size and accessibility of bathrooms;
- The proposed development should include accessible footpaths and guttering that will allow people in wheelchairs to move freely.

Based on the above comments, many of the dwellings in the proposed development may not be suitable for occupation by the elderly, disabled or mobility impaired.

It should be noted, however, that the AHSEPP does not contain specific requirements for the provision of accessibility for dwellings. In addition, the proposed buildings are identified as a mix of Class 1a and Class 2 structures for the purposes of the Building Code of Australia (BCA). The BCA does not require provision of access for disabled persons or the mobility impaired for this class of structure.

2.4.16 ECONOMIC IMPACTS

EP&A Act, Section 79C(1)(b) the likely impacts of development

On face value, if the proposed development proceeds, it would result in positive economic impacts initially through construction opportunities and later through the provision of affordable rental housing of which there is an

identified need in Ballina Shire. Concern has been raised in submissions (see details below) that the proposed development may negatively impact on property values. It is considered beyond the role of the consent authority to speculate with regard to positive or negative impacts on private property values. It is unknown what the long term economic impacts of the proposed development would be on the land values in the immediate locality.

2.4.17 SUITABILITY OF THE SITE

EP&A Act, Section 79C(1)(c) the suitability of the site for development

The subject site has been identified in Council's strategic planning documents, development control plan and draft local environmental plan as being suitable for low density residential development comprising predominantly single dwelling houses on larger than normal lot sizes. A low density style of development represents the existing and desired future character for the precinct in accordance with the applicable land use regulations and development controls that apply to the land. These regulations and controls have been applied to the land in response to consultation with the community and having regard to the overall character of the various precincts that make up the Lennox Head village. Medium density development of an appropriate scale that is sympathetic with the design guidelines for Lennox Head is supported by Council in areas identified in the DCP. These areas have been selected in locations close to services and along the coastal strip where development can be designed to be compatible with the surrounding locality. The current built form of the locality of the subject site comprises low-density, single dwellings on large allotments. The locality has been identified as having particular characteristics in Council's strategic planning assessments and, consequently, appropriate development controls have been implemented to protect these in close consultation with local residents over the years. These controls are further reinforced in Council's Draft LEP as addressed earlier in this report. In this case, the proposed medium density residential flat development is incompatible with the character of the immediate surrounding locality, is inconsistent with Council's land use planning controls for the future development of the area, and is therefore not considered a suitable use of the site. Furthermore, the location of the site and its distance from essential community services, facilities and employment centres makes it unsuitable for an affordable rental housing development of this scale.

2.4.18 SUBMISSIONS

EP&A Act, Section 79C(1)(d) any submissions made in accordance with this Act or the regulations

The proposal was placed on public exhibition for two weeks commencing on Thursday 10 March 2011. A total of 226 written submissions either objecting to or supporting the proposal have been received. Of the 226 submissions, 212 (94%) objected to the proposed development and 14 (6%) were in support. In addition to the above, one of the submissions made in support of the proposed development also included 200 signatures submitted in the form of a petition in support of the development. Further comment relating to this petition is contained below. Of the submissions

received objecting to the proposal, 103 (46%) were from residents in the immediate Greenfield Road vicinity. Copies of all submissions received are **attached** to this report.

The submissions raising objections to the proposed development have been analysed and issues have been identified and addressed as detailed in the table below

ISSUE RAISED	COMMENTS
Access	
- distance to services too great	Access issues are addressed in Sections 2.4.13-17 of this report. The location and design of the development and the proximity of the site to essential community services, facilities and employment centres has been considered. The proposed development is considered inappropriate for the site in this regard. The accessibility of the development for the mobility impaired has also been considered and is addressed in the report.
- distance to services incorrect in application documents	
- poor accessibility for mobility impaired	
Aesthetic impacts	
- design not compatible with local buildings, more consistent with in-town medium density development	An assessment of the bulk and scale of the proposed development is addressed in Section 2.4.13 of this report. It has been concluded that the bulk and scale of the development is inappropriate for the site with regard to its impacts on the character of the surrounding built and natural environment. It is further concluded that the development does not adequately address or satisfy the relevant building design and development standards applicable to the site.
- incompatible with surrounding natural environment	
Affordable housing	
- development does not meet the needs of occupants of affordable housing	These aspects of the proposed development are addressed in Section 2.4.17 of this report where the suitability of the site for the proposed use is considered.
- no details have been provided relating to the management of the affordable housing	Should the development proposal be supported, the provision of these details would need to be required as a condition of consent in accordance with the AHSEPP requirements.
- concerns raised over consequences following end of 10 year affordable housing period	The proposed development has been assessed with regard to the regulatory requirements and likely impacts in Sections 2.4.1-17 above.

ISSUE RAISED	COMMENTS
	The provisions of the AHSEPP specifically allow that the development is only required to be retained as affordable housing for 10 years.
- proposed development inconsistent with Council's affordable housing policy	Comments relating to the consistency of the proposed development with Council's Affordable Housing Policy is contained in Section 2.9 of this report.
<i>Amenity</i>	
- proposed development will have negative impact on residential amenity	Issues relating to the impacts of the development on the amenity of the surrounding residential locality are addressed in Section 2.4.13 of this report.
<i>Built form</i>	
- the built form of the proposed development does not integrate with surrounding environment	The bulk and scale of the proposed development and its proximity to property boundaries is discussed in Section 2.4.13 and the assessment against the provisions of Council's DCP in Section 2.4.11 of this report.
<i>Bushfire risk</i>	
- proposal inconsistent with best practise bushfire risk management	Issues relating to bushfire risk are addressed in Section 2.4.14 of this report.
- bushfire management plan not provided with application	
<i>Character</i>	
- development will have negative impact on existing and future character of locality	The proposed development has been assessed for its compatibility and consistency with the existing and desired future character of the locality. These matters are discussed further in the assessment of the proposed development against the provisions of Council's DCP and the assessment of the 'likely impacts' contained earlier in this Sections 2.4.11 and 2.4.14 of this report. It has also been assessed against the relevant development controls applicable to the site (refer to separate assessment of DCP provisions in this report). The proposed development is considered to be inconsistent with the existing and desired future character of the locality.
- properties were purchased based on existing character	
- desire to maintain semi-rural residential environment	
- development incompatible with character of existing natural and built environments	
- proposed development substantially alters the existing character of the locality	

ISSUE RAISED	COMMENTS
<i>Development Control Plan</i>	
- proposed development is inconsistent with the provisions of the Ballina Combined Development Control Plan	An assessment of the proposed development has been made against the provisions of Council's DCP as detailed in Section 2.4.11 of this report. Based on this assessment it is considered that the proposed development does not comply with the provisions of the DCP.
<i>Density</i>	
- change in density proposed will degrade atmosphere of existing built environment	Assessment of the density of the proposed development is included in Section 2.4.11 of this report and in the assessment of the 'likely impacts' of the development earlier in Sections 2.4.13-17 of this report. In comparison with the surrounding built environment, the proposed development represents a significant deviation from the current standard and does not comply with applicable density controls.
- chose to purchase property in locality due to current density	
- relative density of proposed development extreme at 1 dwelling per 330m ²	
- proposed density incompatible with existing	
<i>Design</i>	
- design does not integrate with surrounds	The proposed development is required to have regard for integration with the surrounding locality as required by Clause 15 of the AHSEPP. Further assessment of these design guidelines is contained in the assessment of the proposed development against the provisions of the AHSEPP as detailed earlier in Section 2.4.1 of this report. The assessment has concluded that the proposed development is inadequate in this regard.
- more diverse housing styles required to meet affordable housing needs	The proposed development includes a mix of 1-, 2-, and 3-bedroom dwellings in a mix of single and 2 storey buildings. The development is considered to provide an adequate dwelling diversity in this regard.
- poor accessibility for mobility impaired	Access issues have been assessed in Sections 2.4.13-17 of this report.
<i>Draft LEP</i>	
- proposal inconsistent with provisions of Draft LEP	The proposed development has been assessed with regard to the Draft LEP as detailed earlier in Section 2.4.10 of this report. The proposed development is

ISSUE RAISED	COMMENTS
	inconsistent with the provisions of the Draft LEP.
<i>Employment</i>	
- insufficient employment options locally to support development	The location of the proposed development and its separation distance from essential community services and facilities and to employment centres has been considered under 'likely impacts' and 'suitability of the site' as detailed earlier in Sections 2.4.13-17 of this report.
<i>Environment</i>	
- proposed development is unsustainable and no provision is made for solar or wind power or the incorporation of communal gardens	The applicant is obliged to provide connection to essential infrastructure services to Council's satisfaction. The dwellings in the proposed development have been issued with BASIX certification in accordance with regulatory requirements. Council does not currently require provision of solar or wind power facilities or internal communal gardens for private developments. The provision of these facilities would be at the discretion of the applicant/developer.
- proximity of development to sensitive vegetated areas	The proposed development has been assessed for its impact on the natural environment and is discussed further under 'likely impacts' earlier in Section 2.4.14 of this report. It is considered that the proposed development does not adequately address the ecological values of the site or the proximity of the development to, and likely impacts on the significant stands of littoral rainforest on the site.
- proximity of development to sensitive vegetated areas will result in negative impacts on diversity	
- inadequate assessment of impacts on threatened species and endangered ecological communities	
- impacts resulting from altered and increased stormwater runoff	
<i>Ethics</i>	
- ethics of the proposed development	The determining authority is generally not in a position to make decisions based on moral or ethical grounds. The development has been assessed for its impacts on the natural and built environment and for its compliance with regulatory and statutory controls and has been recommended for determination accordingly.

ISSUE RAISED	COMMENTS
<i>Facilities</i>	
<ul style="list-style-type: none"> - insufficient and inadequate community facilities available in the Lennox Head community 	<p>A level of community facilities are provided within the Lennox Head village such as basic commercial services, medical facilities, a primary school and library. There is minimal scope for expansion of these facilities given environmental and land use planning constraints. The use of the subject site for the proposed purpose is considered unsuitable having regard to its distance from the limited community facilities available in the wider locality.</p>
<ul style="list-style-type: none"> - no details have been provided for internal recreation facilities within the development for use of residents 	<p>The design of the proposed dwellings provides a basic level of internal amenity. No provision is made within the development for personal storage areas for bulky personal items or additional vehicles (such as boats, bicycles, motorcycles, trailers etc). Although requested, minimal details have been provided relating to the provision of communal facilities on the site such as shared gardens, barbecue areas, outdoor recreation areas, play equipment etc. Information was provided indicating several general areas for these purposes with no specific details provided. A number of these nominated areas are in conflict with the proposed environmental protection and stormwater treatment areas on the site. The proposed development is, therefore, considered deficient in this regard and it is questioned whether adequate open space areas exist on the site to accommodate these facilities. Should the development be supported, it is recommended that the proposed plans be amended to adequately provide a sufficient level of internal facilities.</p>
<i>Financial</i>	
<ul style="list-style-type: none"> - negative impacts on adjoining properties due to loss in value 	<p>Determination of development is generally not made based on impacts on property values where</p>

ISSUE RAISED	COMMENTS
	development is permissible and has adequately addressed environmental impacts.
<i>Flora & Fauna</i>	
<ul style="list-style-type: none"> - impacts of domestic animals on flora and fauna - negative impacts of development on flora & fauna in locality 	The proposed development has been assessed with regard to the environmental constraints of the site and likely impacts on flora and fauna as detailed under 'likely impacts' in Section 2.4.14 of this report. It is considered that the development application has inadequately assessed the impacts of the development on the flora and fauna present on the site.
<i>Historical context</i>	
<ul style="list-style-type: none"> - outcomes of previous development applications indicate site not considered suitable for medium density development 	The proposed development must be assessed on its own merit. Compliance with relevant development controls for the site has been assessed as detailed in Section 2.4.11 of this report.
<i>Infrastructure</i>	
<ul style="list-style-type: none"> - insufficient provision of infrastructure to service development 	This aspect of the development has been assessed by Council's engineers who have concluded that the existing infrastructure in the locality does have the capacity to service the development, subject to conditional consent.
<i>Law and order</i>	
<ul style="list-style-type: none"> - concerns for public safety due to no police station in Lennox Head 	The proximity of the site to essential community services and facilities has been considered as part of the assessment and is discussed under 'social impacts' in Section 2.4.15 of this report.
<i>Legislative conflict</i>	
<ul style="list-style-type: none"> - application has manipulated provisions of SEPP 	The proposed development has been assessed with regard to the AHSEPP and other relevant planning instruments and regulatory controls as detailed in Section 2.4.1 of this report.
<i>Lennox Head – impacts on</i>	
<ul style="list-style-type: none"> - development not what community wants for village - size of village not suitable to accommodate the development - inconsistent with Lennox Head Community Aspirations Plan 	The proposed development has been assessed with regard to its impacts on the locality and its compatibility with the surrounding locality and with the coastal village character of Lennox Head. This matter has been assessed against the provisions of Council's DCP and

ISSUE RAISED	COMMENTS
	under 'likely impacts' as detailed in Sections 2.4.11 and 2.4.13 of this report. This matter is also considered having regard to applicable strategic planning documents and the North Coast Urban Design Guidelines as contained in Section 2.6 of this report.
<i>Local Environmental Plan</i>	
- proposed development is inconsistent with Ballina Local Environmental Plan 1987	The proposed development has been assessed for consistency with the BLEP as detailed in Section 2.4.9 of this report.
<i>Location</i>	
- location inappropriate for type of development	The location and suitability of the site for the proposed development has been assessed in Sections 2.4.13 and 2.4.17 of this report.
- site isolated from essential services (business, community, employment)	
<i>Long Term Planning</i>	
- proposed development is inconsistent with Council's long term planning policies	The proposed development has been assessed against Council's development controls and strategic planning policies (see earlier assessments in this report). The development, as proposed, has been found to be inconsistent with these controls and policies.
<i>Management plan</i>	
- proposed development does not conform with Greenwood Grove Management Plan	Consideration has been given to elements of the Greenwood Grove Management Plan which was prepared as a result of DA 2004/605. However, the proposed development has been assessed on its own merit.
<i>Mosquito impacts</i>	
- location of dwellings in mosquito risk area	The proposed development has been assessed against the provisions of DCP Chapter 11 – Mosquito Management (see assessment of DCP provisions in Section 2.4.11 of this report).
<i>Noise</i>	
- negative noise impacts on surrounding locality	The subject land is currently zoned for urban residential uses. The proposed development involves use of the land for residential purposes. Generally, it is considered that residential development does not inherently result in excessive additional noise impact.

ISSUE RAISED	COMMENTS
	Notwithstanding this, the development has been assessed with regard to its impacts on adjoining properties as discussed in Sections 2.4.13-17 of this report.
<i>North Coast Urban Design Guidelines</i>	
- the proposed development does not comply with North Coast Urban Design Guidelines	The proposed development has been assessed against the North Coast Urban Design Guidelines in Section 2.6 of this report.
<i>NSW Coastal Policy</i>	
- the proposed development is inconsistent with NSW Coastal Policy	The proposed development has been assessed against the provisions of the NSW Coastal Policy as detailed in Section 2.5 of this report.
<i>Over development</i>	
- the proposed development is an over development of the site	The suitability of the site, bulk and scale and density of the proposed development have been assessed as detailed in Sections 2.4.13-17 of this report. It has been concluded that the proposed development does constitute an over development of the site.
<i>Overlooking</i>	
- the proposed development results in the undesirable overlooking into private spaces of adjoining properties	The proposed development has been assessed with regard to the overlooking of adjoining properties as detailed under 'likely impacts' contained in Section 2.4.13 of this report.
<i>Overshadowing</i>	
- the proposed development results in the overshadowing of adjoining residential properties	The proposed development generally complies with development controls with regard to overshadowing adjoining properties. It is not expected that an unreasonable level of overshadowing will occur on adjoining properties. Overshadowing is regulated in Chapter 16 of the DCP and is discussed in Section 2.4.11 of this report.
<i>Parking</i>	
- negative impacts on adjoining properties resulting from on-street parking	Matters relating to parking are discussed as part of the impact assessment of the development in Sections 2.4.13-17 of this report.
- insufficient spaces provided to service demand generated	The AHSEPP contains specific car parking provisions that apply to the proposed development. Where the

ISSUE RAISED	COMMENTS
	development complies with the provisions of the AHSEPP, car parking cannot be used as a ground for refusal of the development application. The proposed development complies with the AHSEPP car parking requirements applicable at the time of lodgement of the development application.
<i>Pedestrian Access</i>	
<ul style="list-style-type: none"> - inadequate provision for pedestrian access 	Pedestrian access is discussed in the assessment of the development, its suitability for the site and against relevant development controls earlier in this report. While the applicant has given an undertaking to provide some improvements to the surrounding pedestrian path network, it is still considered that substandard pedestrian access infrastructure exists between the site and the Lennod Head village centre.
<i>Precedent</i>	
<ul style="list-style-type: none"> - proposed development will set precedent for other medium density developments in area 	Any future development on other sites will be required to demonstrate compliance with the AHSEPP and any other relevant planning instruments and development controls as the subject development has been required to do.
<i>Previous Development Applications</i>	
<ul style="list-style-type: none"> - the development should be restricted to comply with requirements of previous development approvals for the site 	Whilst there remain outstanding conditions from DA 2004/605 relating to the subject land, the application must, and has, been assessed on its own merit having regard to the land use regulations and development controls applicable to the site.
<i>Privacy</i>	
<ul style="list-style-type: none"> - proposed development will result in loss of privacy for adjoining residents 	The development has been assessed against its potential impacts on adjoining properties. A number of issues have been raised with regard to the proximity of the development to property boundaries and the negative impacts of overlooking and loss of privacy for adjoining properties is detailed the assessment of 'likely impacts' in Section 2.4.13 of this report.

ISSUE RAISED	COMMENTS
<i>Public Interest</i>	
- the proposed development is not in the public interest of the community	The consistency of the development with applicable land use regulations and development controls has been included in this assessment and is contained above. Discussion of the development and whether or not it is in the public interest is contained below.
<i>Public Transport</i>	
- development site is inadequately serviced by public transport	Transport issues have been considered in the assessment of the development as contained earlier in this report.
<i>Road Network</i>	
- existing road network is of inadequate design and capacity to accommodate traffic generated by the development	It has been concluded that the existing road network has the capacity to accommodate the additional traffic demands created by the development. Further discussion of roads and traffic issues is contained in the assessment of 'likely impacts' contained in Section 2.4.13 of this report.
<i>Safety</i>	
- effects of afternoon sunlight on Greenfield Road traffic	Traffic and road safety issues have been discussed in the assessment of 'likely impacts' contained in Section 2.4.13 of this report.
- impacts on road and footpath safety due to increased use	
<i>Scale</i>	
- the scale of the proposed development is inappropriate for the site	The scale of the development is discussed in the assessment of 'likely impacts' contained in Section 2.4.13 of this report. It has been concluded that the bulk and scale of the development proposal is inappropriate for the site.
<i>Seniors Living Urban Design Policy</i>	
- proposed development is incompatible with Seniors Living Urban Design Policy	A full assessment against the provisions of this policy is contained in the assessment of the development against the provisions of the AHSEPP contained in Section 2.4.1 of this report. The proposed development has not adequately addressed the design provisions of this policy.
<i>State Environmental Planning Policy 71 – Coastal Protection</i>	
- the proposed development is incompatible with the provisions of this SEPP	An assessment of the proposal against the provisions of SEPP 71 is contained in Section 2.4.7 of this

ISSUE RAISED	COMMENTS
	report. The proposed development is considered to have not adequately addressed the provisions of SEPP 71.
<i>State Environmental Planning Policy (Affordable Rental Housing) 2009</i>	
- the proposed development is incompatible with the provisions of this SEPP	The relevant sections of the AHSEPP have been discussed earlier in this report. The proposed development is considered to have inadequately addressed the design guidelines as specified in the AHSEPP. At the time of lodgement of the development application, the AHSEPP did not nominate specific centres for this type of development.
- Lennox Head is not listed as a nominated regional centre in this SEPP	
<i>Services</i>	
- the capacity of existing services in Lennox Head insufficient to service demand created by proposed development	The access to and sufficiency of essential community services to cater for the development is discussed in the assessment of the impacts of and suitability of the site for the development as proposed (see details under 'likely impacts' and 'suitability of the site' contained earlier in Sections 2.4.13-17 of this report. The location of the proposed development is considered inadequate with regard to the accessibility and proximity of the site to essential community services.
- the proposed development has inadequate access to services	
<i>Setbacks</i>	
- the proposed development contains setbacks that are incompatible with those existing in the locality	Setbacks are discussed further in the assessment of the proposed development against the provisions of Council's DCP contained in Section 2.4.11 of this report.
<i>Social</i>	
- the proposed development will result in an unacceptable impact on the social fabric of Lennox Head	The social impacts of the development are discussed in the assessment of the 'likely impacts' of the development in Section 2.4.15 of this report.
<i>Storage Areas</i>	
- the proposed development contains no storage areas for items such as boats, trailers etc.	The development application details the provision of internal storage areas for each unit. The proposed design also incorporates a number of external storage areas for items such as bicycles and the like. No provision is made on the site for the storage of ancillary or recreational vehicles such as boats or trailers.

ISSUE RAISED	COMMENTS
<i>Suitability of Site</i>	
<ul style="list-style-type: none"> - site is not suitable for the development as proposed 	<p>An assessment of the suitability of the site for the proposed development is contained in Section 2.4.17 of this report. It is concluded that the subject site is not suitable for the development as proposed.</p>
<i>Sustainability</i>	
<ul style="list-style-type: none"> - the proposed development is unsustainable for the village of Lennox Head 	<p>The sustainability of the proposed development is discussed in the assessment of various regulatory requirements and development controls addressed in earlier sections of this report. The compatibility of the proposed development and likely impacts on the Lennox Head locality is also discussed under 'likely impacts', 'suitability of the site' (Sections 2.4.13 and 2.4.17) and the assessment against the provisions of Council's DCP all of which are addressed in Section 2.4.11 of this report.</p>
<i>Tenancy mix</i>	
<ul style="list-style-type: none"> - concerns raised over possible tenant mix in proposed development 	<p>The consent authority has no role in regulating or restricting the occupancy of dwellings providing the relevant land use regulations and development controls are met. It is noted that the AHSEPP contains specific requirements for the eligibility of occupation of affordable housing. The AHSEPP provisions are addressed in greater detail in Section 2.4.1 of this report.</p>
<i>Threatened Species Conservation Act</i>	
<ul style="list-style-type: none"> - the proposed development will have a negative impact on threatened species 	<p>The impacts of the proposed development on the flora and fauna of the locality are addressed under the 'likely impacts' of the development contained in Section 2.4.14 of this report. The submitted development application is considered to have inadequately addressed the impacts of the development on flora and fauna.</p>

ISSUE RAISED	COMMENTS
<i>Traffic</i>	
- development is heavily car dependent	The car dependency, traffic impacts and resultant amenity impacts of the development are addressed under the 'likely impacts' of the development contained in Section 2.4.13 of this report. The scale of the development is considered inappropriate for the locality.
- development will increase traffic and cause congestion	
- increased traffic will negatively impact on amenity	
- inadequacy of Coast Road and Greenfield Road intersection	This intersection has been assessed as sufficient to cater for the additional demand by Council's engineer as detailed under the 'likely impacts' of the development contained earlier in Section 2.4.13 of this report.
- inadequate school bus turning facilities	Developments of this nature are not generally required to provide bus turning facilities. It is understood that a regular school bus service operates on Greenfield Road without the need for turning facilities.
- inappropriate development for cul de sac	This issue is discussed further under the 'likely impacts' of the development contained earlier in this Sections 2.4.13-17 of this report.
- concern over loss of safe, quiet low-traffic street	The impacts of the proposed development on the amenity and streetscape and thus the character of the locality is addressed in the 'likely impacts' of the development contained in Section 2.4.13 of this report. The proposed development is not supported as a result of the negative impacts on the locality resulting from the bulk, scale and intensity of the development.
- Rosewood Place, Satinwood Place and Tallow Wood Place do not meet the requirements for an "access street (100 vehicles per day)"	The adequacy and safety of the surrounding street system to service the proposed development is addressed under the 'likely impacts' of the development contained in Section 2.4.13 of this report. Council's engineers are satisfied that these streets have the capacity to cater for the additional traffic demand.
- safety concerns due to increased traffic and current infrastructure	
- unacceptable traffic increase	Amenity impacts resulting from the increased traffic levels are addressed under the 'likely impacts' of the development contained earlier

ISSUE RAISED	COMMENTS
	in Section 2.4.13 of this report.
- conflicting information in traffic impact assessment (specifies a maximum of 100 vehicles per day for an “access street”, proposal stated to generate 380 vehicles per day)	The traffic impacts of the development have been assessed by Council's engineer and are discussed further under the ‘likely impacts’ of the development contained in Section 2.4.13 of this report.
- traffic impact assessment submitted with application inadequate	Council's engineers have reviewed the submitted traffic impact assessment and are satisfied with its adequacy.
<i>Unemployment</i>	
- concern raised over high unemployment in locality, no major employers for residents	The suitability of the site and its proximity to essential services such as employment centres is discussed in Section 2.4.17 of this report.
<i>Value</i>	
- the estimated value of the proposed development has been underestimated	The estimated cost of works for the proposed development has been reviewed by Council's Building Surveyor. It is concluded that, given the bulk and scale of the development, the estimated figure has been reasonably accurately calculated.
- poor accessibility for mobility impaired	Accessibility issues are discussed under the assessments of ‘likely impacts’ of the development and ‘suitability of the site’ contained in Section 2.4.17 of this report.
<i>Vegetation</i>	
- incorrect details provided with application documents and does not reflect reality	The application has been assessed with regard to the adequacy of the assessment of the impacts of the development on the vegetation present on the site. This matter is discussed under the ‘likely impacts’ of the development contained earlier in Section 2.4.14 of this report. The submitted application is considered deficient with regard to its assessment of the impacts the proposal would have on the flora and fauna of the locality.
<i>Views</i>	
- the proposed development will have an undesirable impact on views from adjoining properties	The impacts of the development on views are addressed in under the ‘likely impacts’ of the development contained in Section 2.4.13 of this report.

ISSUE RAISED	COMMENTS
<i>Village atmosphere</i>	
- the proposed development will have an undesirable impact on the village atmosphere of Lennox Head	The impacts of the development on the village atmosphere are addressed under the 'likely impacts' of the development contained Sections 2.4.13-17 and in Sections 2.5 and 2.8 of this report. The proposed development is considered to be of a bulk and scale that is incompatible with the existing and desired future character of this precinct of the Lennox Head village.
<i>Waste management</i>	
- inadequate provisions made in the development proposal for management of waste	Reference is made to waste disposal locations and garbage enclosures in the development application and on the proposal plans. As addressed in sections 2.4.1, 2.4.11 and 2.4.13, the proposed garbage enclosures are not supported and thus it is considered the development application has not made adequate provision for the management of waste.
- inappropriate placement of bins	
<i>Youth services</i>	
- insufficient services exist in the locality to service the needs of young people	The adequacy of essential community services available to the site is addressed under 'likely impacts' and 'suitability of the site' as contained earlier in Sections 2.4.13-17 of this report.
<i>Zoning</i>	
- the proposed development is inconsistent with the Local Environmental Plan zone provisions	An assessment of the proposed development with regard to the zone provisions of the Local Environmental Plan is contained in Section 2.4.9 of this report.

Acknowledgement is made of the submissions made in support of the application. A total of 14 submissions of support were received as well as a petition containing 200 signatures. These submissions indicate that there exists a significant level of support for the concept of the provision of affordable rental housing in Ballina Shire. A number of valid issues were raised in the submissions of support that include the following:

- allows occupants of larger dwellings to downsize and remain close to family/friends;
- will benefit the community by providing affordable housing
- will serve to address shortage of housing in area;
- will allow families to pay reduced rent and save for deposit on own home;

- will assist in providing social diversity through alternative residential accommodation options;
- will provide affordable rental housing to middle income workers; and,
- will create jobs through construction phase and servicing during occupation.

One of the submissions of support for the development application also included an attachment containing 200 signed form letters submitted in the form of a petition. Questions are raised as to the validity of this submission as each page of the submitted petition has been discovered to be a duplication of submissions made in support of a previous development application (DA 2010/678). It is doubtful as to whether each of the signatories on the petition are aware that their names have been submitted in support of DA 2011/72.

Notwithstanding, it would be fair to say that the revised design of this development application is broadly similar to that lodged under DA 2010/678 and could be regarded as being the same project. Consequently, the views expressed may well have been the same.

2.4.19 PUBLIC INTEREST

EP&A Act, Section 79C(1)(e) the public interest

It is acknowledged that there is a need for affordable housing in Ballina Shire and the approval of the subject development application would serve to meet this need. On face value, the provision of affordable housing would be considered as being in the public interest.

In context, however, the proposed development is considered to be incompatible with the existing and desired future character of the immediate locality. The development has not adequately addressed the provisions of the AHSEPP and demonstrates a number of inconsistencies with Council's development controls and strategic planning goals for the area. The subject site is not conveniently located in proximity to essential community services, facilities and employment centres as should be expected for affordable rental housing. Having regard for these issues, it is considered that the approval of the proposed development would not be in the public interest and is therefore not supported.

2.5 New South Wales Coastal Policy 1997

Pursuant to Section 79C of the *Environmental Planning and Assessment Act 1979* and Section 92(1)(a) of the *Environmental Planning and Assessment Regulation 2000*, the proposed development has been assessed against the provisions of the NSW Coastal Policy. The Policy contains a number of goals, objectives and strategic actions that seek to improve, enhance and protect the natural environment associated with the NSW coast. The majority of the strategic directions either do not apply to the subject site or are addressed under other regulatory instruments and policies elsewhere in this report. Some of the specific strategic actions identified in the policy and that apply to the proposed development are addressed in the table below.

NSW Coastal Policy Strategic Action	Proposed Development
2.1.3 Physical and ecological processes and hazards will be considered when assessing development applications	The physical and ecological processes and hazards that affect the site have been considered as part of this application. The subject site is generally considered suitable for urban development with the implementation of appropriate environmental protection measures relating to the significant stands of native vegetation present on the site.
2.2.2 Appropriate planning mechanisms will be considered for incorporating sea level change scenarios set by the Inter-governmental Panel on Climate Change	The subject site is considered elevated and distant enough from estuarine waters to not be directly and negatively affected by sea level change scenarios, therefore no specific additional planning controls are necessary in this regard.
3.2.2 The use of good design principles will be encouraged to ensure more compact, human scale towns are developed with their own character within the constraints of existing infrastructure	The proposed development has been subject to design standards required in both the AHSEPP and DCP Chapter 16 (see details in Section 2.4.1 and 2.4.11 of this report). The subject site is located within an existing establishing low density large lot residential precinct. The desired future character of this precinct is to allow this built form to establish and allow people a reasonable longevity and certainty about their chosen lifestyle. The subject site is approximately 1.5km walking distance and 2.3km driving distance from the Lennox Head village centre. Consequently it is considered that this separation from the village centre and the relative isolation from essential services does not achieve a more compact, human scale for Lennox Head. It is further considered that the proposed development is out of character with the immediate locality. The likely impacts of the development and its consistency with regulatory planning controls are contained in Sections 2.4.1-12 of this report.

NSW Coastal Policy Strategic Action	Proposed Development
3.2.4 In preparing and amending regional and local environmental plans and development control plans and when assessing development applications, consideration of the design and locational principles contained in the Coastal Policy (Appendix C Table 3) will be required.	The subject site has been identified as being suitable for low density large lot residential development. The site is sufficiently separated from the coastline and set within the topography to allow development that will not negatively impact on the scenic or physiological values of the coast.
3.3.1 Local and regional housing strategies for coastal towns will continue to be developed to encourage compact towns in a range of sizes and with a variety of forms.	The subject site comprises an infill area zoned for low density residential development that is compatible with the existing established and establishing development in the locality. Council has identified the area as being suitable for low density development that will maintain the established character of the locality given its physical setting within the structure of the Lennox Head village. The proposal is therefore inconsistent with Council's strategic land use vision for the area.
6.2.1 Planning instruments and development control plans will define the boundaries of urban areas and indicate the amount and form of development which is appropriate for each location taking into account the environmental and servicing implications.	The subject site has been identified as being suitable for residential development pursuant to the zoning provisions of the BLEP. The BLEP is further supported by Council's DCP which specifies the area as being suitable for low density large lot urban development. The low density large lot development designation for the land has been applied both as a result of community desire and having regard for the environmental and servicing implications of the urban development of the land.
6.4.1 A greater choice in housing will be encouraged in coastal urban areas through local and regional housing strategies	Council's DCP has designated a variety of urban forms within the Lennox Head village in response to the existing and desired future character of the village. This is typified by a compact village centre surrounded by medium density developments extending along the beachfront with lower density more traditional suburban lands on the periphery. The subject site, located at the western extremity of the

NSW Coastal Policy Strategic Action	Proposed Development
	urbanised area of the village, has been designated for low density housing.
6.4.2 Higher density residential development, in close proximity to coastal town centres, should be encouraged through the use of planning instruments and development control plans, to provide easy access to services and employment and to create a sustained and stimulating town centre environment without strain on existing infrastructure	Council's DCP has designated areas within close proximity to the village centre as suitable for medium density development. This has been the result of community consultation through which the desired future character of the village has been determined. Development of the village is also constrained by limited services and a desire to restrict development in order to retain a small coastal village atmosphere. The majority of services and employment opportunities for Lennox Head residents lie outside the village in nearby centres such as the coastal town of Ballina.

It can be concluded that the location, bulk and scale of the proposed development is incompatible with the existing and desired future character of this part of the Lennox Head locality. The subject site is considered unsuitable for medium density development of this design and yield and the application does not comply with the strategic actions recommended in the NSW Coastal Policy.

2.6 North Coast Urban Design Guidelines 2009

The North Coast Urban Design Guidelines have been prepared by the NSW Department of Planning to assist with the assessment of the existing positive attributes of urban settlements in order to maintain the character of the settlement throughout future settlement growth. The guidelines also outline principles and strategies for managing environmentally, economically and socially sustainable settlement growth. The proposed development has been assessed in accordance with these guidelines as follows.

Lennox Head can be classified as a coastal village for the purposes of the North Coast Urban Design Guidelines. The guidelines describe coastal villages as:

Coastal villages typically have a strong sense of community, are generally of walkable size, with possibly a public school, community hall, local shops and parks. Often the coastal location and moderate climate makes the settlement attractive to holiday makers and 'sea changers' seeking a more relaxed lifestyle. This can lead to significant development pressure and population growth. Care needs to be taken to ensure the settlement growth is sustainable and of a desirable character.

Comment

As previously discussed in this report, the proposed development is not considered to be compatible with the current and desired future character of this locality within the wider ambit of the Lennox Head village. The proposed development is also

considered to be inconsistent with Council's preferred development style for the locality.

The guidelines describe the key characteristics of coastal villages as:

Coastal villages are typically modest in scale and tightly defined within their natural landscape, often with a single, mixed-use 'main' street. Built form largely comprises detached dwellings with the occasional small scale apartment building or dual occupancy accommodation.

Comment:

The subject site, while separated from the original village centre of Lennox Head, is considered to comprise a supporting residential precinct of the wider Lennox Head village. The precinct contains a built form that is complementary to and compatible with the character of the village of Lennox Head. The proposed development is considered to be inconsistent with the key characteristics of a coastal village as detailed above and inconsistent with the desired future character of the low density suburban nature of the precinct surrounding the site. The built form, bulk and scale of the proposed development are considered to be inconsistent with the current and desired future characteristics of the existing surrounding residential precinct and with the concept of Lennox Head as a coastal village.

The guidelines contain a summary of principles to assist in the management of settlement growth. It is stated that development should be guided to "reinforce the character of settlements and to minimise impact on the natural environment". As previously discussed earlier in this report, the proposed development is considered to be incompatible with the existing and desired future character of the particular locality of this site and is inconsistent with the development control provisions for the site. The development application is also considered to have inadequately addressed the likely impacts of the development on the significant stands of littoral rainforest on the site and the local fauna.

It can be concluded that the proposed development, having regard to the concept of coastal villages and supporting residential precincts, the key characteristics of these villages and the principles recommended to manage settlement growth, is inconsistent with the directives contained in the North Coast Urban Design Guidelines.

2.7 Lennox Head Community Aspirations Strategic Plan 2002

The Lennox Head Community Aspirations Strategic Plan was adopted by Council in November 2002. This plan was developed in consultation with the community to provide a strategic direction for the future development of the Lennox Head village. In the formulation of the plan, several key issues of relevance for the future planning and development of Lennox Head were identified. These issues are addressed through the implementation of six strategic principles and required actions. Further assessment of the proposed development with regard to the relevant principles is detailed below.

Urban Growth

The proposed development is on land that has been previously zoned for urban purposes and generally complies with the strategic urban growth principles contained in the strategic plan. Through the strategic plan, the community has identified a preferred average density for new release areas of eight dwellings per hectare (one dwelling per 1250m²). Although the subject site is not considered a new release area, the proposed development is to take place on a large parcel of land that has not

previously been used for urban development. The site also adjoins a potential future new release area comprising rural land that is the subject of a current rezoning application for urban uses (the Henderson Farm – BLEP Amendment No. 103). It is currently proposed that the majority of the land adjoining the northern and western boundaries of the subject site will be zoned for environmental protection purposes. The development site contains substantial areas that are constrained by the presence of native vegetation. As such the developable area of the site is restricted. Excluding the vegetated areas, the site has an area of approximately 13560m² suitable for development. The proposed development, involving a residential flat development comprising 74 units, has a relative density of one dwelling per 233m² and indicates a vast difference from the preferred one dwelling per 1250m² for new release areas.

Community Infrastructure

The strategic plan recognizes the shortage of community facilities in the Lennox Head locality. Should approval be granted to the proposed development, consent would be conditioned to require the payment of developer contributions in accordance with Council policy. Some of these contributions would be for the purposes of purchasing community land and enhancing assets in the locality. It should be noted, however, that there is considerable lead time in the purchasing, design, planning and construction of such facilities.

Environment

The strategic plan outlines a number of actions in relation to the protection and restoration of the natural environment in the Lennox Head area. As a result of previous subdivision approvals on the site, the areas of significant vegetation have been subject to restoration and rehabilitation works. The proposed development involves the erection of a number of buildings in close proximity to the rehabilitated vegetation areas. Concerns are raised by Council officers with regard to the adequacy of the vegetated buffer and the separation distance between the proposed buildings and the edge of the vegetated area. This matter is addressed in Section 2.4.14 of this report. Concerns are also raised with regard to the sufficiency of the proposed bushfire risk and mosquito management for the proposed development. These matters are further addressed in Section 2.4.14 of this report.

Housing and Development Form

The strategic plan contains a number of recommendations relating to the control of urban development, building design and density. It also seeks to promote the development of affordable housing. The strategic plan specifically identifies that while a range of densities is desired, higher densities are located closer to activity nodes, such as the village centre with lower densities in outlying areas. The subject site is located at the western periphery of the village and is considered to be an outlying area. In this regard, the development of the site for medium density purposes is considered incompatible with the strategic plan.

Transport and Accessibility

The strategic plan identifies the need for future development in Lennox Head to incorporate the “integration of landuse and transportation planning so as to reduce the dependence on the private motor vehicle”. As previously identified, the proposed development is isolated from essential services and facilities and as a consequence the occupants of the proposed development will be highly car dependent. In this regard, the proposed development is considered inappropriate for the site given its scale and relative isolation from essential community services and facilities. Should the application be supported, development consent will be conditioned to require the payment of developer contributions in accordance with Council policy. Some of these contributions will be utilized for the provision of additional and upgraded cycleway and

road transport facilities in the Lennox Head area. Furthermore, should the application be supported, it is recommended that in order to achieve the desired access and mobility principles for Lennox Head, appropriate development consent conditions should be implemented requiring the provision of adequate off-street footpath/cycleway facilities connecting the development to the Lennox Head village centre.

2.8 Lennox Head Structure Plan 2004

The Lennox Head Structure Plan has been prepared by Council to provide the framework for the planning and development of future urban land release areas in Lennox Head. The subject site is currently zoned for urban uses pursuant to the BLEP and is not considered to be an urban release area. The subject site, however, does adjoin an identified future urban release area to the north. This area is known as "Area E – Henderson Farm North" in the structure plan. The proposed development has been assessed with regard to the structure plan provisions for Area E due to the proximity of the site to this area and the integration and connection the proposed development will have between the established Greenfield Road precinct and this future release area.

Area E comprises the land directly north of the subject site. The area nominated for future urban use extends in a northeasterly direction towards The Coast Road. The structure plan identifies that this land is subject to a number of environmental constraints, but nominates some of the elevated portions of the site as suitable for future development. The structure plan specifies the preferred future density for urban development in Area E to be low density large lot residential development that is consistent with that currently provided in the Greenfield Road area. In this regard, the proposed development, comprising a medium density residential flat development, is not only inconsistent with the existing low density large lot area surrounding the site but also with the preferred urban density proposed for the land release area adjoining it to the north.

2.9 Ballina Shire Affordable Housing Strategy 2010

Council adopted an Affordable Housing Strategy in March 2010 which seeks to improve housing affordability in Ballina Shire. The strategy recommends a number of actions to be taken to address housing affordability. These include actions in areas such as maintaining adequate supplies of zoned land, development controls and the provision of incentives and subsidies. The affordable housing strategy specifically mentions the provisions of the AHSEPP and acknowledges that it has the effect of relaxing a number of development controls relating to particular residential developments. While generally supportive of relaxing development standards, the affordable housing strategy also emphasises that this should only occur when other community objectives are protected. The housing strategy indicates that intensification of residential development in existing urban areas is appropriate only when in proximity to commercial and community services and facilities. This aspect of the affordable housing strategy is now reflected in the amended AHSEPP development standards that took effect on 20 May 2011. The proposed development does not comply with these standards. Notwithstanding, the application is being considered on its merit and in consideration of the provisions of the AHSEPP applicable at the time of lodgement of the development application. Irrespective of the effects of the amendments to the AHSEPP, based on the above, it is considered that the proposed development is not consistent with the Ballina Shire Affordable Housing Strategy due to the distance of the subject site from essential commercial and community services and facilities and the incompatibility of the proposed development with the surrounding locality.

3. Conclusions

The proposed development seeks consent for the erection of multi dwelling housing comprising 74 medium density dwellings for the purposes of affordable rental housing utilising the provisions of the AHSEPP. At the time of lodgement of the development application the AHSEPP contained provisions that permitted medium density developments of the type proposed in urban zones and had the effect of prevailing over other planning instruments and development controls. The AHSEPP was amended on 20 May 2011 which had the effect of not only amending the development standards for affordable rental housing but also allowing consent authorities discretion in determining existing applications either under the pre-amendment AHSEPP standards or under the current AHSEPP standards. The May 2011 amendment incorporated new provisions for affordable rental housing to be located within 400 metres of a local centre. In this regard, the proposed development, being located greater than 400 metres from the Lennox Head village centre, is not permissible. The AHSEPP amendment also added the requirement that a consent authority must not consent to a development application made under the AHSEPP unless it has taken into consideration whether the design of the development is compatible with the character of the local area. In addition to these AHSEPP requirements, the development is also still required to be assessed against its impact on the surrounding environment.

Clause 54A(2) of the AHSEPP as amended, provides that an application made under the AHSEPP may be determined as if the amendment had not been made. Consequently, the consent authority must choose to either utilise the AHSEPP provisions applicable at the time of lodgement of the development application or utilise the amended AHSEPP provisions that took place. If the amended AHSEPP provisions are applied, the proposed development cannot be considered for approval as it is unable to meet the requirements of being within 400 metres of a local centre.

This assessment report has considered the proposed development against the provisions of the AHSEPP as applicable at the time of lodgement of the development application. It is concluded, as detailed in this report, that the development as proposed exhibits an unreasonable number of inconsistencies with various planning instruments, regulatory guidelines and development controls and does not comply with the design requirements as specified for consideration in Clauses 15, 16A and 54A of the AHSEPP.

Therefore, as a result of the assessment of the development application, it is concluded that the consent authority has the following options for determination:

1. That the application be refused based on the issues raised in this report. It is considered that the development as proposed does not adequately address the provisions of the AHSEPP and other relevant planning provisions, is not compatible with the character of the local area, does not adequately address the likely environmental impacts and is therefore not in the public interest.
2. That the application be approved subject to conditional consent, should it be determined that the need for affordable housing in the locality outweighs the expected negative environmental impacts of the development as proposed. It should be noted that if conditional approval is granted, it is considered that it will not be possible to ensure that the development satisfactorily addresses the issues raised in this report.

4. Recommendation

It is recommended that Development Application 2011/72 (JRPP Ref. 2011NTH009) to Undertake an Affordable Rental Housing Development in Accordance with State Environmental Planning Policy (Affordable Rental Housing) 2009 Comprising the Erection

of 74 Single and Two Storey Dwellings and Associated Infrastructure be **REFUSED** for the following reasons:

1. The proposed development does not satisfy the design requirements as specified in *Seniors Living Policy: Urban Design Guidelines for Infill Development* as required by clause 15 of *State Environmental Planning Policy (Affordable Rental Housing)* 2009.
2. The proposed development is not compatible with the character of the local area and therefore does not satisfy the requirements of Clauses 16A and 54A(3) of *State Environmental Planning Policy (Affordable Rental Housing)* 2009
3. The proposed development does not satisfy the requirements of clause 8 of *State Environmental Planning Policy 71 – Coastal Protection*.
3. The proposed development is not in accordance with the aims and objectives of the *Ballina Local Environmental Plan* 1987
4. The proposed development is inconsistent with the aims, objectives and zone provisions of the *Draft Ballina Local Environmental Plan* 2010.
5. The proposed development does not satisfy the aims, objectives and relevant development standards contained in the *Ballina Shire Combined Development Control Plan* including Chapter 1 – Urban Land, Chapter 11 – Mosquito Management and Chapter 16 – Lennox Head.
6. The proposed development is inconsistent with the recommended strategic actions contained in the *New South Wales Coastal Policy*.
7. The proposed development fails to adequately address the environmental constraints and attributes of the site and constitutes an overdevelopment of the site.
8. The cumulative impacts of the proposed development is likely to have an adverse impact on the amenity of future occupants of the development and adjoining residents.
9. The proposed development is not in the public interest.

Attachments

1. Site and Locality Plans
 2. Proposed Development Plans
 3. Submissions
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