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## SECTION 79C ASSESSMENT

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**APPLICATION NUMBER:** 10.2015.28.1

**APPLICANT:** adm Architects

**OWNER:** Rail Corporation NSW

**PROPERTY DESCRIPTION:** LOT: 1 DP: 1073158, 28 Bong Bong Street KIAMA

**SITE ZONING:** B2 Local Centre

**DEVELOPMENT DESCRIPTION:** MIXED USE DEVELOPMENT COMPRISING GROUND FLOOR RETAIL AND SEVENTY FIVE (75) RESIDENTIAL UNITS

**DATE:** 16 March 2015

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### **Development Site**

The property is described as LOT: 1 DP: 1073158 which is located at 28 Bong Bong Street KIAMA 2533.

The overall site measures 5488m<sup>2</sup> and is a rectangular in shape, corner allotment. The site is currently vacant and is bounded by Manning Street to the south-east, Bong Bong Street to the north-east, South Coast Railway line to the north-west and a mixed use (commercial/residential) development to the south-west.

The site is zoned B2 Local Centre pursuant to Kiama Local Environmental Plan 2011.

The site is cleared and slopes (cross falls) moderately from the north downward to the south.

Access to the property is available from both Bong Bong Street (primary frontage) and Manning Street (secondary frontage).

The site is serviced by electricity and telecommunications and by reticulated water and sewer.

The site is subject to the following constraints:

- Heritage items indicated in the Kiama Local Environmental Plan 2011 on adjacent land (the Grand Hotel and the Uniting Church)
- Noise and vibration from adjoining transport corridors (South Coast railway)

### **Description of the Proposed Development**

The proposal is a mixed use development consisting of fifteen (15) ground floor retail premises and seventy five (75) residential units (shop top housing). The development comprises four (4) storeys, with one (1) basement level.

The proposed development is configured as follows:

<b>Level</b>	<b>Proposed use</b>
Basement	<ul style="list-style-type: none"> <li>○ 132 residential car parking spaces;</li> <li>○ Residential storage areas; and</li> <li>○ 25 residential bicycle parking spaces;</li> </ul>
Ground floor	<ul style="list-style-type: none"> <li>○ 13 retail shops;</li> <li>○ Foyers (for buildings) A, B, C, D &amp; E;</li> <li>○ 74 car parking spaces (58 retail spaces and 16 resident visitor spaces);</li> <li>○ 15 bicycle parking spaces;</li> <li>○ Loading dock; and</li> <li>○ Residential and retail garbage bin enclosures;</li> </ul>
Level 1	<ul style="list-style-type: none"> <li>○ 2 retail shops;</li> <li>○ 23 residential units; and</li> <li>○ Residential common room;</li> </ul>
Level 2	<ul style="list-style-type: none"> <li>○ 26 residential units;</li> </ul>
Level 3	<ul style="list-style-type: none"> <li>○ 26 residential units.</li> </ul>

The proposed fifteen (15) ground floor retail premises include thirteen (13) facing Manning (Ground floor retail premises 3 – 15 inclusive) and two (2) facing Bong Bong Street (Level 1 retail premises 1 & 2). The size of the retail premises range from 84m<sup>2</sup> (Retail premise 15) to 163m<sup>2</sup> (Retail premises 10 & 13), with the average size being 135.27m<sup>2</sup>. The overall retail floor space amounts to 2029m<sup>2</sup>.

Retail premises 3 & 4, 6 & 7, 8 & 9, 11 & 12 and 14 & 15 are each divided by a non-load bearing wall, meaning the spaces may be amalgamated, where required, to provide for greater floor area and with that a more flexible end use.

The residential component of the development consists of seventy-five (75) units, made up of:

- 2 x 1 bedroom units;
- 49 x 2 bedroom units; and
- 24 x 3 bedroom units.

The proposed unit sizes range from 80m<sup>2</sup> to 115m<sup>2</sup> in floor area, with an average unit size of 106.8m<sup>2</sup>. Nineteen (19) of the proposed residential units are adaptable units.

The proposed development is configured in five (5) connected building forms (being Blocks A, B C, D & E) stepping down the site with the fall of the land. The presentation of the proposed development to Manning Street is varied in that Blocks B & C share the same facade, Blocks D & E share the same facade, with the corner building (Block A) being individual and distinct from the rest of the building, forming a prominent built element to define the street corner.

A total of 206 car parking spaces are proposed on-site, as represented in the Table above.

Vehicular access to the proposed development is obtained from Manning Street at two (2) entry/exit points. The southern-most access point is dedicated to the retail parking area/service vehicle dock and the northern-most access point is dedicated to the residential basement car parking area.

Waste storage is proposed by way of three (3) enclosed bays situated on the ground floor of the development at the southern end of the site. The first bin storage bay is dedicated for retail waste and recyclables (16 bins), the second for residential organic waste (8 bins) and the third for residential garbage and recyclables (38 bins).

The exterior of the building is proposed to be finished in a combination of painted rendered walls (colour combination Dulux 'Timeless Grey' and Colorbond 'Surfmist'), face brickwork (Austral 'Bowral Blue') and cladding (Colorbond 'Ironstone'). The facade will also include feature walls (Colorbond 'Ironstone' in colour) and clear glass balustrading to level 2 & 3 balconies.

## **Section 79C Assessment**

The proposed development has been assessed in accordance with Section 79C of the Environmental Planning and Assessment Act 1979 (as amended) and the following matters are considered relevant:-

### **Relevant Environmental Planning Instruments**

- State Environmental Planning Policy No. 71 – *Coastal Protection* (SEPP 71)

The site is located within the coastal zone, as defined by SEPP 71.

Consideration has been given to the objectives of the SEPP 71 and the matters prescribed by Clause 8. The proposed development is considered to be consistent with the objectives of the SEPP.

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

A BASIX Certificate was lodged with the application which demonstrates that the dwellings have been designed in accordance with BASIX.

- State Environmental Planning Policy No. 55 - Remediation of Land

The development application is accompanied by a Site Audit Report prepared by Environ (Ref: AS120434) dated 27 March 2009. The report affirms the land is suitable for the proposed use.

- State Environmental Planning Policy No 65 — Design Quality of Residential Flat Development (SEPP 65)

This Policy aims to improve the design quality of residential flat development in New South Wales.

A Design Verification Statement signed by architect Angelo Di Martino (NSW Registration No. 7608); principal of adm Architects (being a suitably qualified person) was lodged in support of the application, in accordance with the SEPP.

This statement verifies that the proposal satisfies the 10 design principles in SEPP 65 together with the supporting Residential Flat Design Code (RFDC).

- State Environmental Planning Policy (Infrastructure) 2007

The subject land backs onto the South Coast Railway corridor. The development involves excavation to a depth beyond 2m below natural ground level within 25m of the rail corridor (Clause 86) and the application was accordingly referred to Transport Sydney Trains for concurrence.

By way of letter dated 27 April 2015, Transport Sydney Trains has granted concurrence to the proposal subject to conditions. The conditions imposed are in relation to noise and vibration; stray currents and electrolysis from rail operations; excavation and construction impacts; crane and other aerial operations; environmental conditions; drainage and fencing etc.

These recommended conditions will be included in the consent notice should development consent be granted to the proposal.

In relation to noise and vibration, Clause 87 of the SEPP states that where development consent is sought for development for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following LAeq levels are not exceeded:

- (a) in any bedroom in the building - 35 dB(A) at any time between 10.00 pm and 7.00 am,
- (b) anywhere else in the building (other than a garage, kitchen, bathroom or hallway) - 40 dB(A) at any time.

The development application is supported by a Rail Noise and Vibration Assessment, prepared by Day Design Pty Ltd and dated 6 January 2015, which acknowledges the requirements of the SEPP and makes recommendations accordingly. Should consent be granted to the proposal, conditions will be imposed requiring compliance with the recommendations of the Acoustic Report.

- Illawarra Regional Environmental Plan No. 1 (IREP 1)

Clause 74 of the IREP is relevant to commercial centres and states that the objectives relating to commercial centres are:

- (a) *to ensure that the commercial service centres are developed to suit the convenience of customers and to optimise private and public investment, and*
- (b) *to promote shopping and pedestrian amenity in all commercial centres.*

The proposed development is considered to be consistent with these objectives. Clause 79 refers to residential uses in business zones and states:

*“The consent authority should consider permitting residential uses in mixed development in business zones, above commercial property.”*

The proposed development satisfies Clause 79 of the REP in that the residential use is above the street level/ground floor retail and business (commercial) floor space and associated commercial car parking module.

Clause 139 of the REP imposes a maximum building height control of 11 metres measured vertically from any point on the **ceiling** of the top most floor of the building to the natural ground level immediately below that point. The proposed development has a maximum ceiling height of RL 24.6m AHD (ceiling of proposed unit A301), thereby measuring 12.6m in height under the terms of the IREP. The proposed building height breach is discussed in detail under Clause 4.6 of KLEP 2011.

- Kiama Local Environmental Plan 2011

The subject land is zoned B2 Local Centre pursuant to Kiama Local Environmental Plan (LEP) 2011. The proposal (*mixed use development – in this instance retail and shop-top housing*) is permitted with consent in the zone and is considered to be consistent with the zone objectives.

Specific clauses requiring consideration:-

Clause 4.3 requires that the height of the building does not exceed the maximum height shown on the Height of Buildings Map (being 11 metres in this instance – measured vertically from the **highest point of the building** to the existing ground level below). The maximum overall height of the proposed building is 12.9m (at the roofline above proposed unit A301). The proposed development thereby breaches the 11m building height development standard by up to 1.9m. The applicant has sought an exception to the building height development standard pursuant to Clause 4.6 (see below).

Clause 4.4 requires that the floor space ratio does not exceed the maximum floor space ratio shown for land on the Floor Space Ratio (FSR) map. In this instance the LEP permits an FSR of 2.0:1. The FSR of the proposed development is 1.99:1 as identified by the applicant, being compliant with the development standard.

Clause 4.6 provides for exceptions to certain development standards where requested and justified in writing by the applicant and where Council is satisfied that:

- the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) (i.e. that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard); and
- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

In this instance it is proposed to construct to a height of up to 12.9m at the highest point of the building (the north eastern corner), thereby breaching the 11m building height development standard of Clause 4.3. The proposed building height breaches represent what can generally be described as five (5) triangular sections encapsulating the south east corner of the upper storey of each of the 5 block components (i.e. Block A, B, C, D & E). In each instance the height breach tapers off due to the cross fall of the land until the building height falls within the 11 metre development standard.

The applicant has provided a building height plane diagram (attached), which illustrates the extent of the 11m height limit breaches. In terms of roof area, the proposed height breach is most prevalent over proposed Blocks A & E and, in terms of vertical measurement, the

proposed height breach is most significant for Block A (1.9m breach) followed by block D (1.7m breach).

The applicant has provided a submission, pursuant to LEP Clause 4.6, seeking exception to the building height development standard of Clause 4.3 of the LEP.

### **Applicant's Submission**

In addressing Clause 4.6 and seeking exception to Clause 4.3, the applicant has lodged a well founded submission which, in summary, contends that:

- The extent of the breach is limited to the roof of the eastern portion of the building. The maximum height of Buildings A – E is 12.9m, 12.5m, 11.8m, 12.7m and 12m respectively.
- The most significant height breach relates to Building A, at 12.9m. This portion of the building represents the corner element, which is emphasised for urban design purposes.
- The design approach utilised to accommodate shop top housing, while responding to the topography of the site and the requirements of the Residential Flat Design Code; would be compromised if compliance with the building height standard was to be achieved.
- The proposed development responds to the context of the site and streetscape by transitioning the building form, reflecting the context established by the existing mixed-use development to the south of the site (being lower in height than the proposed development) and stepping with the topography in 5 distinct blocks to the higher Grand Hotel (at approximately 13m in height), opposite the site at its northern end.
- In comparison to a building otherwise compliant with the permissible maximum building height, the proposed building height breaches will have minimal impact in terms of visual impact, disruption of views, loss of privacy and the like.
- Despite the building height breach the proposed development is within the public interest in that it:
  - Provides a suitable built form on the site, in context with the scale and character of the street and local area;
  - Will not result in an unreasonable loss of sunlight to the adjacent mixed use development; and
  - Will not hinder the attainment of the B2 Local Centre zone objectives.
- Full compliance with the building height development standard would significantly reduce the gross floor area of the building, rendering the development economically unfeasible.

### **Response**

In reference to the extent of the breach, in overall height terms the proposed 1.9m building height breach (at its worst) represents 17.3% of the 11m development standard.

The proposed height limit breach represents a five pronged point encroachment of the height limit (corresponding to each of the five building blocks making up the development) as a consequence of the cross fall of the land over the length of the site. The height breach in each of the five instances tapers off (toward the north) until a compliant 11m height is observed for the remainder (western sector) of the development.

The extent of the building height breach is illustrated on the applicants building height plane diagram (see attached). The roof area involved in the height breach is most evident in this diagram.

In relation to Clause 4.6(3)(a) of the LEP the following matters are noted:

- The proposed building height breach does not trigger a breach of the floor space ratio (FSR) development standard.
- The proposal does not result in any unreasonable additional amenity impacts, such as overshadowing, view loss, privacy loss and the like, as discussed within this report.
- The proposed development responds to the site cross fall and, in combination with this, provides a transitional in-fill form between the existing mixed-use development to the south and the heritage listed Grand Hotel to the north, which is reasonable in the context of the site. The building height breach does not undermine this.

It is generally accepted, on this basis, that compliance with the development standard is unreasonable and unnecessary under the circumstances.

In relation to Clause 4.6(3)(b) of the LEP the following matters are noted:

- The proposal is consistent with the B2 zone objectives
- Despite non-compliance with the building height development standard, the proposal is consistent with the objectives of Clause 4.3; being:
  - (a) to ensure future development is in keeping with the desired scale and character of the street and local area

Comment: The proposed building is compatible with the desired scale and character of the area despite the height breaches, particularly given the topography of the site and the height differential between existing adjoining development to the north and to the south (as discussed below under The likely Impacts of the Development – Streetscape).

- (b) to allow reasonable daylight access to all developments and the public domain

Comment: Shadow diagrams have been provided by the applicant and are attached to this report. Overshadowing as a consequence of the proposed development is considered to be acceptable. With that, the proposed height limit breach, being primarily along the Manning Street frontage of the building, does not result in any unreasonable additional overshadowing impact on beyond that of an otherwise height compliant development.

From the public domain, Manning Street forms the south eastern property boundary, which has a 30m wide road reserve. In terms of the footpath at the base of the proposed building, the additional height proposed has negligible additional shadow impact. With the afternoon sun shadows elongate and overshadowing of the footpath on the opposite side of Manning Street will occur earlier. Nonetheless it is considered that the additional overshadowing brought about by the proposed height breach is acceptable.

From the private domain the mixed use development adjoining to the south is most impacted by overshadowing from the proposed development and, overall,

overshadowing as a consequence of the proposed development are considered to be reasonable. Given the location of the existing mixed use development to the south west of the development site, the additional overshadowing as a consequence of the height limit breach is not expected to have significant additional overshadowing impact beyond that of a development otherwise compliant with the height limit. The impact of overshadowing on the adjoining site are discussed below under 'The Likely Impact of the Development – Overshadowing'.

- Despite non-compliance with the building height development standard, the proposal is consistent with the objectives of Clause 4.6; being:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development

Comment: The proposed development balances the topography and constraints of the site with the permissible floor space ratio and requirements of SEPP 65, LEP 2011 and DCP 2012. As identified, the height limit breaches with the resulting building form are brought about as a consequence of the cross fall of the land over the length of the site. For the reasons outlined the proposed height breaches are, on balance, considered to be reasonable. Accordingly, an appropriate degree of flexibility in the application of the height limit control is warranted in this instance.

- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances

Comment: Compliance with the building height limit would be achieved by removal of the top floor of the proposed development and the twenty-six residential units (some 35% of the residential units proposed) that form the top floor.

The proposed mixed use development is situated in a prime position within the Kiama business area, in close proximity to the railway station, shops and restaurants, the beaches, pubs and clubs, public facilities etc. The objectives of the B2 Local centre zones are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of the people who live in, work in and visit the local area.
  - To encourage employment opportunities in accessible locations.
  - To maximise public transport patronage and encourage walking and cycling.

The height limit breach represents five point encroachments. Removal of the top floor to overcome the height limit compliance, with the loss of the 26 units that make up the top floor of the development, would not fully appreciate or promote the objectives of the zone and would be contrary to the urban consolidation principles of Council. The scale of the mixed use development proposed, inclusive of the building height limit exception, results in a better outcome for and from the development by maximising the opportunity available for activation of the town centre.

- The site is suitable for the proposed development and, in itself, the building height breach does not create any unreasonable additional impact in terms of view impact, overshadowing, privacy loss or the like.

On the issue of view, as identified above it is considered that the proposed height breach will not result in unreasonable additional view loss impact, beyond that of a development otherwise compliant with the building height limit. The dwellings that will experience view loss as a result of the development are those in Eddy Street, situated to the west of the development site. This is more elevated land than the development site, with levels at the Eddy Street frontage ranging from 18m AHD at 11 Eddy Street to 20m AHD at 1 Eddy Street, compared to land levels at the Manning Street frontage of the development site ranging from 6m AHD up to 12m AHD. The applicant has provided a photo montage view impact diagram, which is attached to this report and illustrates the likely view loss impact.

The views from Eddy Street are principally toward Main Beach, over the lower levels of the subject development site. Any development of the site that extends to and complies with the maximum height limit will prevent views from Eddy Street to the beach and Coronation Park. The height of the proposed development, particularly the most southern section of the development (proposed Buildings D & E) is 19.7m and 19m respectively. Although the development proposed will block views of the beach (irrespective of the height limit breach) and disrupt the majority of the ocean view, it is evident from the photo montage that residences in Eddy Street will retain water and horizon views over the top of the proposed development, notwithstanding the breach of the height limit.

A more detailed assessment of view loss is provided below under 'Public Submissions'.

It is accepted, on this basis, that there are sufficient environmental planning grounds to justify contravention of the development standard under the circumstances.

Overall, despite non-compliance with the numeric building height development standard, the proposed development satisfies the objectives underpinning the standard. The height limit breach is limited to the eastern half of the building, predominantly relating to the Manning Street elevation. The proposed building form is well articulated to this street frontage, it steps with the topography of the land and appropriately responds to the form of adjoining development to the north and south. These measures serve to integrate the building into the streetscape and ensure that, despite the height limit breaches, the building is not overbearing in its form and presentation to the street. The proposal is thereby not contrary to the public interest under the circumstances.

As the proposed exception to the building height development standard has satisfactorily addressed Clause 4.6(3) of Kiama LEP 2011, it is recommended that the application for variation be supported.

Clause 5.5 lists requirements for development within the coastal zone. The proposal is not inconsistent with the objectives of the clause. The proposal does not cause increased coastal hazards or adverse impacts by way of diminished foreshore access, treatment of effluent and disposal of stormwater.

Clause 5.10 lists requirements for heritage conservation for items listed in Schedule 5 of the Kiama LEP 2011. An item of heritage exists on two (2) adjacent properties, listed in Schedule 5 as "*Grand Hotel*" (Item I116) and "*Kiama Uniting Church, church trees and grounds*" (Items I114 & I115).

Council's Heritage Advisor provided the following comment on the proposal:

*“There are several heritage items located in the vicinity of the subject site, including Kiama Uniting Church (I114), Kiama Uniting Church trees and grounds (I115), and the Grand Hotel (I116).*

*The proposed development would have minimal impact on the setting of the Church, given that the two are well separated by a roundabout and could not be viewed together from short or long range vantage points.*

*Considering the impact of the development on the setting of the Grand Hotel, the current appreciation of the heritage item in long-range views to the place from the south in Manning Street will be impacted with the new building obscuring the heritage item. In this instance I agree with the heritage report in that it would be likely that any proposed development would have similar impacts. The loss of the above view is considered acceptable.*

*The scale of the proposed building is comparable to the Hotel and is considered acceptable given the width of Bong Bong Street provides a buffer between the two buildings.*

*The form of the proposed building and its principal street elevations are broken-up into smaller elements and well-articulated, which positively responds to the Hotel.*

*The external colour scheme is muted, with good contrast between the principal colours.*

*The contemporary detailing of the building is considered acceptable for its location and context. The use of dark-coloured brickwork at ground floor level provides an appropriate base to the proposed building which responds well to the character of older buildings in the Town Centre.*

*Overall the proposed building would have an acceptable impact on the Grand Hotel.”*

The proposal meets the objectives of clause 5.10 and is not likely to adversely affect the heritage significance of the adjacent heritage items.

Clause 6.2 lists considerations for proposals which involve earthworks. The proposal meets with the objectives of the clause and the matters prescribed for consideration are satisfied.

Clause 6.8 requires the proposal to have an active street frontage in B1 & B2 zones. The Clause states that “*a building has an **active street frontage** if all premises on the ground floor facing the street are used for the purposes of business premises or retail premises.*”

With the exception of the residential entrance foyers and vehicle accesses (being an exclusion to the active street frontage requirement under sub-clause (4)(a) and (c) respectively), the ground floor of the development consists of retail premises facing Manning Street. This satisfies the definition for active street frontage.

The objective of the clause is “*to promote uses that attract pedestrian traffic along certain ground floor street frontages in certain business zones*”. It is noted that the building has been excavated into the site at the north-eastern end, meaning the corner retail premise (no. 3) has its floor level predominantly below the street level of Bong Bong Street. This arguably diminishes the exposure of the retail use to that street frontage and, arguably the intent of active street frontages in engaging with the street.

In terms of the objective of the clause, retail premises no. 3 has a predominantly glass facade to Manning Street, making the retail use visible and accessible from Manning Street,

being the main street frontage of the building. The premises does address Bong Bong through a 9m long window along this street frontage (the window being approximately half of the length of the shop), providing a reasonable degree of exposure to/from the retail space and thereby adequately engaging with the street, as well as with retail premises no's 1 & 2, which both face Bong Bong Street at street level.

The proposed development is considered to be consistent with Clause 6.8.

### **Any draft Environmental Planning Instruments**

Nil.

### **Development Control Plan (DCP) 2012**

- Kiama Development Control Plan (DCP) 2012

#### Chapter 5 – Medium density development

The proposed development is generally consistent with the requirements of Chapter 5 of the DCP, except in relation to the following matters, where variation is sought:

- Control C1 – meet the principal development standards under LEP 2011.  
The proposed breach of the building height development standard is addressed above under LEP 2011 Clause 4.3 and exception sought pursuant to Clause 4.6. This matter has been discussed in detail and the building height breach is considered to be acceptable under the circumstances.
- Control C30 – requires storage areas to be provided for each unit at the following rate:
  - One-bedroom apartments 6m<sup>3</sup>
  - Two-bedroom apartments 8m<sup>3</sup>
  - three plus bedroom apartments 10m<sup>3</sup>.

The applicant has stated that the overall development provides for a total of 259m<sup>2</sup> of storage area, which equates to 647.5m<sup>3</sup> (assuming all the storage is in the basement car park area i.e. 259m<sup>2</sup> x 2.5m (height) = 647.5m<sup>3</sup>). Overall, control C30 requires 652m<sup>3</sup> of storage space to be provided, meaning the proposal is marginally short of the DCP requirement in overall storage space terms.

Comment: No detail has been provided as to how the storage areas have been allocated between the units, or how the storage space sizes are reflective of the unit sizes (as prescribed by the control). This information had been specifically requested by Council in its request for additional information dated 29 April 2015. The applicants response to this request was that specific allocation of storage space will be determined at strata subdivision, which will be the subject of a separate development application to Council at a later date.

- Control C32 – requires that private open space (in the form of a balcony, deck, terrace, garden, yard, courtyard or roof terrace) must meet the following specifications:
  - A minimum area of 25m<sup>2</sup> for each dwelling, and
  - A minimum dimension in one direction of 5m, and

- Does not include drying facilities or garbage storage areas, and
- Be directly accessible from an indoor living area

Variation is sought in relation to the first and third dot points.

- Minimum 25m<sup>2</sup> balcony area – the variation relates to 32 of the proposed 75 units

The non-compliant unit balcony areas range from 12m<sup>2</sup> (6 of the units) to 24 m<sup>2</sup> (Unit A205), with an average non-compliant balcony size of 15.1m<sup>2</sup>.

The applicant contends that because of the town centre location and the location of the public park and beach essentially across the road from the development site, then the development should not warrant the provision of a high level of private open space that would normally be applied to medium density residential development in suburban contexts.

Comment: In addressing this matter in further detail, it is acknowledged that the proposed balcony sizes are compliant with SEPP 65 and the associated NSW Residential Flat Design Code.

The NSW Residential Flat Design Code is a guideline that has been developed at the State level to demonstrate ways in which the 10 Design Quality Principles of SEPP 65 may be achieved for residential flat development within NSW. Council's DCP provisions for medium density residential development are not generally contrary to the SEPP, but rather provide controls that are desirable at the local level i.e. the Kiama Municipality.

The NSW Residential Flat Design Code contains its own 'Objectives', 'Better Design Practice' and 'Rules of Thumb' for, amongst other things, open space and balconies for residential flat development. The Residential Flat Design Code states that balconies should be "*sufficiently large and well proportioned to be functional and promote indoor/outdoor living. A dining table and two chairs (smaller apartment) and four chairs (larger apartment) should fit on the majority of balconies in any development.*" Council's DCP, on the other hand, requires a blanket 25m<sup>2</sup> private open space area irrespective of the unit size or, for that matter, the type of medium density development.

Despite numeric non-compliance with the DCP private open space control for 32 of the 75 proposed units, it is generally accepted that the development provides for usable and functional private open spaces, being directly accessible from the living area of each unit, which serves to enhance the functionality of the indoor/outdoor living/open space area. The proposed development provides a sufficient level of private open space consistent with that recommended by the NSW Residential Flat Design Code, as outlined above.

Further to the above comments, it has been acknowledged and successfully argued in the past that blanket minimum 25m<sup>2</sup> private open space area/s per unit requirement is unreasonable for residential accommodation in the form of 'shop top housing' in a B2 Local Centre zone. In this respect it is noted that the business zone carries with it different and more mixed development types (in terms of form and use) than a residential zone and the same standard of residential amenity (e.g. relating to the provision of private open space, for instance) should not be expected for residential development in a commercial zone (i.e. this being distinct from dedicated residential development in a residential zone).

In addition to these comments and as identified by the applicant, it is acknowledged that the development is situated opposite the Coronation Park and Main Beach, being an

accessible public open space area in close proximity for residents of the proposed development.

In combination with the functionality of the proposed balcony areas and the accessibility of the Coronation Park adjacent, justification for reduced private open space area acknowledging SEPP 65 and the NSW Residential Flat Design Code is accepted. For the reasons outlined above, the variation proposed to the minimum required 25m<sup>2</sup> private open space area for 32 of the proposed units is considered to be reasonable in this instance and is supported.

- Drying areas within private open space

In relation to drying areas, 47 of the 75 units are proposed to have a drying line and, of these, some 26 of the proposed drying areas are within the minimum private open space area of the unit. This is contrary to the requirements of control C32.

Comment: The proposed clothes lines on balconies are of a type that fold away when not in use, freeing up the open space area for recreational use.

It is fair to acknowledge that, with larger scale residential flat development, there is a general expectation that the balconies will provide a dual purpose as a clothes drying area, not just an open space area. It is important to have clothes drying facilities for as many units as possible so as not to rely solely on mechanical clothes drying, which is clearly a far less sustainable means of clothes drying. The issue however is not with clothes drying on the balconies but rather the use of the private open space area for clothes drying.

Non-compliance is arguably exacerbated in this instance given that for many of the units the proposed private open space area is less than 25m<sup>2</sup> in size. Had the private open space areas all been 25m<sup>2</sup> as required then it would be more acceptable to incorporate clothes drying within this area. However as discussed above it is considered to be acceptable to reduce the private open space areas under the circumstances, based largely on the recommendations of the NSW Residential Flat Design Code. Again, when considering this variation it is important to recognise the scale of development and the practicalities of some of Council's DCP requirements where larger scale development is proposed. The scale of the development is considered to add weight to the applicants request for variation to permit clothes drying within the private open space area. By virtue of the fact the clothes lines will be folding (effectively flush to the wall when not in use), the private open space area remains functional for purpose of recreational use. It essentially comes down to the management of the occupant to ensure that use of the clothes drying line will not conflict with their use of the private open space area.

In relation to the visual impact of the proposed clothes drying lines, condition of consent will be imposed, should consent be granted, requiring that the clothes lines are no higher, when extended, than the height of the balustrade of the balcony. Although the balustrades are permeable glass, restricting the height of the clothes lines to the balustrade height will serve to reduce the visual impact than that otherwise positioned above the balustrade height. Furthermore, the fixing of the clothes lines in consistent locations on balconies is arguably more presentable than the alternative reliance upon mobile clothes airers positioned ad hoc on balconies.

Given the larger scale of the development proposed it is not considered to be an unreasonable outcome, under the circumstances, to relax the requirement for clothes drying to be excluded from private open space areas.

- Control C34 – requires community open space to be provided at a minimum rate of 5m<sup>2</sup> per dwelling.

Based on this performance control, the proposal requires community open space area measuring 375m<sup>2</sup> (i.e. 75 x 5m<sup>2</sup> = 375m<sup>2</sup>). The proposal provides for an overall community open space area of 187m<sup>2</sup> (excluding drying areas).

As with control C32 above, variation is sought on the basis that the development is in close proximity to Main Beach and Coronation Park.

Comment: The on-site community open space area, albeit numerically undersized based on the performance control, provides for a functional space for use by the residents of the complex. The space incorporates both outdoor and indoor space and is centrally located within the residential complex, making the community open space area both versatile and practical.

The NSW Residential Flat Design Code states that communal open space “*may be accommodated on a podium or roof(s) in a mixed-use building*”, which was considered in this case. In consultation with Council’s assessment officers this approach was not favoured due to the additional height breaches and associated view loss implications that would be brought about by roof-top balustrades, roof-top community facilities and disabled access to the roof top areas.

Having regard to the B2 zone and the fact that facilities and public open space areas are in close proximity, the community open space proposed is considered to be reasonable, as outlined, despite the technical non-compliance with the DCP performance control.

- Control C47 - requires that the building does not fully cover the site allowing for 25% deep soil landscaping. This is a building ‘footprint’ control.

The applicant contends that the requirement for a deep soil zone being 25% of the site area is more suited to a medium density residential development in a suburban context, not a mixed use development within the context of a town centre location. The issue of context, as raised by the applicant, is relevant.

Comment: Being a building footprint control, the deep soil landscaping requirement is intended to promote separation and to both soften the impact of the built form and improve privacy between neighbouring sites. There is less emphasis on this in the context of a business zone, whereby zero lot line development, hard stand areas and generally higher density development are permissible. It is agreed that the deep soil landscaping control is generally most relevant to a residential zone and associated medium density residential development, rather than mixed use development in a business zone, as in this case.

- Section 13 (controls C52 – C55) of the DCP requires that drying areas be provided for each unit with 5 lineal metres of line per unit that is not visible from any public space, has a northerly aspect and is not located forward of the building line.

In this instance 47 of the 75 units are proposed to have a clothes drying line, in addition to a further two clothes drying lines accessed through the community open space area. The remaining 28 units will be reliant upon mechanical dryers and the two community clothes drying lines.

Comment: It is generally reiterated that the proposed development, being mixed commercial and residential within a commercial zone, is different in that respect from

dedicated residential development on residential land, which carries with it lower FSR development standards, greater setback requirements and greater emphasis on deep soil landscaping and the like. In association with this there is more ready opportunity to provide drying areas for units.

Further to this point, it is noted that compliance with this control is more readily achievable for lower density types of medium density residential development, such as attached dwellings and multi-dwelling housing, which involve dwellings having ground level access and their own lot of land. In instances of units within commercial areas, which are generally more densely built areas, there has generally been a higher reliance on mechanical clothes drying within units rather than clothes drying lines.

The clothes drying opportunities provided are considered to be reasonable despite the technical non-compliance with the DCP performance measures.

### Chapter 9 – Car parking requirements

The proposed development incorporates basement car parking accommodating 206 cars over 2 levels (lower level 132, upper level 74).

Overall, Council's DCP requires the provision of 172 on-site car parking spaces (114 residential + 58 retail = 172 ((see below))).

The proposed mixed use development triggers separate parking requirements between the retail component of the development and the residential component. In this respect, and as outlined in the DCP, car parking is calculated on the basis of each distinct use.

#### Retail component

Based on the DCP requirements, retail premises require 1 car parking space per 35m<sup>2</sup> of Gross Leasable Floor Area (GLFA).

The overall retail GLFA proposed is 2012m<sup>2</sup>, thereby requiring fifty-eight (58) car parking spaces (i.e. 2012/35 = 57.48, rounded up to 58). Fifty-eight (58) car parking spaces are proposed on-site for the retail component of the mixed use development, including two (2) disabled parking spaces.

#### Residential component

The residential component of the development draws on the RMS Guide to Traffic Generating Developments for medium density residential development. The Guide recommends a minimum number of off-street, residential parking spaces of:

- 1 space for each unit (75 units = **75 spaces**), plus
- an additional 1 space per each 5 x 2 bedroom unit or part thereof (49 x 2 bedroom = 9.8 = **10 spaces**),
- an additional 1 space per each 2 x 3 bedroom unit or part thereof (24 x 3 bedroom = **12 spaces**), plus
- an additional one space per each five units for visitor parking or part thereof *is recommended* (75 units = **15 visitor spaces**).

Consequently a total of 112 on-site car parking spaces are required and 148 (including 16 visitor parking spaces in the commercial parking level) are proposed in this instance.

Overall forty-two (42) bicycle parking spaces (25 residential, 10 visitor & 7 commercial) are proposed for the development.

The proposed development satisfies Council's DCP requirements for on-site parking.

### Chapter 26 – Kiama Town Centre

The proposed development is generally consistent with the requirements of Chapter 26 of the DCP, except in relation to the following matters:

- Section 4 – Future Building Design – “*A general building height of no more than three (3) storeys*” applies; and
- Section 7(a) – Scale, building height and bulk – “*On major public corners and prominent entrance sites, a three (3) storey height limit should be imposed.*”

Comment: The 3 storey height limit performance controls within Chapter 26 were effectively carried through from the preceding DCP 13 – Kiama Town Centre, which was adopted by Council in 1997. The former DCP 13 was in turn directly connected with the provisions of then Kiama LEP 1996. In this respect Clause 50(2)(a) of LEP 1996 specified a maximum 3 storey height limit for development in the Kiama central business district.

As opposed to LEP 1996, the current LEP 2011 stipulates a maximum 11m building height limit at the site, leaving the number of storeys that may be accommodated within that height limit dependent upon design and Building Code of Australia (BCA) standards. As discussed in detail above under LEP 2011 Clause 4.6, the proposal seeks to breach the 11m building height limit, which is supported in this instance having regard to the circumstances of the case.

The proposed development constitutes four (4) storeys to Manning Street and to the corner of Manning Street and Bong Bong Street. Aside from the 4 storey height, the corner building element is further emphasised by a parapet feature to delineate the corner element, creating an “edge” to the building form on the corner, which is consistent with Section 7(a) of Chapter 26.

In terms of the 4 storey height along Manning Street, as discussed above under LEP Clause 4.6 and below under ‘Streetscape’, the proposed development is considered to be compatible with the streetscape notwithstanding the breach of the DCP 3 storey limit.

In conjunction with the supported breach of the 11m building height development standard of LEP 2011, no objection is raised in this instance with the proposed non-compliance with the 3 storey height limit under DCP Chapter 26.

### Any Planning Agreement

Nil

### Any Matters Prescribed by the Regulations

- *NSW Coastal Policy 1997: A Sustainable Future for the New South Wales Coast*

The proposal does not compromise the strategic actions or principles (Appendix C - Table 3) adopted within the *NSW Coastal Policy 1997*.

### **Any Coastal Zone Management Plan**

Nil

### **The Likely Impacts of the Proposed Development**

- **Streetscape**

Overall the proposed development represents a contemporary, well articulated design and style that presents appropriately to both Manning Street and Bong Bong Street.

The proposed development exceeds the 11m building height development standard, however despite this the building is not considered to be overbearing in the streetscape context, mainly because of the articulated form of the building to Manning Street meaning the height breaches represent point encroachments.

It is worth noting that the proposal as originally lodged incorporated turret roof forms on each of the five building blocks (Blocks A, B, C, D & E). The height of the proposed development with the turret roofs was up to 13.7m, representing a height limit breach of up to 2.7m. Whilst in isolation these turret roof forms contributed positively to the architecture of the building, in the context of the streetscape the roof turrets contributed significantly to the overall perception of height, bulk and scale of the development, to the overall detriment of streetscape compatibility. The roof turrets were subsequently deleted from the proposal, making the development less imposing and compatible with the streetscape of Manning Street and the central business area.

From a streetscape perspective the proposed development is considered to positively respond to existing neighbouring development. Proposed Block A (the corner building) is built to the Manning Street/Bong Bong Street boundary, complimenting the adjacent Grand Hotel. Blocks B, C, D & E are recessed from the Manning Street boundary, with the fourth storey of blocks D & E stepped back further from Manning Street, in acknowledgement of the existing mixed use development to the south (83 Manning Street). From a streetscape perspective this serves to transition the building form, i.e. from the generally lower set, recessed mixed use development at 83 Manning Street to the prominent Grand Hotel at the top of the hill.

Furthermore, DCP 2012 Chapter 5 – Medium Density Development, control C50 advocates that corner sites should give visual prominence through design elements to define the corner. Consistent with this, Chapter 26 – Kiama Town Centre, Section 1 requires that “*major corner sites should be redeveloped with stronger “edge” buildings*”. In recognition of this the corner building element height is emphasised by a parapet and awning feature and by facade treatment that is individual from the rest of the development.

Overall, the design of the proposed development is considered to be reasonable when considered in relation to the context of the site. The bulk, scale and design of the amended proposal is consistent with relevant planning instruments and the streetscape.

- **Noise**

Construction works will generate some noise, though conditions of consent can be imposed to ensure that works are undertaken only within specified hours to limit impacts upon neighbours.

The proposal represents permissible mixed use (retail/business/residential) development in a B2 Local Centre zone. In terms of land use, no on-going significant noise impacts are expected as a result of the development. The development incorporates a commercial loading bay in the ground floor basement area and, in that location, is unlikely to present a noise problem. Use of the retail and business premises will be the subject of either separate development applications (which will consider noise impacts) or application for complying development certificate (first use of premises).

Aside from noise emanating from the development site, the site adjoins the South Coast railway line and as such (conversely) will be subject to rail noise. A Rail Noise & Vibration Assessment has been submitted with the proposal (as required by Clause 87 of SEPP (Infrastructure) 2007) which acknowledges the requirements of the SEPP and makes recommendations accordingly. Should consent be granted to the proposal, condition will be imposed requiring compliance with the recommendations of the Acoustic Report.

- **Privacy and Overlooking**

No significant concerns are raised in relation to privacy loss and overlooking resulting from the proposed development.

- **Overshadowing**

Shadow diagrams have been supplied with the development application (attached), which indicate that the overshadowing impacts of the proposed development will be reasonable.

The mixed use development adjoining to the south is most impacted by overshadowing from the proposed development. The ground floor of this development is commercial, with car parking adjacent the northern boundary. The first and second floor of that development is residential, with the first floor, northern most unit, most heavily impacted by overshadowing from the proposed development. This unit has a north-eastern orientated (front) balcony extending to the northern boundary of that property. The balcony connects with a walkway extending to the backyard area of the unit. Whilst the development overshadows the front balcony between 9.00am and approximately 2.00pm during mid winter, the back yard area of the unit is not overshadowed by the proposed development after 12 noon. On this basis the impacts of overshadowing on the open space and outdoor area of this unit is considered to be reasonable. It is noted that the residents of the mixed use development have not raised any objection to the proposal on the grounds of overshadowing.

The issue of overshadowing has been discussed under Clause 4.6 above.

- **Views**

The proposal will have no unreasonable impact upon views currently available from neighbours. This is discussed in greater detail below under 'Public Submissions'.

- **Vehicular Access, Parking and Manoeuvring**

Sufficient car parking is proposed within the development site. The proposed development does not result in any loss of on-street car parking.

Manoeuvring is compliant with AS/NZS 2890.1 – 2004 and the driveway will comply with required gradients.

- **Stormwater Management**

A satisfactory drainage design has been provided with the application.

All stormwater will drain to the Council's stormwater network.

- **Environmental Impacts**

*Vegetation Removal* – No significant vegetation is to be removed.

*Fauna Impacts* – It is unlikely that the proposal will affect any fauna or its habitat.

*Impact on Soil Resources* – Construction activities have the potential to impact on soil resources by way of erosion and sedimentation. Conditions of consent should be imposed, if consent is granted, in relation to soil and water management controls to be implemented during construction. Satisfactory implementation of these controls will prevent significant impacts on soil resources.

*Impact on Water Resources* – Stormwater will be conveyed to the street. Controls will be implemented during construction to minimise sedimentation.

- **Social and Economic Impacts**

The proposed development will likely have minimal adverse social or economic impacts. The amenity impacts of the proposed development have been considered in detail and concerns raised in submissions are not considered to warrant refusal of the application.

This site represents the only 'brown field' site in Manning Street and has long been a gap in the commercial fabric of the town centre. Development of the site will make a significant social and economic contribution to Kiama by providing a link between the southern Main Beach commercial precinct and the rest of the Kiama Central Business District/Town Centre.

The proximity of the proposed development adjacent to the Kiama train station will also encourage the use of public transport.

The seventy-five (75) residential units will also serve to increase housing stock and housing options available within Kiama and the town centre and, with that, boost the vibrancy and liveliness of the Kiama Town Centre.

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

The proposal fits within the locality and the site attributes are considered to be conducive to development. The proposed mixed use development is permissible within the B2 zone and satisfies the zone objectives.

- **Traffic**

Access to the proposed development is obtained exclusively from Manning Street via two access points. The northern-most access point is for residents of the complex and the southern-most access point is for the retail use and resident visitors.

The development application is supported by a Traffic & Car Parking Impact Statement, which acknowledges the proposed access arrangements and car parking levels and concludes that there is adequate sight distances to both vehicles and pedestrians and the development has

*“little impact on the operation of the Manning Street and Bong Bong Street intersection.”*

The impact of the proposed development in relation to traffic and the local road network has been assessed by Council’s Development Engineers, who have raised no objections to the development on the grounds of traffic.

- Contamination from Previous Land Uses

A Site Audit Report has been submitted in support of the proposal which concluded that the site is suitable for the proposed development.

- Effect on Public Domain

The active street frontage of the development to Manning and Bong Bong Streets and the mixed use nature of the development will contribute to the vibrancy and vitality (activation) of Kiama town centre and its public domain.

- Utility Needs and Supply

The proposal is serviced by all essential services.

- Safety, Security and Crime Prevention

The proposal has been considered against Crime Prevention Through Environmental Design (CPTED) principles and is considered to be acceptable.

- Operational Waste

The proposal properly considers waste storage and retrieval. Council’s Waste Services have considered the proposal and have not raised any concerns.

- Operational Noise

No on-going significant noise impacts are expected as a result of the development. The development application is supported by a Rail Noise & Vibration Assessment, prepared by Day Design Pty Ltd, which makes recommendations within the report to abate noise/vibration impacts from the adjoining rail corridor. Accordingly, should consent be granted to the proposal, conditions will be imposed requiring compliance with the recommendations of the Rail Noise & Vibration Assessment.

In addition, the matter has been referred to Transport Sydney Trains, who have provided concurrence conditions that will be included as conditions of consent should development consent be granted.

- Risks to People and Property from Natural and Technological Hazards

There are no known natural & technological hazards on the land.

- BCA Compliance

Council building officer has reviewed the proposal and raises no issues in relation to BCA compliance. A Section J assessment has been submitted and no concerns are raised by Council’s Building Surveyors.

- Construction Impacts

Construction works will generate some noise, though conditions of consent can be imposed to ensure that works are undertaken only within specified hours to limit impacts upon neighbours.

## **Submissions**

### **Public Submissions**

Notification letters were sent to neighbouring property owners who were provided with fourteen (14) days in which to comment on the proposal. At the conclusion of the notification period, six (6) submissions were received which raised the following (summarised) matters of concern:-

Item 1:- View loss from dwellings at 1 Eddy Street (two submissions)

Response:- Assessment of potential view impact has been established by planning principle outlined in the NSW Land & Environment Court judgement in *Tenacity Consulting v Warringah, Roseth, SC (2004)*. The four step assessment to establish whether or not view sharing is reasonable in this instance, as enunciated in the planning principle, is addressed as follows:-

#### Step 1 – Assessment of views to be affected

1 Eddy Street is situated adjacent the northern section of the proposed development site and contains four dwellings. The primary view from the site is diagonally across the development site towards Main Beach, the Gwinganna Avenue headland and the Tasman Sea beyond.

#### Step 2 – From what part of the property are the views obtained

Of the two submissions received objecting on the grounds of view loss, in each case the view loss is from the living area of the dwelling. The floor levels of these spaces are RL 21.62m AHD and RL 27.16m AHD.

#### Step 3 – Assessment of the extent of the impact

Views toward Main Beach and the Tasman Sea from 1 Eddy Street are currently hindered by existing Norfolk Island Pines and by existing development along Manning Street. It should also be acknowledged that the current views essentially exist due to the fact the development site is a vacant, brown field site.

Of the overall five block development, proposed blocks D & E are situated in the primary view corridor identified in Step 1.

The overall height of proposed Blocks D & E is RL 19.7m AHD and RL 19m AHD respectively and the floor levels of the objector's living rooms are RL 21.62m AHD and RL 27.16m AHD. Add a standing height (e.g. the average height of an Australian woman is 1.6m) and it is reasonably deduced from the height differentials that views over the proposed development will be available from the living room windows of the objectors dwellings.

A photo montage of the proposed development (attached) illustrates the likely impact on views from 5 Eddy Street. The land at 1 Eddy Street is more elevated and the view

across the development site is more acute, nonetheless the photo montage reasonably indicates the likely view loss implications of the development and the retained views of the headland, ocean and horizon beyond the development site.

#### Step 4 – Assessment of the reasonableness of the proposal

The B2 (Town Centre) zone, of which the site is zoned, carries with it significantly higher development potential than most other zones, including a permissible 11m building height limit and permissible FSR of 2:1 in this instance. Clearly development designed around these controls is going to result in some level of view loss to neighbouring properties, particularly given the proportions of the site (5488m<sup>2</sup> in size), its orientation (north-south) and the identified primary view corridor from 1 Eddy Street across the development site.

The proposal as originally lodged incorporated turret roof forms on each of the five building blocks (Blocks A, B, C, D & E). The height of the proposed development with the turret roofs was up to 13.7m (Block D), representing a height limit breach of up to 2.7m. The plans have subsequently been amended by deleting the five (5) roof turret structures, which exacerbated view loss to residents in Eddy Street, as well as pushing the roof of Buildings D & E back from Manning Street to reduce the extent of the height breach.

Beyond this, the applicant points out that DCP 2012 Chapter 5 – Medium Density Development states *“whilst Council is committed to the principles of view sharing it must be noted in these area a certain loss of views may be expected as development forms change. Where possible designers should attempt to preserve views through the development process. However, loss of views cannot be used as the significant determinant in assessing an application.”* It is emphasised that the extent of the views currently available from 1 Eddy Street are available primarily because the current site is vacant. There is no doubt that the proposed development will impede a majority of the view currently enjoyed from 1 Eddy Street, however it is evident that water and headland views will still be available from that address.

Notwithstanding the height breaches proposed, the proposed development satisfies the relevant environmental planning instruments and Council's DCP 2012 as applying to the site. The height breaches are not considered to add unacceptably to the view loss brought about by the proposed development.

Overall it is considered that view loss from neighbours as a result of the proposal is not unreasonable. The development itself is considered, on balance, to be reasonable.

#### Item 2:- The development exceeds the LEP building height limit

Response:- The proposed breach of the building height limit has been discussed in detail above under LEP 2011 Clause 4.6. As discussed the proposed exception to the building height development standard is considered to be acceptable having regard to zoning, development controls and site constraints.

#### Item 3:- Traffic in Manning Street will be excessive

Response:- The development application is supported by a Traffic & Car Parking Impact Statement, which has been reviewed in detail by Council's Development Engineers. It is considered that the proposed development is likely to have an acceptable impact in terms of traffic related matters and that the road network within the Kiama town centre is capable of supporting the additional traffic generated by the proposed development.

Item 4:- Privacy loss and amenity impact to the balcony of the existing unit to the south

Response:- In general terms, privacy and overlooking implications are inevitable where higher density development is proposed. Land & Environment Court planning principles recognise that the ease with which privacy can be protected is inversely proportional to the density of development. In this respect the planning principle outlines that whilst at low densities there is a reasonable expectation that a dwelling and some of its open space will remain private; at higher densities it is more difficult to protect privacy.

The subject site (and the objector's site) is zoned B2 Local Centre. This zone carries with it height and floor space ratio (scale and density related) controls greater than that of most other zones, as well as mixed use development types. In light of the planning principle, the level of privacy of adjoining properties in this zone/location cannot be guaranteed to the same extent as it could, for instance, had the area been a dedicated residential zone.

The objectors concerns, as outlined in their submission, relate predominantly to the Level 2 & 3 south-western most units, being units E201 & E202 (Level 2) and units E301 & E302 (Level 3). All units at the south western end of the development have high sill windows, which adequately protect the privacy of neighbours. The issue at hand then is privacy loss from balconies.

Unit E202 has a moderately sized 12m<sup>2</sup> balcony that opens to the south-east and south-west and unit E302 has a small 4m<sup>2</sup> balcony facing south east and screened to the south-west. The principal views from these balconies are toward Main Beach to the south east, so given the reasonably conservative size of the balconies in conjunction with the primary view direction, these balconies are not considered to represent an unacceptable breach of privacy to the southern neighbours.

Unit E201 has a moderately sized 15m<sup>2</sup> balcony that opens to the south-east and screen to the south-west. This balcony is situated to the far south east of the site and is setback some 9m from the south western boundary; hence it is not considered to represent a significant privacy breach for the neighbours.

Unit E301 has its principal balcony space essentially above the unit E201 balcony. The balcony for Unit E301 however wraps around the side of the unit, providing a 1m wide walkway along the south-western facade connecting the master bedroom to the main balcony. Given the use of that narrow length of the balcony is likely to be very limited combined with the 7m setback from the south western boundary; the balcony area is not considered to represent a significant privacy breach for the neighbours.

Overall, whilst it is acknowledged that some degree of privacy loss and overlooking will result from the proposed development, it is not considered on balance that the privacy loss implications are such that refusal of the proposal is warranted under the circumstances, or for that matter the introduction of additional privacy screens is warranted.

Item 5:- The development should access onto Bong Bong Street to alleviate traffic congestion in Manning Street.

Response:- In order to achieve the required on-site car parking, the proposed development relies on basement car parking levels. In order to access basement car parking, the access ideally needs to be at the lower levels of the site. The development has accordingly been designed with two separate access points from Manning Street. The Bong Bong Street frontage represents the highest parts of the site and is therefore not conducive to access to basement car parking levels. As addressed in Item 3 above, the Traffic & Car Parking

Impact Statement identifies that the proposal is acceptable in terms of access and traffic impact and Council's Engineers have raised no objection to this.

Item 6:- Overshadowing – the proposed development will overshadow the building at 62 Manning Street reducing afternoon sunlight.

Response:- Shadow diagrams have been provided (attached) which indicate that the shadow cast by the proposed development will not impact the base of the objector's three storey building until after 1pm on 21 June (mid-winter). On this basis the overshadowing from the development does not breach Council's policy and will not be unreasonable, particularly given the central business area location.

Item 7:- Construction noise and dust will penetrate the residential units in Manning Street

Response:- Conditions of consent will be imposed, should consent be granted, to address these issues and minimise the impacts on neighbours, including restricting the hours during which construction activities may occur and employing dust suppression measures.

Item 8:- The adequacy of the number of on-site car parking spaces is queried.

Response:- On-site car parking is discussed in detail above under DCP 2012 Chapter 9 – Car parking requirements. Proposed on-site car parking, accounting for both the retail use and residential use, satisfies the requirements of Council's DCP.

## **External Referrals**

The application was referred to the following State Government Departments.

- Transport Sydney Trains.

Sydney Trains issued their concurrence to the application on 27 April 2015. Concurrence conditions will be incorporated into the consent notice should development consent be granted for the proposal.

## **Internal Referrals**

The application was referred to the following Council Officers for their consideration.

- Development Assessment Officer - Building

No objection has been raised in relation to the proposed development. Conditions of development consent have been recommended should the application be approved.

- Subdivision & Development Engineer

No objection has been raised in relation to the proposed development. Conditions of development consent have been recommended should the application be approved.

- Landscape Design Officer

No objection has been raised in relation to the proposed development. Conditions of development consent have been recommended should the application be approved.

- Environmental Health Officer

No objection has been raised in relation to the proposed development.

- Heritage Advisor

No objection has been raised in relation to the proposed development.

- Property Manager

No objection has been raised in relation to the proposed development. A condition of development consent has been recommended should the application be approved.

- GIS Officer

No objection has been raised in relation to the proposed development. A condition of development consent has been recommended should the application be approved.

### **The Public Interest**

The proposal is considered to be consistent with all relevant Environmental Planning Instruments (with the exception of LEP Clause 4.3 – Building Height, whereby exception to the development standard is sought, as discussed in detail within the report) and generally consistent with the majority of the relevant controls under Development Control Plan 2012. The proposal seeks variations to some provisions of DCP 2012 Chapter 5 – Medium Density Development and Chapter 26 - Kiama Town Centre, which are supported under the circumstances as outlined within the report. The proposed development is not likely to cause significant adverse impacts to the natural or built environment (noting the zoning of the land, the development standards/controls the zoning entails and the context of the site), is not likely to cause significant adverse social and economic impacts, is generally suitable for the site and therefore, on balance, is considered to be consistent with the public interest.

### **Final Comments and Conclusions**

The proposed development has been assessed having regard to all relevant matters for consideration prescribed by Section 79C of the Environmental Planning and Assessment Act, 1979. The proposal is generally consistent with Kiama Local Environmental Plan 2011 and relevant Development Control Plan 2012 Chapters. The proposed development is consistent with the objectives of the B2 Local Centre zone.

Consideration has been given to the social, economic and environmental impacts of the proposed development and no significant concerns are raised. Concerns raised in submissions have been considered and do not warrant refusal of the application.

The proposed development is considered to be reasonable and conditional approval is recommended.

### ***RECOMMENDATION***

That Council approve Development Application number 10.2015.28.1 pursuant to Section 80 of the Environmental Planning and Assessment Act, 1979, subject to conditions.

The following specific matters require conditioning:-

- (a) S94 - 73 x large, 2 x medium (A204 & A 304 (80m<sup>2</sup>))
- (b) Colour schedule
- (c) Sydney Trains concurrence conditions (Word version in TRIM)
- (d) Eng, BS, Landscape, Waste, Property, GIS, Heritage
- (e) Condition RE: adaptable dwellings, details prior issue CC
- (f) Recommendations of Rail Noise & Vibration Assessment
- (g) Asbestos fragment remediation – see *Site Audit report*
- (h) Bin wash out facility – *check with Waste*
- (i) Balcony clothes drying lines are to be of a 'fold away' type and are to be set at approximate balustrade height on the wall (e.g. 10.2012.262.1)

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**Mr B R Elliott**