

COUNCIL ASSESSMENT REPORT

Panel Reference	2016HCC061
DA Number	1283/2016
LGA	Central Coast Council
Proposed Development	<ul style="list-style-type: none"> Three storey 122 bed residential care facility with associated basement car parking and ancillary works under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 including demolition of existing structures
Street Address	149-157 Main Road & Nos 6-12 Tamar Avenue, Toukley
Applicant/Owner	Opal Aged Care TYDK Property Pty Ltd and Ms S Ku and Ms K L Yeong
Number of Submissions	3 submissions received
Regional Development Criteria (Schedule 4A of the Act)	General development over \$20 million
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 State Environmental Planning Policy (State and Regional Development) 2011 State Environmental Planning Policy No. 71 – Coastal Protection State Environmental Planning Policy 55 – Remediation of Land State Environmental Planning Policy (Infrastructure) 2007 Draft State Environmental Planning Policy (Coastal Management) 2016 Wyong Local Environmental Plan 2013 Wyong Shire Development Control Plan 2013 <ul style="list-style-type: none"> Chapter 1.2 – Notification of Development Proposals Chapter 2.11 – Parking and Access Chapter 3.1 – Site Waste Management Chapter 3.6 – Tree and Vegetation Management Chapter 6.1 – Key sites
Is a Clause 4.6 variation request required?	Yes
Does the DA require Special Infrastructure Contributions conditions (S94EF)?	No
Have draft conditions been provided to the applicant for comment? Have any comments been considered by council in the assessment report?	No
List all documents submitted	Officer's Assessment Report

with this report for the Panel's consideration	Recommended conditions Plans
Recommendation	Approval subject to conditions
Report prepared by	Ross Edwards – Senior Development Planner Emily Goodworth – Section Manager – Development Assessment Jamie Loader – Unit Manager - Development Assessment
Report date	22 March 2018

Assessment Report and Recommendation

CENTRAL COAST COUNCIL

For The Hunter Central Coast Joint Regional Planning Panel (JRPP)

A development application has been received for a three storey, 122 bed residential care facility with associated basement car parking and ancillary works, including demolition of existing structures at 149-157 Main Road & Nos 6-12 Tamar Avenue, Toukley. The development is relying upon the provisions of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004. The application has been assessed having regard for the matters for consideration detailed in Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and other statutory requirements.

Applicant	Opal Aged Care
Owner	TYDK Property Pty Ltd and Ms S Ku and Ms K L Yeong
Application No	DA/1283/2016
Description of Land	Lots 1/8 DP 29025 & Pt Lot 39 DP 8320, Lot 12 DP 29025, Lot 11 DP 29025, Lot 10 DP 29025, Lot 9 DP 29025 Nos 149-157 Main Road & Nos 6-12 Tamar Avenue, Toukley
Proposed Development	Three storey 122 bed residential care facility with associated basement car parking and ancillary works and demolition of existing structures.
Site Area	4,728m ²
Zoning	R3 Medium Density
Existing Use	Unused caravan park and residential allotments
Employment Generating	29
Estimated Value	\$23,204,854

RECOMMENDATION

- 1. That the JRPP grant consent to DA/1283/2016 at Lots 1/8 DP 29025 & Pt Lot 39 DP 8320, Lot 12 DP 29025, Lot 11 DP 29025, Lot 10 DP 29025, Lot 9 DP 29025, for the construction of a three storey 122 bed residential care facility with associated basement car parking under State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 and demolition of existing structures subject to the conditions provided in Attachment 2.***
- 2. That JRPP assume the concurrence of the Secretary of the Department of Planning and Environment in accordance with the written notification of assumed concurrence issued under clause 64 of the Environmental Planning and Assessment Regulation 2000.***
- 3. That the Council advise those who made written submissions of the JRPP decision.***
- 4. That the Council advise those Government Authorities who made written submissions of the JRPP decision.***

PRECIS

- The proposal is permissible within the R3 Medium Density zone as an Aged Care Facility in accordance with clause 4(1) of State Environmental Planning Policy (SEPP) (Housing for Seniors or people with a Disability) 2004.
- The site is identified as a 'key site' under WLEP 2013 key site maps, however the proposal is not relying on the provisions of Clause 7.11 of WLEP 2013 which allow for a bonus building height of 23 metres (rather than 12 metres) subject to the provision of significant public benefit to the community.
- Following the notification of the proposal, three submissions were received.
- The value of the development is approximately \$23,204,854. Due to the value of the development the application is required to be determined by the Hunter and Central Coast Joint Regional Planning Panel (JRPP).

VARIATIONS TO PLANS/POLICIES

LEP/DCP	WLEP 2013
Clause	Clause 4.3 – Building Height
Standard	Maximum Building Height for a building on any land
Departure basis	The variation equates to 11.5% or 1.38m. Variation sought under Clause 4.6 of WLEP 2013.

LEP/DCP	WLEP 2013
Clause	Clause 4.4 – Floor Space Ratio (FSR)
Standard	Maximum floor space ratio (FSR) for a

	building on any land
Departure basis	The variation equates to 21.6% or 921.8m ² . Variation sought under Clause 4.6 of WLEP 2013.

THE SITE AND SURROUNDING DEVELOPMENT

The site contains Toukley Caravan Park on the northern portion (Lots 1 to 8 in DP 29025 and Lot 39 in DP 8320, 149 – 157 Main Road, Toukley) and four residential dwellings and ancillary outbuildings on the southern portion of the subject site (Lots 9 to 12 in DP 29025, 6-12 Tamar Avenue). The total area of the site is 4,728m².

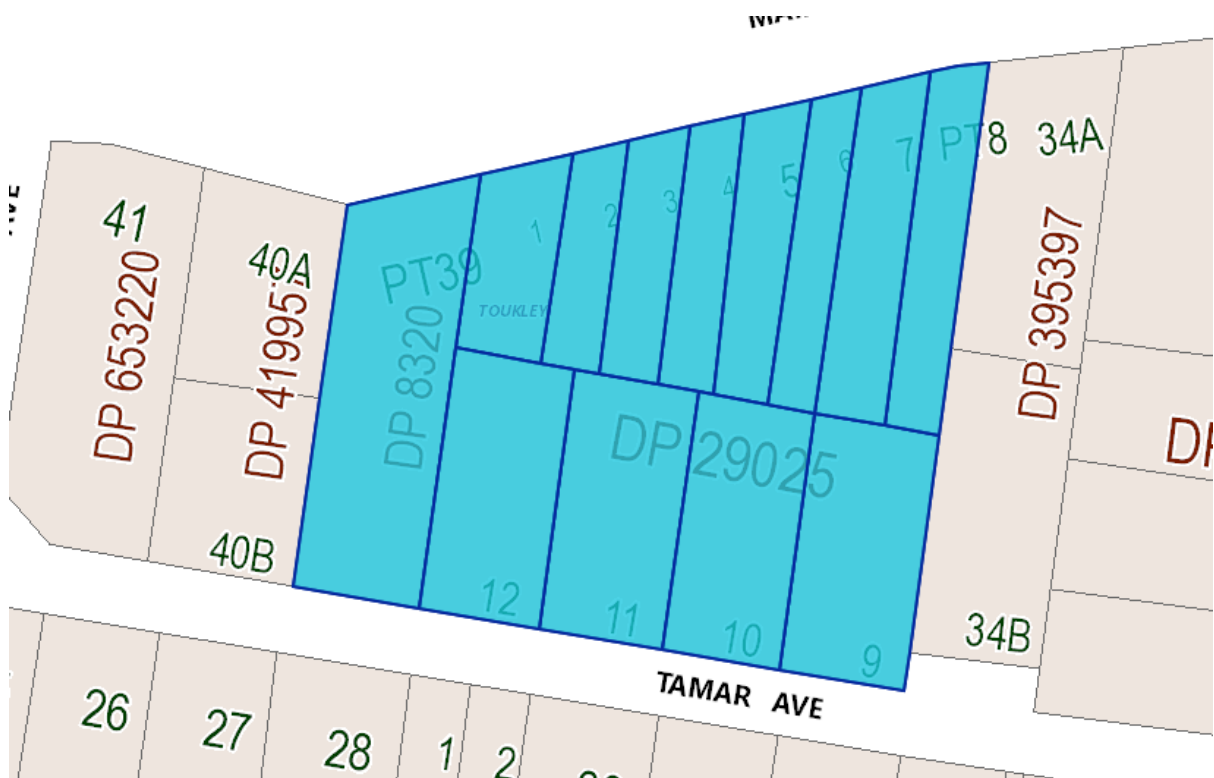


Figure 1: Plan showing subject site and surrounding properties Lot and DP numbers.

The caravan park is in a dilapidated state and has been vacant for a number of years. The existing infrastructure within the caravan park includes a dwelling house, garage, bitumen road and a concrete brick amenities building.

The predominant land use in the locality comprises low density, single and two storey residential dwellings. There are however a range of commercial uses along Main Road to the east and west of the site that includes hotels, motels, restaurants, retail shops and motor vehicle hire premises.

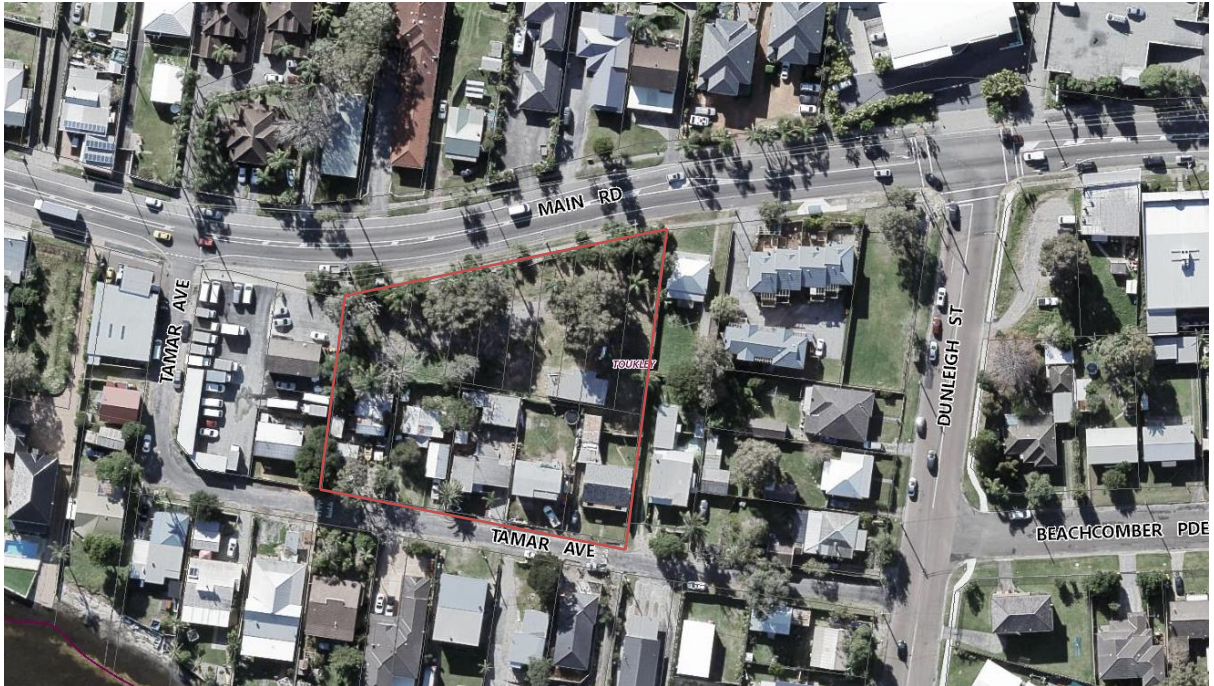


Figure 2: 2016 Aerial photo showing subject site and surrounding properties.

The subject site and the land to the east is zoned R3 Medium Density Residential under Wyong Local Environmental Plan 2013. Adjoining zones include R2 Low Density Residential zones to the north, R2 Low density residential is to the south, R3 Medium Density Residential to the east and B4 Mixed Use to the west (see Figure 3).

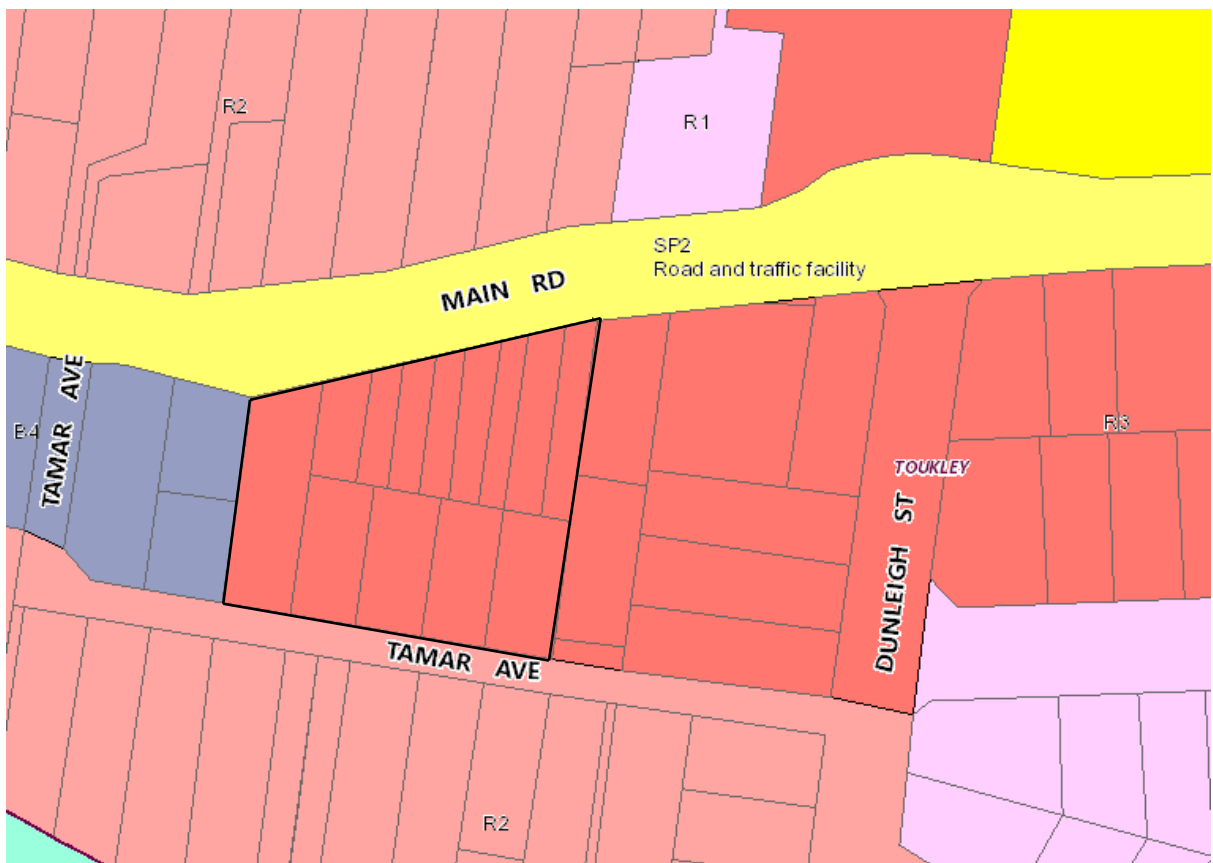


Figure 3: Zoning Map, Wyong Local Environmental Plan 2013, subject site and surrounding properties.

The Proposed Development

The development application originally proposed the construction of a four storey, 138 bed residential care facility and ancillary works including the demolition of existing structures.



Figure 4: Elevations of the original proposal



Figure 5: Artist impressions of the original development proposed

A preliminary assessment by Council staff identified a number of issues such as:

- building height,

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- floor space ratio (FSR),
 - compliance with SEPP (Housing for Seniors or People with a Disability) 2004,
 - waste servicing,
 - urban design, and
 - basement design.

As a result of a request by Council staff to address the issues above, the proposal was amended to be a 3 storey, 122 bed residential care facility including basement car parking, ancillary works and demolition of existing structures.

A detailed description of the amended proposal is as follows:

Basement Level

- Kitchen (including cold room, dry storage and freezer);
- Back of house facilities (including laundry, archive storage and garbage storage);
- Integrated car park providing 29 parking spaces (including one accessible space);
- Staff and administrative areas (including male and female bathrooms);
- Stormwater detention tank and stormwater re-use tank;
- Lift cores, circulation corridors, and fire stairs; and
- Fire pump room

Ground floor

- 28 high care bedrooms comprising 20 x single bed rooms and 8 x companion rooms (two beds) (all with en-suite bathroom facilities);
- Porte-cochere;
- Visitor car parking area providing 4 spaces (including one accessible space);
- Foyer/reception area;
- Hair salon;
- Back of house facilities, including loading dock and garbage/recycling storage areas (access to which is restricted to staff only);
- Resident amenity areas (including audio room, sitting area, lounges, café and hair dressing salon);
- Dining and servery areas;
- Nurse stations, medical areas, and staff bathrooms;
- Lift cores, circulation corridors, and fire stairs;
- Loading bay and waste collection area;
- Staff and administrative offices (including toilets, a courtyard and an interview room);
- Ancillary café for use by residents, staff and visitors;
- Substantial tree planting and landscaping (including a covered outdoor terrace); and
- Secure passive recreation areas.

Level 1

- Twenty two (22) high care bedrooms comprising seventeen (17) x single bed rooms and 5 x companion rooms (2 beds) (all with ensuite bathroom facilities) in Level 1 East wing;
- Fourteen (14) dementia specific care bedrooms comprising eleven (11) x single bed rooms and 3 x premium bed rooms (all with ensuite bathroom facilities) in a secure unit;
- Resident amenity areas (television room, lounges, activity spaces and sitting areas);

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- Dining and servery areas;
 - Ancillary areas (including storage and utility areas);
 - Nurse stations and medical areas;
 - Male and female bathrooms;
 - Lift cores, circulation corridors and fire stairs;
 - Memory sensory courtyard; and
 - Secure outdoor terrace areas.

Level 2

- Thirty seven (37) high care bedrooms comprising 29 x single bed rooms and 8 x companion rooms (2 beds) (all with ensuite bathroom facilities);
- Resident amenity areas (television room, lounges, activity spaces and sitting areas);
- Dining and servery areas;
- Ancillary areas (including storage and utility areas);
- Nurse stations and medical areas;
- Male and female bathrooms;
- Lift cores, circulation corridors and fire stairs; and
- Secure outdoor terrace areas.

Roof level

- Lift overruns and plant deck
- Fire stair access.

In summary the proposed amended development comprises 122 beds (80 single bed rooms and 21 companion rooms) for residents with high care needs. There is a dementia specific unit on Level 1 comprising 14 units.

Operational management

- The proposed facility will be owned and operated by Opal Aged Care. This organisation will be responsible for the ongoing operation and maintenance of the facility in accordance with the requirements of the Commonwealth Department of Health.
- The proposed facility will be operated and managed by 29 staff at any one time 24 hours a day, 7 days a week.

Vehicular access and parking

- Vehicular access to and from the site is via separate entry and exit crossings from Main Road. The internal circulation system allows vehicles to arrive and depart in a forward direction via a single-lane driveway.
- The development incorporates a basement level level car park for 29 car parking spaces (including 1 accessible space). Vehicular access to the basement car park is provided via a two-way ramp from the internal driveway.
- Four visitor car parking spaces (including 1 accessible space) are provided at grade (opposite the Porte cochere) and are directly accessed from the internal driveway.
- A dedicated space is provided for an ambulance.
- A separate loading dock and service access drive is provided on the western boundary of the site. The proposed configuration of the service area allows delivery

and service vehicles to reverse into the dedicated service area and leave in a forward direction.

- The proposed internal access driveway and car parking dimensions have been designed to comply with the Australian Standard for Parking Facilities (Part 1: Off-Street car parking and Part 6: Off-Street parking People with Disabilities), AS 2890.1:2004 and AS 2860.6:2009.

Pedestrian access

- A dedicated at-grade footpath will provide pedestrian access from Main Road to the main entrance and reception area of the facility.
- No pedestrian access will be available to the site from Tamar Avenue.



Figure 6: Elevations of the amended proposal



Figure 7: Artist impressions of the proposed amended development

SUBMISSIONS

Any submission from the public

The application was notified in accordance with Chapter 1.2 -Notification of Development Proposals of Wyong DCP 2013 (WDCP). The original proposal was notified between 4 November and 24 November 2016 and the amended proposal was notified between 28 July and August 2017. A total 3 submissions were received. 1 submission was received in regards to the first notification period and 2 submissions were received in regards to the re-notification period of the amended proposal. The key issues raised in relation to the proposal are identified below.

- *Loss of privacy and residential amenity*

Comment

The potential for overlooking of 159 Main Road, 14 Tamar and including 7 to 19 Tamar Avenue has been minimised by providing compliant setbacks and a combination of landscape plantings which will achieve a mature height ranging between 3m to 10m along the boundaries. The proposed physical distance and separation will address potential visual privacy issues between the development and the private open spaces, bedrooms and living rooms associated with the neighbouring dwellings. However, given the scale and bulk of the development it is conditioned that an updated landscape plan is required prior to the issue of the Construction Certificate which is to include details of additional mass plantings of suitable canopy species with a minimum mature height of 5m within the site along the eastern, western and southern boundaries. This will assist in screening the development from the private open spaces, bedrooms and living areas within the adjoining residences.

- *Additional landscape plantings to be provided to ensure privacy of the neighbouring sites.*

Comment

The proposal provides 6m side and rear setbacks which comply with those required for a residential flat building. The windows of the development which are orientated towards the side boundaries are associated with the bedrooms and the windows within the rear elevation of the development are predominately associated with bedrooms. The proposed 6m side and rear setbacks including the plantings to be provided within the setbacks will maintain the privacy of the neighbouring sites of 159 Main Road, 14 Tamar and including 7 to 19 Tamar Avenue.

To assist in providing additional screening of the development to the adjoining residences of 159 Main Road, 14 Tamar and including 7 to 19 Tamar Avenue, it is conditioned that an updated landscape plan is required prior to the issue of the Construction Certificate to include details of additional mass plantings of suitable canopy species with a minimum mature height of 5m within the site along the eastern, western and southern boundaries.

- *Kerb and gutter should be provided in Tamar Avenue, including the resurfacing of this road.*

Comment

According to Council's Development Engineering, the cost of providing kerb and guttering, a footpath and a new road surface on Tamar Avenue is approximately \$230,000. The provision of kerb and guttering, a footpath and resurfacing of Tamar Avenue is not considered reasonable as vehicular or pedestrian access from Tamar Avenue to the proposed development will be minimal. Vehicular and pedestrian access to the site will be from the proposed driveway and pathways from Main Road.

- *Stormwater management concerns regarding the impact of the proposed development on the existing stormwater system in the area. The table drains at 12 and 17 Tamar Avenue should be relocated.*

Comment

The applicant provided a Stormwater Drainage Report dated July 2017, prepared by MPC Consulting Engineers with the DA. This report addresses water quality and quantity requirements for the proposed development. A concept stormwater management plan was also submitted and outlines the management and treatment of stormwater runoff from the roof, basement and impervious areas of the proposed development.

The proposed stormwater management system has been designed to include on-site detention so as to restrict stormwater flow rates from the site. Other design improvements include:

- Stormwater connections are to be made at existing drainage pits located in Main Road and Tamar Avenue.
- Minor civil works are required in Tamar Avenue, to improve the grade for stormwater flow.

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- The development is proposing to discharge into the existing pit on Tamar Avenue and this pit has been conditioned to be upgraded.

Council's Development Engineer has reviewed the stormwater and drainage report and considered the impact of the proposed development on the existing stormwater system as being negligible.

- *Sediment control measures should be in place during the construction of the development.*

Comment

Agreed. Conditions will be recommended to ensure that suitable erosion and sediment control measures are in place before construction commences and throughout the duration of the construction of the development.

- *Neighbouring residents would like a footpath on the southern side of the development, along the Tamar Avenue frontage, to ensure the safety residents and their children.*

Comment

According to Council's Development Engineering, the cost of providing a footpath on Tamar Avenue would cost approximately \$29,000. Council does not require a footpath along the southern frontage of the site (Tamar Avenue), as the proposed development provides no pedestrian or vehicular access to Tamar Avenue. No footpath is located on either side of the site on Tamar Avenue and as such, there is no nexus for Council to require the construction of a footpath on Tamar Avenue.

It is recommended that additional street trees are to be provided along the sites frontage of Main Road and Tamar Avenue. Details are to be provided on an updated landscape plan prior to the issuing of the Construction Certificate.

- *The proposed median on Main Road will restrict right hand movements into the residential properties directly opposite the development when coming from the east on Main Road. This will make it difficult to get trailers into these properties.*

Comment

A median is required to be placed in the middle of Main Road in front of the subject development site. This was a requirement requested by the Roads and Maritime Services (RMS) for safety reasons and traffic flow.

The requirement of the median on Main Road as requested by the RMS will restrict right hand movements to the properties of 172 to 182 Main Road. There are suitable alternative routes in the area so that the residents of 172 to 182 Main Road can gain access to their properties without the need to turn right across Main Road. It is considered that the width of the east bound lane on Main Road will allow adequate movements for trailers to be able to enter the residential properties which are directly opposite the development site.

Submissions from public authorities.

Water NSW

No objections subject to the inclusion of a condition of consent which requires approval from Water NSW in the event that groundwater is to be extracted during construction.

NSW Roads and Maritime Services

The NSW RMS raised no objection to the proposal subject to the inclusion of a condition which restricts the proposed access to Left in/Left out only, with all movements in a forward direction. This condition has been imposed accordingly.

NSW Police Force

The application was referred to the NSW Tuggerah Lakes Local Area Command (TLLAC) Crime Prevention Officer for comment. In accordance with the Consultation Protocol between TLLAC and former Wyong Shire Council, Council can assume no objection to the proposed development if no comment is provided within 28 days. No comment has been provided by TLLAC objecting to the proposal.

The proposed development has been designed with regard to the principles of Crime Prevention Through Environmental Design (CPTED). Surveillance will be provided throughout the site with the use of effective lighting, appropriate fencing, landscaping, and identification of the site entrances with the avoidance of dark spaces throughout the development. The private external terrace courtyards assist in providing passive surveillance of the site by residents, staff and visitors. The proposed facility will be staffed 24 hours a day, 7 days a week therefore constant passive surveillance will be provided over the site.

Internal consultation

The application was referred within Council to the following officers and the issues raised in the referral process are discussed below and in other relevant areas of the report.

Ecologist

Council's Ecologist has reviewed the amended plans in regards to the proposed tree removal and did not raise any objections to the removal of the trees from the site. The Arborist Report and Flora and Fauna Assessment recommended a number of native species be included in the landscape plantings and these have been incorporated in the landscape plan.

Contributions Officer

The site falls within the Toukley District Section 94 plan. The proposal will not generate a demand for open space and community facilities therefore no Section 94 contributions are applicable. However, where Section 94 contributions are not applicable to a development Council's Section 94A plan comes into effect. Section 94A contributions have been applied as part of the consent.

Traffic Transportation Engineer

The application was referred to Council's Traffic and Transportation Engineer who advised that while this is a large development it is not a significant traffic generator and will not have an impact on the local road network.

Engineering

The application was referred to Council's Senior Development Assessment Engineer for consideration. No objections subject to conditions relating to:

- Stormwater management,
- Dilapidation reporting,
- Geotechnical reporting,
- Consolidation of lots, and
- Provision of services.

Senior Environmental Health Officer Environmental Protection

Council's Senior Environmental Health Officer - Environmental Protection reviewed the preliminary contamination assessment and the acoustic report and raised no objection to the proposal subject to suitable conditions being applied to the consent to reflect the recommendations provided in the contamination and acoustic reports.

Water and Sewer Planning

The application was referred to Council's Water and Sewer Planning section for assessment. No objection was raised in relation to the proposed development in terms of additional loading on the existing infrastructure in the area. Council's Water and Sewer section advised that the application will warrant the lodgement of a Section 305 and Section 307 application of the *Water Management Act 2000* and subsequent approval by Council prior to the issue of a Construction Certificate. Conditions have been applied accordingly.

Trade Waste

The application was referred to Council's Trade Waste Section who advised that the application will warrant the lodgement of a Liquid Trade Waste (LTW) Application and subsequent approval by Council prior to the issue of a Construction Certificate. Conditions have been applied accordingly.

Urban design

Council's Urban Designer supported the design of the proposal subject to:

- the functionality of the internal design,
- amenity of the rooms adjacent to the dining/lounge room, and
- additional seating areas within the landscaped area of the site.

The Architectural Design Statement (Issue D) prepared by Jackson Teece verified that the design of the residential care facility is acceptable to the streetscape and will provide internal and external functionality of the care facility while ensuring suitable amenity to the residents. Council's Urban Designer supported the architectural design statement and the proposal.

To ensure that there are additional seating areas within the landscaped area of the site, the landscape plan is conditioned to be amended to include additional seating areas on site.

Social planning

A Social Impact Assessment relating to the amended design of the proposed residential care facility was provided. Council's Social Planner raised no issues.

Ecologically sustainable principles

The proposal has been assessed having regard to ecologically sustainable development principles and is considered to be consistent with the principles.

The proposed development is considered to incorporate satisfactory stormwater, drainage and erosion control and the retention of vegetation where possible and is unlikely to have any significant adverse impacts on the environment and will not decrease environmental quality for future generations. The proposal does not result in the disturbance of any endangered flora or fauna habitats and is unlikely to significantly affect fluvial environments.

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the application. This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may address these potential impacts.

ASSESSMENT

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

Section 4.15(1) Matters for consideration

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

THE PROVISIONS OF RELEVANT INSTRUMENTS/PLANS/ POLICIES

Relevant State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy (Housing for Seniors or People with a Disability) (SEPP HSPD) 2004

The development application has been submitted under the provisions of *SEPP (Housing for Seniors or People with a Disability) 2004*. The SEPP allows for the development of seniors and assisted living in residential, mixed use and commercial zones. The proposed development is for those who require assisted living.

There are no specific residential care facility provisions under *Wyong Local Environmental Plan 2013* (WLEP 2013) and *Wyong Development Control Plan 2013* (WDCP 2013).

This SEPP aims to encourage the provision of housing (including residential care facilities) that will:

- a) increase the supply and diversity of residences that meet the needs of seniors or people with a disability, and*
- b) make efficient use of existing infrastructure and services, and*
- c) be of good design.*

The above aims will be achieved by:

- a) setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified in this Policy, and*
- b) setting out design principles that should be followed to achieve built form that responds to the characteristics of the site and form, and*
- c) ensuring that applicants provide support services for seniors or people with a disability for developments on land adjoining land zoned primarily for urban purposes.*

The proposed development is permissible by virtue of the provisions of clause 4 (1) of the SEPP which allows for land that is zoned primarily for urban purposes and on which dwelling houses and residential flat buildings (among other uses) are permissible, to provide housing for seniors or people with a disability. The subject site is zoned R3 Medium Density Residential and residential flat buildings and dwelling houses are permitted within this zone.

Whilst the site is mapped under SEPP 71 as being in a 'coastal protection area', and therefore, land to which Schedule 1 – Environmentally Sensitive Land refers to, clause 4(7)(a) states that land identified under SEPP 71 does not preclude the application of SEPP HSPD.

Additionally, Schedule 1 precludes the application of SEPP HSPD where the land is identified as being in a floodway or affected by high hazard flooding. Whilst the site is mapped as being affected by flooding the land is not in a floodway or in high hazard flooding.

Under clause 10 of SEPP HSPD, the proposed residential care facility is considered to be seniors housing which is defined as follows:

Seniors housing is residential accommodation that is, or is intended to be, used permanently for seniors or people with a disability consisting of:

- a) a residential care facility, or*
- b) a hostel, or*
- c) a group of self-contained dwellings, or*
- d) a combination of these*
but does not include a hospital.

The relevant provisions of the SEPP HSPD to be taken into account for the assessment of the proposed residential care facility are outlined below.

Clause 11 Residential care facilities

Clause 11 of the SEPP defines a *residential care facility* as residential accommodation for seniors or people with a disability that includes:

- a) meals and cleaning services, and*
- b) personal care or nursing care, or both, and*
- c) appropriate staffing, furniture, furnishings and equipment for the provision of the accommodation and care,*

not being a dwelling, hostel, hospital or psychiatric facility.

The proposed development complies with the above definition.

Clause 16 Development consent required

Development for the purposes of seniors housing utilising the provisions of SEPP HSPD may be carried out with the consent of the relevant consent authority.

Clause 18 Restrictions on occupation of seniors housing

Clause 18 (1) of SEPP HSPD restricts the occupation of seniors housing to the following only:

- a) seniors or people who have a disability,*
- b) people who live within the same household with seniors or people who have a disability,*
- c) staff employed to assist in the administration of and provision of services to housing provided under this Policy.*

Clause 18 (2) of SEPP HSPD restricts the consent authority from granting consent to a development application made under Chapter 3 unless the following has been applied as part of the consent:

- a) a condition is imposed by the consent authority to the effect that only the kinds of people referred to subclause (1) may occupy any accommodation to which the application relates, and*
- b) the consent authority is satisfied that a restriction as to user will be registered against the title of the property on which development is to be carried out, in accordance with Section 88E of the Conveyancing Act 1919, limiting the use of any accommodation to which the application relates to the kinds of people referred to in subclause (1).*

Conditions have been applied to the consent to ensure that the future occupants of the facility meet the definitions referred to in Clause 18 (1) and to ensure that a restriction as to user is registered on the title in accordance with *Section 88E of the Conveyancing Act 1919*.

Clause 24 Site compatibility certificates required for certain development applications

Seniors housing is permissible in the R3 Medium Density Residential under Wyong Local Environmental Plan (WLEP 2013). Therefore, Clause 24 does not apply to this application and a site compatibility certificate is not required to be provided in this circumstance.

Clause 26 Location and access to facilities

Clause 26 requires Council to be satisfied that residents of the proposed development will have satisfactory access to facilities such as banks, shops, community services, recreation facilities and general medical practitioners. As the Central Coast is included as a local government area within the Greater Sydney (Greater Capital Statistical Area) the provisions of clause 26(2)(b) and 26(3) apply. In this regard, the proposed development is located within 400m of existing bus stops on Main Road that are accessible by means of a suitable access pathway with overall average gradient of no more than 1:14. Direct hourly bus services are provided to Toukley town centre and to the nearby shopping centre in Lake Haven seven days a week.

Clause 28 Water and Sewer

Council's reticulated water and sewer currently service the development site. Council's Water and Sewer Section have confirmed that the existing services can accommodate the additional load that will be generated by the development.

Clause 29(2) Consent authority to consider certain site compatibility criteria for development applications to which clause 24 does not apply

As previously noted, the proposed development did not require a site compatibility certificate under clause 24. As such, and in accordance with clause 29(2), in determining a development application to which clause 29 applies, a consent authority must take into consideration the criteria referred to in clause 25(5)(b)(i), (iii) and (v).

Clause 25(5)(b) requires the consent authority to be of the opinion that the proposed development is compatible with the surrounding land uses having regard to the following criteria:

- (i) *the natural environment (including known significant environmental values, resources or hazards) and the existing uses and approved uses of land in the vicinity of the proposed development,*

It is considered that the proposed development has taken into consideration the natural environment associated with the site and its surrounds, including existing vegetation and topographical features. The proposed development is considered to be commensurate with existing and approved uses of the land in the vicinity of the subject site and with the desired future character of development along Main Road.

- iii) *the services and infrastructure that are or will be available to meet the demands arising from the proposed development (particularly, retail,*

community, medical and transport services having regard to the location and access requirements set out in clause 26) and any proposed financial arrangements for infrastructure provision,

The subject site is located within close proximity of Toukley town centre which provides a range of retail, community and medical services. Additionally, there is a regular bus service which services Main Road that can take residents into Toukley or Lake Haven. It is considered the developer will be able to provide the necessary infrastructure for the proposed development.

- (v) *without limiting any other criteria, the impact that the bulk, scale, built form and character of the proposed development is likely to have on the existing uses, approved uses and future uses of land in the vicinity of the development,*

The location of the proposed development on the subject site has allowed for adequate setbacks to adjoining development which assists in alleviating the bulk and scale of the development. A 6m setback has been provided to the side and rear setback which is commensurate with the setback required for a three storey residential flat building and is considered to provide appropriate area for landscaping.

The character of the area is a mix of residential development with commercial premises located on Main Road and the zoning of the area, being R3 medium density residential will allow for a variety of uses in the locality. The bulk, scale and built form of the development are considered to be consistent with approved and future uses of the land in the vicinity of the development.

Clause 30 Site analysis

In accordance with the provisions of clause 30, the consent authority must be satisfied the applicant has taken into account a site analysis in accordance with clause 30 (1), (2), (3) and (4).

A comprehensive site analysis plan and written design statement by the applicant's architect was provided with the application. It is considered the site analysis plan and the written design statement adequately addresses how the proposal achieves compliance with Clause 30 (1), (2), (3) and (4) and the design principles set out in Division 2 of the SEPP HSPD.

Clause 32 Design of residential development

Clause 32 requires the consent authority to be satisfied that the proposed development demonstrates that regard has been given to the principles set out in Division 2 of the SEPP. It is considered that the proposed development has demonstrated compliance with the principles set out in Division 2 of SEPP HSPD as discussed below.

Design Principles

Clause 33 Neighbourhood amenity and streetscape

The proposed development has been designed having regard to the context of the site. The future character envisaged under the R3 zoning of WLEP 2013 encourages medium density residential developments such as residential flat buildings that are generally three storeys in height. The development has an overall height of three storeys and provides 6m setbacks to the site boundaries to maintain the amenity of the neighbouring sites by providing an adequate area of separation. The proposed front setback, ranging from 6.2m to 26m, is considered generous and results in a development that does not impose on Main Road and provides visual interest to the street elevation.

The proposed setbacks will reduce the perceived bulk and scale of the development on the neighbouring sites and the extent of overshadowing. The landscape plantings along the eastern and western boundaries of the site will alleviate the bulk and scale of the development when approaching the site from an easterly and westerly direction on Main Road.

It is considered the proposed three storey building height is appropriate in the context of the R3 and B4 zone to the west of the site. Any future development in the R3 and B4 zoned land will potentially be three stories in height and has the potential to screen the western and eastern elevations of the development from Main Road.

The proposal is sympathetic to the natural topography of the land and will maintain the neighbourhood amenity and character of the local area by proposing facades that provide visual interest and designing the development to minimise overlooking of adjoining properties. To enhance the visual interest of the northern elevation of the development which directly fronts the streetscape of Main Road, it is recommended that vertical blades are provided on the western side of the windows from the top of the third floor window to the bottom of the ground floor window. This will break up the appearance of the northern façade of the development and will provide visual interest to the streetscape.

To offset the proposed removal of trees from the site, substantial landscaping and tree plantings are proposed so as to enhance site amenity and streetscape appearance. It is to be noted that the subject site is not located within a riparian zone.

The proposed palisade fencing fronting Main Road is conditioned to be removed from the development so that a transitional landscaped area can be established between Main Road and the development and the private/public interface can be improved. Additionally, it is recommended the proposed electrical substation is relocated from the front of the eastern wing of the building to the eastern boundary of the site so as to minimise its impact on the development and streetscape. It is also recommended to be screened by landscape plantings. A condition of consent has been recommended to this effect.

The proposed 1.8m high metal palisade fencing fronting Tamar Avenue is not considered to be commensurate with the existing streetscape. It is recommended within the conditions of consent that the proposed fencing fronting Tamar Avenue is to be a combination of materials and articulation such as masonry with timber slat infill with a maximum height of 1.2m with landscaping. This will ensure passive and natural surveillance of the area and maintain the visual amenity to the streetscape that is predominately low density residential development on Tamar Avenue.

It should be noted the subject site does not contain any heritage items listed under Schedule 5 of WLEP 2013 and is not located within a heritage conservation area.

Clause 34 Visual and acoustic privacy

The design of the development has taken into consideration the visual and acoustic privacy of the future residents within the development and to the neighbouring site through the placement of windows, the location of balconies and roof terrace areas and the provision of adequate setbacks and landscaping.

The proposal has been designed that the courtyards and external living areas are orientated to the north so as to minimise privacy impacts to the neighbouring sites, particularly on Tamar Avenue. The proposed living areas for the residents are orientated to the north so as to achieve generous levels of solar access. Additionally, landscaping within the proposed setback areas will contribute to the visual privacy of the residents and adjoining properties through appropriate screening.

In relation to traffic noise, the residential component is likely to be sensitive to traffic noise and therefore it is recommended that appropriate measures are taken in the construction of the dwellings to reduce traffic noise. Consideration has been given to the amenity of the residents fronting Main Road. The proposed walls of the building and the rooms are to be of concrete panels with an inner skin of plasterboard which will provide adequate noise attenuation for traffic noise. The weakest acoustic point in any of the rooms will be the glazing.

The applicant submitted a Traffic Noise Assessment, prepared by Spectrum Acoustics, which considers the location of the residential care facility to be satisfactory subject to the implementation of recommendations within the report. Conditions have been applied accordingly.

Noise control measures for the loading dock and the mechanical services equipment such as air conditioning, ventilation systems are conditioned so as to not have an impact on the surrounding sites.

Clause 35 Solar access and design for climate

The submitted shadow diagrams indicate that the majority of the proposed overshadowing from the development will be over Tamar Avenue. The greatest impact of overshadowing to the properties located directly to the south will be to the front setback areas on these sites at midday. The proposal has been designed so that the current levels of solar access to the main living areas and private open space to the neighbouring residential sites are not significantly impacted by the development.

The residential care facility has been designed to ensure that the living and dining areas within the building are orientated north which will reduce energy use and provide a practical use of natural ventilation and solar heating. The proposed layout of the development has been designed to maximise solar access to the living, communal and outdoor terrace areas.

Clause 36 Stormwater

The proposal will provide one underground detention tank with the capability of holding a total volume of 80m³ of stormwater. Additionally, a bio retention pond is proposed at the front of the site with a holding capacity of 13m³ and a holding tank is proposed in the basement to capture the driveway runoff which will be discharged to the on-site stormwater detention system by a pump out system. The proposed on-site detention has been provided for the development to attenuate stormwater flows to pre-developed flow rates, which will ensure that the total discharge from the development site to Council's existing stormwater management system on Tamar Avenue and Main Road will not exceed pre development flows. The proposal also provides a rainwater retention tank with the capacity of holding 25m³ of stormwater that will be used for the purposes of on-site irrigation to the landscaped areas.

The proposed basement drainage including pump out system design and on-site detention is conditioned to be in accordance with the relevant requirements of AS3500.3 – Stormwater drainage.

Clause 37 Crime Prevention

The proposed development has been designed with regard to the principles of Crime Prevention Through Environmental Design (CPTED). Surveillance will be provided throughout the site with the use of effective lighting, appropriate fencing, landscaping, and identification of the site entrances with the avoidance of dark spaces throughout the development. The private external terrace courtyards assist in providing passive surveillance of the site by residents, staff and visitors. The proposed facility will be staffed 24 hours a day, 7 days a week therefore constant passive surveillance will be provided over the site.

Clause 38 Accessibility

The accessibility report prepared by Morris Goding Accessibility Consulting dated 25 July, 2017 demonstrated that the proposed development has accessible paths of travel that are continuous and are of an appropriate grade for accessibility. The proposal demonstrates compliance with statutory requirements (Commonwealth Discrimination Act (DDA)) pertaining to site access, common area access, accessible car parking and accessible sanitary facilities. The proposal has been conditioned to ensure compliance with the DDA prior to the issue of the Occupation Certificate.

Clause 39 Waste Management

The waste management plan (WMP) prepared by KMH Environmental provides details of waste management activities that will be carried out during the demolition, construction and ongoing operational phase of the proposed residential aged care facility. The WMP confirmed that all waste material arising from the initial site preparation works involving earthworks, tree removal, and demolition of the existing structures, construction works and the ongoing operation of the care facility will be appropriately managed.

The proposal incorporates a waste and recycling area within the ground floor of the development and the waste storage area is located within the basement and is accessible to the ground floor loading bay by a goods lift. This area will be used as a storage area for all waste and recyclable materials in the relevant bins for collection by the waste collection vehicles.

Part 4 Development standards to be complied with

Clause 40 Development standards – minimum sizes and building heights

Development consent must not be granted to a development unless the proposed development complies with the following standards:

- 40(2) Site size – minimum 1,000m²
- 40(3) Site frontage – 20 metres wide measured at the building line
- 40(4) Height in zones where residential flat buildings are not permitted.

The proposal complies with the standards specified in this clause, as the total area of the site is 4,728m² and the site has a frontage to Main Road that exceeds 20m satisfying Clause 40 (2) and (3). Clause 40 (4) does not apply in this circumstance, as residential flat buildings are permissible with consent within the R3 zone.

Part 7 Development Standards that cannot be used as grounds to refuse consent

Division 2 Residential care facilities

Clause 48 Standards that cannot be used to refuse development consent for residential care facilities.

The consent authority must not refuse consent to a development application made pursuant to SEPP HSPD for the carrying out of development for the purpose of a residential care facility on any of the following grounds:

a) Building height – if all of the proposed buildings are 8 metres or less,

The proposed total height of the residential care facility is 13.38m. SEPP HSPD does not impose height restrictions on Residential Aged Care facility developments within the R3 zone. Therefore the proposed building height greater than 8m is considered on merit.

The applicant has provided the following reasons outlining why the proposal should be supported:

- *The development is three storeys above ground which is the numbers of storeys envisaged under the LEP in the areas subject to the 12 metre building height control.*

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- *The external wall height is approximately 12m. The proposed 13.38m height is mainly associated with the roof mounted plant room and design elements at the centre of the building providing articulation to the north and south facades and identifying the main entry to the facility. This area is well setback from the front and side boundaries and would not be generally visible from the surrounding public domain as can be seen from the montages provided on the plans.*
 - *The height of the building is influenced by floor to ceiling heights of 3.2m to accommodate plant and other services for an efficient residential care facility operation. The ground floor has a higher floor to ceiling height consistent with the main entry function and nature of the activity on the ground floor. These floor to floor heights are required to meet the operational requirements for this form of the seniors housing.*
 - *The proposed development has evolved from a detailed consideration of the characteristics of the site in its context including the prevailing planning controls contained in the LEP and DCP as an indicator of the desired future character of the area.*
 - *The built form (including height) needs to be compatible with the desired future character of the area evolving in response to the planning controls of Council and the State Government.*
 - *The proposal is located within an area identified as a key site where a building height of 25m is envisaged. The majority of the built form is contained below the 12m maximum building height and well below the building height envisaged for the site under the key site controls.*
 - *The site is located adjacent to a business zone and on a large lot within a block identified for redevelopment as a key site. The bulk and scale of the development when perceived from the public domain would appear as a three storey building with articulated facades and variable setbacks from Main Road. The proposed setbacks comply with those required for a residential flat building of the same height providing the opportunity for perimeter landscaping and open space.*
 - *The aims of the Seniors Housing SEPP are achieved by setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified within the SEPP. An express aim of the SEPP is to encourage the development of seniors housing by overriding planning controls that would prevent such development. The maximum building height development standards in the LEP provide that the height of a building must not exceed that identified on the relevant maps. The view is taken that these controls are inconsistent with the SEPP because they mandate that consent be refused. The SEPP is specifically written to set aside such planning controls.*

Comment:

The proposed 13.38m building height is supported for the following reasons:

- The proposal will maintain the desired future bulk and scale and visual characteristic of Main Road by providing a three storey development that is well articulated and provides visual interest to the area.
- The proposal does not have any significant impact of overshadowing to the neighbouring properties.
- The proposal provides setbacks that comply with those required for a residential flat building of the same height providing the opportunity for additional landscaping so as to screen the structure from neighbouring development and alleviate overlooking to the neighbouring developments.
- The proposed height of the building is influenced by floor to ceiling heights of 3.2m to accommodate plant and other services for an efficient residential care facility operation. These floor to floor heights are required to meet the operational requirements of the RACF.
- It is considered that the proposal is of an appropriate scale in terms of bulk and height which has been designed to respond to the amenity of the surrounding development. The proposal provides appropriate levels of solar access, privacy, open space and views while maintaining a streetscape character that integrates appropriately with the surrounding low density housing and the future higher density development within the area.

b) Density and scale – if the density and scale of the building when expressed as a floor space ratio is 1:1 or less,

Comment - The proposed FSR of the residential care facility is 1.09:1. SEPP HSPD does not impose a maximum FSR control on RACF developments within the R3 zone. Therefore the proposed FSR greater than 1:1 is considered on merit.

The applicant has provided the following reasons outlining why the proposal should be supported:

Development consent is sought under the Seniors Housing SEPP; therefore the SEPP prevails to the extent of any inconsistency. The SEPP does not specify any FSR limit for the development. In the circumstances, it is clear that the SEPP did not intend to impose any FSR limit and therefore the application of a FSR limit (merely because one is provided for in the LEP) would be an 'inconsistency'. Notwithstanding, it is considered that the proposal should be supported in the following regards:

- *The density, bulk and scale of the development is appropriate in the context of the site's redevelopment potential as envisaged by the 'key site' development control pursuant to LEP Clause 7.11 in that:*
 - *it will deliver a high standard of design excellence for an identified key site;*

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- *it provides for the amalgamation of thirteen parcels of land and facilitates development opportunities that will improve the public domain and local context;*
 - *it will provide social and economic benefits for Toukley and surround area; and*
 - *the provision of seniors housing will deliver significant public benefit to the locality.*
 - *The density, bulk and scale of the development is compatible with the streetscape in that the front façade of the building presents to Main Road and has a subservient rear presentation to Tamar Avenue;*
 - *Building facades have been articulated to reduce the apparent bulk of the building.*
 - *The proposal facilitates the redevelopment of the area in a manner which is entirely appropriate for the local character and which will contribute to economic growth.*
 - *The site is located adjacent to a business zone and on a large lot within a block identified for redevelopment as a key site. The bulk and scale of the development when perceived from the public domain would appear as a three-storey building with articulated facades and variable setbacks from Main Road. Setbacks comply with those required for a residential building of the same height providing the opportunity for perimeter landscaping and open space.*
 - *The amended proposal has a bulk and scale appropriate for the key site location and is a low traffic generating development. The proposal will not result in any significant generation of traffic.*
 - *The amended FSR from 1.4:1 to 1.09:1 does not result in an unacceptable or unreasonable intensity of development on the area.*
 - *The development is for the purpose of a health-related service in the form of a residential care facility that is a form of seniors housing for which there is a significant demand in the locality.*
 - *Development consent is sought under the Seniors Housing SEPP which allows a maximum FSR of 1:1. In this regard, the amended proposal's non-compliance with the WLEP FSR control cannot be used as a ground for refusal. The proposed 1.09:1 FSR is a minor variation to the 1:1 FSR control under the Seniors Housing SEPP.*

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- *The aims of the Seniors Housing SEPP are achieved by setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified within the SEPP. An express aim of the SEPP is to encourage the development of seniors housing by overriding planning controls that would prevent such development. The maximum FSR development standards in the LEP provide that the FSR of a building must not exceed that identified on the relevant maps. The view is taken that these controls are inconsistent with the SEPP because they mandate that consent be refused. The SEPP is specifically written to set aside such planning controls.*

Comment:

The proposed FSR is supported for the following reasons:

- The proposed bulk and scale of the development integrates with the established density of the development in the area. The proposal provides appropriate levels of solar access, privacy, open space and views while maintaining a streetscape character that integrates appropriately with the surrounding low density housing and the future higher density development within the area.
- The reduction of the proposed FSR from 1.4:1 to 1.09:1 reduces the size and scale of the development to appropriately integrate within the existing neighbouring development.
- The proposal provides a variety and density of housing within the R3 zone to cater for the housing needs of the community while facilitating development encouraging economic growth.
- The proposal provides for a built form which is in accordance with the vision for this iconic site which has been the subject of a long and detailed planning and public consultation process.

c) Landscape area – if a minimum of 25m² of landscaped area is provided per residential care facility bed

Based on the proposed 122 beds within the facility, 3,050m² of landscaped area is to be provided on site. It is considered that 2,060m² of landscaped area is provided on the ground level on the site, 200m² of outdoor area that includes landscaping on the first floor and 116m² of outdoor area is provided on the second floor which is a combined total area of 2,376m².

The proposed amended development provides a total combined landscaped area of 2,376m² which is a shortfall of 674m² (22% variation) and can be considered on merit.

It is considered that the 2,376m² of proposed landscaping provided on site is of a suitable size which will provide adequate seating areas, plantings and reflective gardens for the residents to enjoy while being assisted by staff and family members that visit the facility. Furthermore, the proposed outdoor areas provided for the use by the residents are connected to the indoor living areas and provide specific purpose built safe areas for the resident outdoor use.

Landscape plantings are conditioned to be provided along the boundaries of the site so as to provide additional screening. This will ensure that a suitable level of privacy is provided for the residents and visitors utilising the sites landscaped area.

d) Parking for residents – if at least the following is provided:

- i. 1 car parking space for each 10 beds in the residential care facility (or 1 parking space for each 15 beds if the facility provides care only for persons with dementia) and
- ii. 1 parking space for each 2 persons to be employed in connection with the development and on duty at any one time, and
- iii. 1 parking space suitable for an ambulance.

Based on the proposed 122 beds within the facility with a maximum number of 29 staff on duty at any one time, it is required that 27 car spaces are to be provided on site with 1 ambulance space. The proposal complies with the car parking space requirements, as 33 spaces are provided on site with 2 spaces for the purposes of accessible parking plus an ambulance space is provided too.

It is considered that no additional car parking is required on site for the proposed food and drinks premises (café) as it is an ancillary component of the RACF and will only be used by the staff, residents and visitors of the care facility.

Clause 55 – Residential care facilities for seniors required to have fire sprinkler systems

It is considered that the proposed RACF will be a Class 9c Building, accordingly it will contain a complete BCA compliant fire sprinkler system. This will be designed and certified by a qualified hydraulic/fire services engineer. The proposed development is conditioned to comply with the BCA as part of the consent.

State Environmental Planning Policy (State and Regional Development) 2011 (SEPP SRD)

As this application was lodged prior to 1 March 2018, the proposal constitutes regional development under Part 4 of SEPP SRD and as identified under Schedule 4A of the EP&A Act due to the estimated value of the development (exceeding \$20 million). As such, the determining authority for the development application is the Hunter and Central Coast Joint Regional Planning Panel.

State Environmental Planning Policy 71 – Coastal Protection

State Environmental Planning Policy No 71 – Coastal Protection applies to the development. The site is located wholly within a coastal protection zone under the SEPP. The proposal has been assessed within the context of the matters for consideration outlined under Clause 8 and found to be satisfactory (as outlined in the attached table Appendix 1).

The proposed development will be discharging stormwater into the existing Council stormwater management system on Main Road and Tamar Avenue. The proposal will not be discharging untreated stormwater into the sea, beach, a rock platform or other water bodies. The proposed development complies with Clause 16 of SEPP 71.

The proposed development is considered to be consistent with the stated aims as it:

- is not considered to negatively effect the natural, cultural, recreational and economic attributes of the New South Wales coast, and will not impact on public access to and along coastal foreshores,
- is located within an unused caravan park and residential allotments and will not impact Aboriginal cultural heritage or values,
- will not impact the visual amenity of the coast, or impact on the beach environment, nor impact on coastal vegetation, the marine environment or rock platforms,
- is not inconsistent with the principles of ecologically sustainable development,
- is of a bulk and scale which is acceptable given its location and planning controls.

SEPP 71 also requires the consent authority to consider the matters listed in Clause 8:

The proposed development is considered to be consistent with the matters for consideration as it:

- is consistent with the aims of the policy,
- will not impact on public access to and along coastal foreshores,
- is suitable for the medium density residential zoning.

Draft State Environmental Planning Policy (Coastal Management) 2016

Under the proposed SEPP, the site is identified as being located within a Coastal Environment Area (CEA) and is also located within the coastal use area of the above draft SEPP.

Any development on land identified as a CEA is required to be in accordance with *Clause 14 – Development on land within the coastal environment area* of the above SEPP. The proposal will not have an impact upon the coastal environment and is therefore consistent with the requirements of Clause 14.

The site is also identified as a coastal use area. The application is therefore required to take into consideration *Clause 15 – Development on land within the coastal use area*. The proposed development has been assessed against Clause 15 of the above plan and has been found to not have an impact upon the coastal use area as the development is confined within the subject site.

State Environmental Planning Policy 55 – Remediation of Land

Clause 7 of SEPP 55 specifically relates to the consideration of contamination and remediation prior to a consent authority granting consent to the carrying out of any development. Specifically, subclause (1) stated that:

A consent authority must not grant 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.*

A Stage 1 Preliminary Contamination Report and Stage 2 Detailed Contamination Report were submitted with the amended application. It was concluded within the Stage 2 Detailed Contamination Report (G09/2515-A, dated 3 July 2017) prepared by Network Geotechnics Pty Ltd that the subject site is suitable for the proposed development subject to the successful removal of the asbestos contaminated material (ACM). Council's Environmental Health Officer supports the recommendations provided within the Stage 2 Detailed Contamination Report. Appropriate conditions have been applied for the removal of the ACM from the site during the demolition of the existing structures and the site preparation works. The subject site is suitable for the proposed development.

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 relates to development with frontage to a classified road (Main Road) and seeks to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- a) Where practicable, vehicular access to the land is provided by a road other than the classified road, and*
- b) The safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
 - i. The design of the vehicular access to the land; or*
 - ii. The emission of smoke or dust from the development; or*
 - iii. The nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- c) The development is a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Vehicular access to and from the site is proposed from Main Road. The proposed development was referred to the Roads and Maritime Services (RMS) for consideration. It was considered by the RMS that the proposal will not adversely impact the safety, efficiency and ongoing operation of the classified road. The RMS recommended that a permanent traffic medium is provided on Main Road along the frontage of the site so as to prevent traffic turning right into the site from Main Road. This has been conditioned to be provided by the developer as part of the consent.

In relation to traffic noise, the development is likely to be sensitive to traffic noise and therefore it is recommended that appropriate measures are undertaken in the construction of the building to reduce traffic noise. It is conditioned as part of the consent that the developer complies with the recommendations provided within the submitted acoustic report titled: *Spectrum Acoustics – Traffic Noise Assessment Proposed Aged Care Facility Toukley dated 18 September 2017, project ref: 171506/7454.*

As the annual average daily traffic volume for Main Road is less than 40,000 cars, Clause 102 of the SEPP does not apply in this circumstance.

Wyong Local Environmental Plan 2013 (WLEP 2013)

Zoning and permissibility

The site is currently zoned R3 Medium Density Residential under WLEP 2013. The proposed RACF is defined as 'Seniors Housing' under WLEP 2013, which is a permitted land use in the R3 zone.

The proposed development is relying on the provisions of SEPP (SHPD) for assessment purposes.

Clause 2.7 - Demolition requires development consent

Under this Clause the demolition of a building or work may be carried out only with development consent. Consent is sought under this application for the demolition of the existing development on site.

Clause 4.3 – Height of buildings

The allowable maximum building height permissible under Clause 4.3 of WLEP 2013 is 12m. As indicated on the amended plans, the maximum building height of the proposal is 13.38m. The proposed 1.38m breach (11.5% variation) of the height limit occurs at the top of the plant enclosure with the overall building parapet height being generally under the 12m maximum building height limit. Accordingly the applicant has request to utilise the provisions of Clause 4.6 so as to vary the building height development standard.

As outlined above, the proposal includes an exception under Clause 4.6 to the required Height of building development standard (under Clause 4.3). The intention of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards to particular development, and in doing so, to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clause 4.3 is not a development standard that is expressly excluded from the operation of this clause under subclause 8.

The standard must not be varied unless it can be demonstrated under subclause 3 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. The applicant provided justification in writing and in this circumstance, the exception proposed is considered reasonable.

The objectives for the maximum Height of building for the site under Clause 4.3 are:

- a) To establish the maximum height limit for buildings to enable the achievement of appropriate development density,*
- b) To ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the area.*
- c) To ensure that the height of the buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.*

The proposal achieves the objectives of the Height of buildings control

The proposal achieves these objectives as discussed below.

- a) To establish the maximum height limit for buildings to enable the achievement of appropriate development density,*

Applicant's response:

In relation to Objective (a), the planning controls contain two height controls for the site being 12m and 25m, the latter being under the provisions of Clause 7.11 of WLEP 2013. The proposed residential care facility has a height of three storeys and the density of development is appropriate in that the building has an appropriate bulk and scale. Future traffic generated by the development is low because of its low intensity use. It is therefore considered that the density of the development on the site is acceptable.

Comment:

The underlying objective of the building height standard of Clause 4.3 of WLEP 2013 is understood to be about maintaining an appropriate scale of development on the established development within the vicinity of the proposal, and mitigating negative impacts upon neighbouring amenity.

The proposed non-compliance with respect to the building height standard is considered acceptable in this circumstance as the non-compliance is mainly associated with the roof mounted plant room, design elements of the building and due to the sloping nature of the site to the Tamar Avenue at the rear of the site. The proposed building non-compliance area is well setback from the boundaries and would not be generally visible from the surrounding public domain. The proposed setbacks comply with those required for a residential flat building of the same height providing the opportunity for additional landscaping so as to screen the structure from neighbouring development.

In addition, the proposed height of the building is influenced by floor to ceiling heights of 3.2m to accommodate plant and other services for an efficient residential care facility operation. These floor to ceiling heights are required to meet the operational requirements of the RACF.

(b) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the area.

Applicant's response:

In relation to Objective (b), the existing character of the area is one in transition from older style dwellings houses and a disused caravan park site to one that facilitates economic development in a manner that also caters to a well-recognised community need for residential care facilities. Council's adopted Toukley Planning Strategy recommends the redevelopment of the caravan site and incentives to be provided for this purpose. The desired future character of the area is seen as one that allows a higher development with site consolidation to achieve rational development sites, employment generating developments, proximity to a centre and to public transport, good urban design and associated public benefits. It is considered that the proposal achieves these elements of the desired future character of the area.

Comment:

The desired character and proportion of Main Road is maintained by this proposal, as the three storey building height is consistent with the future building height envisaged within the area. The height limit of the subject site is 12m and only a maximum height of 1.38m of the building exceeds the height limit. It is noted that majority of the proposal is under the height limit. However, the proposed non-compliance is mainly associated with the roof mounted plant room, design elements of the building and due to the sloping nature of the site to Tamar Avenue at the rear of the site. The minimal areas over the height limit are acceptable for the following reasons:

- The proposal will maintain the visual characteristic of Main Road by providing a three storey development which is envisaged for the area.
- Majority of the development is under the height limit and only the roof mounted plant room, design elements of the building exceed the height limit.
- The proposal does not have any impact of overshadowing to the neighbouring properties.
- The proposal does not have an impact on the privacy of the neighbouring sites.

(c) to ensure that the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.

Applicant's response:

In relation to Objective (c), it is considered that the amended proposal has been designed in a manner that its height protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.

Comment:

It is considered that the proposal is of an appropriate scale in terms of bulk and height which has been designed to respond to the amenity of the surrounding development. The proposal provides appropriate levels of solar access, privacy and open space while maintaining a streetscape character that integrates appropriately with the surrounding low density housing from Tamar Avenue and the future higher density development within the area.

Compliance with Clause 4.6

The intention of Clause 4.6 is to provide an appropriate degree of flexibility to the application of certain development standards. Clause 4.3 is a not development standard excluded from the operation of this Clause under subclause 4.6(8). Clause 4.6 stipulates that a development standard must not be varied unless it can be demonstrated under subclause 4.6(3) that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with the provisions of Clause 4.6, the applicant has lodged a written request justifying contravention of the development standard of:

- a 12m height limit under Clause 4.3 a maximum height of 13.38m. This is a variation of 1.38m or 11.5%.

The objective of this Clause is to provide a greater degree of flexibility in applying certain standards to particular development. Development consent may be granted subject to this Clause, even though the development would contravene a development standard imposed by the WLEP 2013. Development consent must not be granted for a variation unless the consent authority has considered a written request from the applicant justifying the variation by demonstrating:

- (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant has submitted a written request stating that Council's development standard is unreasonable and unnecessary in this instance and the proposed height variation is well founded for the follows reasons:

- *The development is three storeys above ground which is the numbers of storeys envisaged under the LEP in the areas subject to the 12 metre building height control.*
- *The external wall height is approximately 12m. The proposed 13.38m height is mainly associated with the roof mounted plant room and design elements at the centre of the building providing articulation to the north and south facades and identifying the main entry to the facility. This area is well setback from the front and side boundaries and would not be generally visible from the surrounding public domain as can be seen from the montages provided on the plans.*

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- *The height of the building is influenced by floor to ceiling heights of 3.2m to accommodate plant and other services for an efficient residential care facility operation. The ground floor has a higher floor to ceiling height consistent with the main entry function and nature of the activity on the ground floor. These floor to floor heights are required to meet the operational requirements for this form of the seniors housing.*
 - *The proposed development has evolved from a detailed consideration of the characteristics of the site in its context including the prevailing planning controls contained in the LEP and DCP as an indicator of the desired future character of the area.*
 - *The built form (including height) needs to be compatible with the desired future character of the area evolving in response to the planning controls of Council and the State Government.*
 - *The proposal is located within an area identified as a key site where a building height of 25m is envisaged. The majority of the built form is contained below the 12m maximum building height and well below the building height envisaged for the site under the key site controls.*
 - *The site is located adjacent to a business zone and on a large lot within a block identified for redevelopment as a key site. The bulk and scale of the development when perceived from the public domain would appear as a three storey building with articulated facades and variable setbacks from Main Road. The proposed setbacks comply with those required for a residential flat building of the same height providing the opportunity for perimeter landscaping and open space.*
 - *The aims of the Seniors Housing SEPP are achieved by setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified within the SEPP. An express aim of the SEPP is to encourage the development of seniors housing by overriding planning controls that would prevent such development. The maximum building height development standards in the LEP provide that the height of a building must not exceed that identified on the relevant maps. The view is taken that these controls are inconsistent with the SEPP because they mandate that consent be refused. The SEPP is specifically written to set aside such planning controls.*

The reasons for variation proposed by the applicant were considered and the following is provided:

- The proposal will maintain the desired future bulk and scale and visual characteristic of Main Road by providing a three storey development that is well articulated and provides visual interest to the area.
- The proposal does not have any significant impact of overshadowing to the neighbouring properties.

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- The proposal provides setbacks that comply with those required for a residential flat building of the same height providing the opportunity for additional landscaping so as to screen the structure from neighbouring development and alleviate overlooking to the neighbouring developments.
 - The proposed height of the building is influenced by floor to ceiling heights of 3.2m to accommodate plant and other services for an efficient residential care facility operation. These floor to floor heights are required to meet the operational requirements of the RACF.
 - It is considered that the proposal is of an appropriate scale in terms of bulk and height which has been designed to respond to the amenity of the surrounding development. The proposal provides appropriate levels of solar access, privacy, open space and views while maintaining a streetscape character that integrates appropriately with the surrounding low density housing and the future higher density development within the area.

Pursuant to the provisions of Clause 4.6(4), development consent must not be granted for development that contravenes a development standard unless:

- (a)(i) *the consent authority is satisfied that the matters identified above (being the standard is unreasonable and compliance is unnecessary and that there are environmental grounds supporting non-compliance) have been adequately addressed*
- (a)(ii) *the proposed development will be in the public interest as it is consistent with the objectives of the zone, and*
- (b) *the concurrence of the Director-General has been obtained.*

In relation to the public interest:

The proposed variation to the height development standard is considered reasonable in this circumstance and is in the public interest for the following reasons:

- The development does not have any significant impact of overshadowing of the neighbouring development and will not impact upon the useability of their open space areas or upon the amenity of those residents.
- The development will not impact upon the views, privacy and amenity of the adjoining development.
- The development provides sufficient sunlight access.
- The variation will not set an undesirable precedent.

The proposal has been assessed in light of the stated objectives and it is evident that the proposed development will not be contrary to the public interest for the following reasons:

The objectives of the development standard are:

- a) *To establish the maximum height limit for buildings to enable the achievement of appropriate development density,*

The underlying objective of the building height standard of Clause 4.3 of WLEP 2013 is understood to be about maintaining an appropriate scale of development on the established development within the vicinity of the proposal, and mitigating negative impacts upon neighbouring amenity.

The proposed non-compliance with respect to the building height standard is considered acceptable in this circumstance as the non-compliance is mainly associated with the roof mounted plant room, design elements of the building and due to the sloping nature of the site to the Tamar Avenue at the rear of the site. The proposed building non-compliance area is well setback from the boundaries and would not be generally visible from the surrounding public domain. The proposed setbacks comply with those required for a residential flat building of the same height providing the opportunity for additional landscaping so as to screen the structure from neighbouring development.

In addition, the proposed height of the building is influenced by floor to ceiling heights of 3.2m to accommodate plant and other services for an efficient residential care facility operation. These floor to ceiling heights are required to meet the operational requirements of the RACF.

(b) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the area.

The desired character and proportion of Main Road is maintained by this proposal, as the three storey building height is consistent with the future building height envisaged within the area. The height limit of the subject site is 12m and only a maximum height of 1.38m of the building exceeds the height limit. It is noted that majority of the proposal is under the height limit. However, the proposed non-compliance is mainly associated with the roof mounted plant room, design elements of the building and due to the sloping nature of the site to Tamar Avenue at the rear of the site. The minimal areas over the height limit are acceptable for the following reasons:

- The proposal will maintain the visual characteristic of Main Road by providing a three storey development which is envisaged for the area.
- Majority of the development is under the height limit and only the roof mounted plant room, design elements of the building exceed the height limit.
- The proposal does not have any impact of overshadowing to the neighbouring properties.
- The proposal does not have an impact on the privacy of the neighbouring sites.

(c) to ensure that the height of buildings protects the amenity of neighbouring properties in terms of visual bulk, access to sunlight, privacy and views.

The proposal is of an appropriate scale in terms of bulk and height which has been designed to respond to the amenity of the surrounding development. The proposal provides appropriate levels of solar access, privacy and open space while maintaining a streetscape character that integrates appropriately with the surrounding low density housing from Tamar Avenue and the future higher density development within the area.

The objectives of the R3 Medium Density Residential zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*

The application provides additional housing for the needs of the community within a three storey development which is well articulated and provides visual interest to the area. The proposal will maintain the desired future bulk and scale and visual characteristic within a medium density environment.

- *To provide a variety of housing types within a medium density residential environment.*

The application will add to the variety of housing types within a medium density environment so as to facilitate housing choice within the area for the needs of the community.

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

The application will provide a facility which will meet the day to day needs of residents which require housing within an assisted living environment.

- *To maintain and enhance the residential amenity of the surrounding area.*

The application will provide a medium density residential development without adversely compromising the amenity of the neighbouring residential development in terms of solar access, privacy, traffic and car parking.

- *To encourage amalgamation of existing lots to facilitate well designed medium density development and to avoid unnecessary isolation of lots.*

The existing lots will be amalgamated so as to facilitate the well designed medium density development without necessarily isolating existing lots.

The proposed variation to the 12m height in the circumstances of the development is supported and is in the public interest as the development complies with all of the objectives of the zone and is of an appropriate scale in terms of bulk and height which has been designed to respond to the amenity of the surrounding development. The proposal provides appropriate levels of solar access, privacy and open space while maintaining a streetscape character that integrates appropriately with the surrounding low density housing from Tamar Avenue and the future higher density development anticipated within the R3 zone.

In this instance, and on these grounds, the exception is supported and strict 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.

In accordance with clause 64 of the *Environmental Planning and Assessment Regulation 2000*, JRPP may assume the concurrence of the Secretary of the Department of Planning, for an exception to a development standard under clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006*, having regard for the matters set out in subclause 4.6(5) and where the variation is greater than 10% or non-numerical. JRPP have considered those matters set out in subclause 4.6(5) and assume the concurrence of the Secretary in this instance.

Clause 4.4 – Floor Space Ratio (FSR)

The allowable maximum FSR permissible under Clause 4.4 of WLEP 2013 is 0.9:1. The development is proposed under the provisions of SEPP (SHPD). Clause 5 (3) of SEPP (SHPD) stipulates that any inconsistency between this policy and any other environmental planning instrument, SEPP (SHPD) prevails to the extent of the inconsistency.

Clause 48 (b) of SEPP (SHPD) provides a maximum FSR of 1:1 or less as a standard that cannot be used to refuse development consent for a residential care facility. The maximum FSR of the proposal is 1.09:1 (5,177m²) which is a 449m² exceedance (9.5% variation) of the maximum FSR limit permitted under Clause 48 (b) of SEPP (SHPD).

The allowable maximum FSR permissible under Clause 4.4 of WLEP 2013 is 0.9:1. As indicated on the amended plans, the maximum FSR of the proposal is 1.09:1 which is a 921.8m² exceedance (21.6% variation) of the maximum FSR limit permitted under Clause 4.4 of WLEP 2013. Accordingly the applicant has request to utilise the provisions of Clause 4.6 so as to vary the building height development standard.

As outlined above, the proposal includes an exception under Clause 4.6 to the required FSR development standard (under Clause 4.4). The intention of Clause 4.6 is to provide an appropriate degree of flexibility in applying certain development standards to particular development, and in doing so, to achieve better outcomes for and from development by allowing flexibility in particular circumstances. Clause 4.4 is not a development standard that is expressly excluded from the operation of this clause under subclause 8. The standard must not be varied unless it can be demonstrated under subclause 3 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. The applicant provided justification in writing and in this circumstance, the exception proposed is considered reasonable.

Compliance with Clause 4.6

The intention of Clause 4.6 is to provide an appropriate degree of flexibility to the application of certain development standards. Clause 4.3 is a not development standard excluded from the operation of this Clause under subclause 4.6(8). Clause 4.6 stipulates that a development standard must not be varied unless it can be demonstrated under subclause 4.6(3) that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case and there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with the provisions of Clause 4.6, the applicant has lodged a written request justifying contravention of the development standard of:

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- a 0.9:1 FSR limit under Clause 4.4 a maximum FSR of 1.09:1. This is a variation of 921.8m or 21.6%.

The objective of this Clause is to provide a greater degree of flexibility in applying certain standards to particular development. Development consent may be granted subject to this Clause, even though the development would contravene a development standard imposed by the WLEP 2013. Development consent must not be granted for a variation unless the consent authority has considered a written request from the applicant justifying the variation by demonstrating:

- (c) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- (d) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

The applicant has submitted a written request stating that Council's development standard is unreasonable and unnecessary in this instance and the proposed FSR variation is well founded for the follows reasons:

- *The density, bulk and scale of the development is appropriate in the context of the site's redevelopment potential as envisaged by the 'key site' development control pursuant to LEP Clause 7.11 in that:*
 - *it will deliver a high standard of design excellence for an identified key site;*
 - *it provides for the amalgamation of thirteen parcels of land and facilitates development opportunities that will improve the public domain and local context;*
 - *it will provide social and economic benefits for Toukley and surround area; and*
 - *the provision of seniors housing will deliver significant public benefit to the locality.*
- *The density, bulk and scale of the development is compatible with the streetscape in that the front façade of the building presents to Main Road and has a subservient rear presentation to Tamar Avenue;*
- *Building facades have been articulated to reduce the apparent bulk of the building.*
- *The proposal facilitates the redevelopment of the area in a manner which is entirely appropriate for the local character and which will contribute to economic growth.*
- *The site is located adjacent to a business zone and on a large lot within a block identified for redevelopment as a key site. The bulk and scale of the development when perceived from the public domain would appear as a three-storey building with articulated facades and variable setbacks from Main Road. Setbacks comply with those required for a residential building of the same height providing the opportunity for perimeter landscaping and open space.*

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- *The amended proposal has a bulk and scale appropriate for the key site location and is a low traffic generating development. The proposal will not result in any significant generation of traffic.*
 - *The amended FSR from 1.4:1 to 1.09:1 does not result in an unacceptable or unreasonable intensity of development.*
 - *The development is for the purpose of a health-related service in the form of a residential care facility that is a form of seniors housing for which there is a significant demand in the locality.*
 - *Development consent is sought under the Seniors Housing SEPP which allows a maximum FSR of 1:1. In this regard, the amended proposal's non-compliance with the WLEP FSR control cannot be used as a ground for refusal. The proposed 1.09:1 FSR is a minor variation to the 1:1 FSR control under the Seniors Housing SEPP*
 - *The aims of the Seniors Housing SEPP are achieved by setting aside local planning controls that would prevent the development of housing for seniors or people with a disability that meets the development criteria and standards specified within the SEPP. An express aim of the SEPP is to encourage the development of seniors housing by overriding planning controls that would prevent such development. The maximum FSR development standards in the LEP provide that the FSR of a building must not exceed that identified on the relevant maps. The view is taken that these controls are inconsistent with the SEPP because they mandate that consent be refused. The SEPP is specifically written to set aside such planning controls.*
 - *Notwithstanding that this is the correct interpretation of the provisions of the Seniors Housing SEPP, in our view, and for abundant caution, a request have been made pursuant to Clause 4.6 to vary strict application of the FSR development standards in the circumstances of this case.*

The reasons for variation proposed by the applicant were considered and the following is provided:

- The development is proposed under the provisions of SEPP (SHPD). Clause 5 (3) of SEPP (SHPD) stipulates that any inconsistency between this policy and any other environmental planning instrument, SEPP (SHPD) prevails to the extent of the inconsistency. Clause 48 (b) of SEPP (SHPD) provides a maximum FSR of 1:1 or less as a standard that cannot be used to refuse development consent for a residential care facility. The maximum FSR of the proposal is 1.09:1(5,177m²) which is a 449m² exceedance (9.5% variation) of the maximum FSR limit permitted under Clause 48 (b) of SEPP (SHPD).
- The proposed bulk and scale of the development integrates with the established density of the development in the area. The proposal provides appropriate levels of solar access, privacy, open space and views while maintaining a streetscape character that integrates appropriately within the area.

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- The reduction of the proposed FSR from 1.4:1 to 1.09:1 reduces the size and scale of the development to appropriately integrate within the existing neighbouring development.
 - The proposal provides a variety and density of housing within the R3 zone to cater for the housing needs of the community while facilitating development encouraging economic growth.
 - The proposal will maintain the desired future bulk and scale and visual characteristic of Main Road by providing a three storey development that is well articulated and provides visual interest to the area.
 - The proposal does not have any significant impact of overshadowing to the neighbouring properties.
 - The proposal provides setbacks that comply with those required for a residential flat building of the same height providing the opportunity for additional landscaping so as to screen the structure from neighbouring development and alleviate overlooking to the neighbouring developments.
 - The proposal is in the public interest as it provides an aged care facility which provides an additional care facility to service the local community and increase economic growth.
 - The proposal provides for a built form which is in accordance with the vision for this iconic site.

Pursuant to the provisions of Clause 4.6(4), development consent must not be granted for development that contravenes a development standard unless:

- (a)(i) *the consent authority is satisfied that the matters identified above (being the standard is unreasonable and compliance is unnecessary and that there are environmental grounds supporting non-compliance) have been adequately addressed*
- (a)(ii) *the proposed development will be in the public interest as it is consistent with the objectives of the zone, and*
- (b) *the concurrence of the Director-General has been obtained.*

In relation to the public interest:

The proposed variation to the FSR development standard is considered reasonable in this circumstance and is in the public interest for the following reasons:

- The development does not have any significant impact of overshadowing of the neighbouring development and will not impact upon the useability of their open space areas or upon the amenity of those residents.
- The development will not impact upon the views, privacy and amenity of the adjoining development.
- The development provides sufficient sunlight access.

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- The variation will not set an undesirable precedent.
 - The proposal provides a service to the local community which will encourage economic growth and employment.

The proposal has been assessed in light of the stated objectives and it is evident that the proposed development will not be contrary to the public interest for the following reasons:

The objectives of the development standard are:

a) to ensure that the density, bulk and scale of development is appropriate for a site

The proposal provides for a built form which provides an aged care facility for the community within an established urban area. The proposal integrates with the envisage three storey residential flat buildings in the area and provides appropriate levels of solar access, privacy, open space and views.

(b) to ensure that the density, bulk and scale of development integrates with the streetscape and character of the area in which the development is located,

The proposed bulk and scale of the development integrates with the envisaged density of the development in the R3 zone which will consist of the three storey residential flat buildings in the area. The proposal provides appropriate levels of solar access, privacy, open space and views while maintaining a streetscape character that integrates appropriately with the surrounding low density housing and the future higher density development within the area.

(c) to facilitate development in certain areas that contributes to economic growth.

The controls for the site are specifically targeted at allowing developments that will assist in the revitalisation of the existing site, so as to provide a variety and density of housing within the R3 zone to cater for the housing needs of the community while facilitating development encouraging economic growth and additional employment. The proposed FSR will enhance the prospects of the development proceeding and being able to achieve this objective.

The proposal is of an appropriate scale in terms of bulk and scale which has been designed to respond to the amenity of the surrounding development. The proposal provides appropriate levels of solar access, privacy and open space while maintaining a streetscape character that integrates appropriately with the surrounding low density housing from Tamar Avenue and the future higher density development within the area.

The objectives of the R3 Medium Density Residential zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*

The application provides additional housing for the needs of the community within a three storey development which is well articulated and provides visual interest to the area. The proposal will maintain the desired future bulk and scale and visual characteristic within a medium density environment.

- *To provide a variety of housing types within a medium density residential environment.*

The application will add to the variety of housing types within a medium density environment so as to facilitate housing choice within the area for the needs of the community.

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

The application will provide a facility which will meet the day to day needs of residents which require housing within an assisted living environment.

- *To maintain and enhance the residential amenity of the surrounding area.*

The application will provide a medium density residential development without adversely compromising the amenity of the neighbouring residential development in terms of solar access, privacy, traffic and car parking.

- *To encourage amalgamation of existing lots to facilitate well designed medium density development and to avoid unnecessary isolation of lots.*

The existing lots will be amalgamated so as to facilitate the well designed medium density development without necessarily isolating existing lots.

The proposed variation to the 0.9:1 FSR in the circumstances of the development is supported and is in the public interest, as the development complies with all of the objectives of the zone and is of an appropriate bulk and scale which has been designed to respond to the amenity of the surrounding development. The proposal provides appropriate levels of solar access, privacy and open space while maintaining a streetscape character that integrates appropriately with the surrounding low density housing from Tamar Avenue and the future higher density development anticipated within the R3 zone.

In this instance, and on these grounds, the exception is supported and strict 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.

In accordance with clause 64 of the *Environmental Planning and Assessment Regulation 2000*, JRPP may assume the concurrence of the Secretary of the Department of Planning, for an exception to a development standard under clause 4.6 of the *Standard Instrument (Local Environmental Plans) Order 2006*, having regard for the matters set out in subclause 4.6(5) and where the variation is greater than 10% or non-numerical. JRPP have considered those matters set out in subclause 4.6(5) and assume the concurrence of the Secretary in this instance.

Clause 5.5 - Coastal Zone

Clause 5.5(2) applies to development within the coastal zone and requires consideration of specified matters prior to consent being granted. The specified matters relate to:

- maintaining existing and identifying new pedestrian access to and along the foreshore,
- the suitability of the development and its impact on scenic quality,

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- the impact of the proposal on the amenity of the coastal foreshore (including shadowing or view loss),
 - protection of the visual amenity and scenic qualities of the coast,
 - conservation of coastal biodiversity and ecosystems, and
 - the cumulative impacts of the development on the coastal catchment.

The proposal is considered satisfactory in relation to the protection of the coastal zone. The development site is within the coastal protection area as identified in the SEPP 71 mapping. The site is not located near the coastal foreshore, includes suitable drainage and is of a distance that no adverse impacts will be created on the coastal foreshore.

Clause 7.1 - Acid Sulfate Soils

WLEP 2013 requires consideration to be given to certain development on land being subject to actual or potential acid sulfate soils. The site is identified as Class 5 on the Acid Sulfate Soils map and due to the fact that the development proposes significant excavation greater than 1m, an Acid Sulfate Soils Management Plan was prepared and submitted to Council, as such, development consent may be granted by the consent authority having regard for the provisions of clause 7.1.

A condition of consent requires construction of the development to be carried out in accordance with the recommendations provided within the Acid Sulfate Soils Management Plan (ASSMP): – *Acid Sulphate Management Plan (ASSMP) Proposed Aged Care Facility Toukley dated 31 January 2018, project ref: G09/2515-C* prepared by Network Geotechnics.

Clause 7.9 – Essential Services

This clause requires that all new development is to have an adequate water supply and facilities for the removal or disposal of sewage and drainage. Water, sewer and stormwater connections are all currently available to the site. In respect of this, the proposal satisfies this Clause.

Section 4.15(1)(a)(ii) the provisions of any draft environmental planning instrument

Draft State Environmental Planning Policy (Coastal Management) 2016 has been addressed previously in the report.

Section 4.15(1)(a)(iii) the provisions of any development control plan

Wyong Development Control Plan 2013 (WDCP 2013)

Chapter 2.11 – Parking and Access

The parking rates required under SEPP HSPD apply to this development. The proposal complies with required car parking rates under the SEPP HSPD.

Chapter 3.1 – Site Waste Management

A Waste Management Plan (WMP) has been submitted with the development application in accordance with Chapter 3.1 of WDCP 2013. The WMP incorporated details of waste management and reuse for the site preparation, construction and ongoing use of the site.

Chapter 3.3 – Floodplain management

The site is affected by localised overland flooding (northern lakes overland flood study) and not from riverine flooding from Tuggerah Lake. The overland flooding is categorised as low hazard due to the low inundation depth and velocity and is isolated across the property. The majority of overland flooding occurs within the road reserve.

The current 1 % AEP flood level of the Tuggerah Lakes is 2.2 metres AHD. The PMF level, including climate change allowance (0.9-1.0m), is 3.7m AHD. Council records indicate that the subject site is approximately RL 4.0metres AHD and no further flood assessment is required.

Chapter 6.1 – Key Sites

An assessment against the controls of Chapter 6.1 of the DCP is not required in this circumstance, as the proposal is not utilising the key site provisions under Clause 7.11 of WLEP 2013.

Section 4.15(1)(iia) any planning agreement

There is no planning agreement applicable to the subject site or proposed development.

Section 4.15(1)(a)(iv) any matters prescribed by the regulations

- *Environmental Planning and Assessment Regulations 2000 (EP&A Regs 2000)*

The *Environmental Planning and Assessment Regulations 2000* applies to all development applications in regards to such items as application type, compulsory contributions, notification of development applications and a range of many other details regarding development application requirements. In regards to this application, there is no specific clause that warrants discussion.

Section 4.15(1)(a)(v) any coastal zone management plan (within the meaning of the Coastal Protection Act 1979)

There are no relevant coastal zone management plans that warrant further discussion.

Section 4.15(1)(b) the likely impacts of the development

a) Built Environment

A thorough assessment of the proposed development on the built environment has been considered in terms of SEPP HSPD, WLEP 2013 and WDCP 2013 compliance and in terms of the submissions received. It is considered on balance, the potential impacts are considered reasonable.

b) Access and Transport

Roads, Access and Traffic – External

Main Road, Toukley is classified as a Category “A” road. Main Road is a classified (i.e. state) road (MR509) forming part of route B70 connecting the M1 Pacific Motorway at the Warnervale interchange to the west with Budgewoi Road (Central Coast Highway) at Noraville to the east. There is “No Stopping” designated along the proposed development site frontage.

The applicant provided a Traffic Impact Assessment (TIA) prepared by Traffic Consultants SECA Solution, to support the application. The proposed development will require two access points off Main Road. The two access points provide a one-way entry driveway to the east of the site and a one-way exit driveway to the west. The consultant recommends providing a central median island to physically restrict vehicle access to the site to left-in left-out only. The median shall extend a suitable distance past the outside edges of the driveway to ensure that drivers don’t negotiate around the barrier to do a hook turn into or out of the site. RMS has recommended a condition to this effect.

Adequate sight distance is available for vehicles at the proposed exit driveway.

Safe pedestrian crossing points to the northern side of Main Road are available at existing traffic signals at the intersection of Main Road and Dunleigh Street, which are provided within close proximity to the development.

The construction of a development of this size and scale has the potential to disrupt traffic flow on Main Road and Tamar Avenue. Appropriate traffic measures shall be implemented during construction of the project to minimise impacts of construction vehicles on traffic efficiency and road safety. A traffic management plan is to be prepared by a qualified traffic consultant prior to the issue of a Construction Certificate.

Access & Servicing – Internal

Vehicles will circulate within the site along the one-way roadway between the entry and exit. The roadway provides access to the ambulance bay, loading bay and four (4) visitor parking spaces, including one accessible space. A down ramp is provided to the left of the circulation roadway providing entry to the underground carpark. The ramp and underground carpark provide for two-way movements, with all traffic exiting the ramp way turning left to exit the site along the one-way internal roadway. Ramp widths, transitions are in accordance with the requirements of AS2890.1.

The circulation driveway is designed to provide adequate clearance (approximately 4.0 metres) to accommodate for servicing vehicles including ambulances and waste/garbage trucks (clearance signs will be required). A loading area is provided adjacent to the western corner of the building. Vehicles are required to circulate through the internal roadway then reverse back into the loading bay. This will enable servicing vehicles to exit the site in a forward direction.

External Civil works (K&G and footpaving/shared paths/cycleway etc)

The entry driveway will utilise the most easterly existing crossover. The exit driveway is to be located on the western edge of the site frontage and will require modifications to the existing kerb and gutter. Road works will be required for the construction of a central median island to restrict left in and left out only for traffic efficiency and safety of Main Road. The road works will be approved by Council and the RMS under a Works Authorisation Deed (WAD) arrangement.

An existing footpath 1.2 metres wide (in reasonable condition) is provided along the development frontage in Main Road and provides pedestrian links to local bus services within 400 metres from the development.

The provision of kerb and guttering and a footpath for the full frontage of Tamar Avenue was considered unreasonable as there is no proposed vehicular or pedestrian access from Tamar Avenue to the proposed building and the works would be of an isolated nature within the road.

c) *Natural Environment*

The site has a long history of residential use including a former caravan park. There is limited removal of vegetation and therefore the development is considered reasonable in terms of impact on the natural environment. All relevant issues regarding the likely impacts on the natural environment have been considered and determined to be reasonable for the proposed development.

d) *Economic Impacts*

The proposed development is suitable for the site and will represent a positive opportunity to improve the local economy by providing additional services and employment opportunities within the local area.

e) *Social Impacts*

The proposal will deliver significant public benefit to the community by providing an aged care facility to cater for the needs of the community within an established urban environment.

Section 4.15(1)(c) *the suitability of the site for the development*

A review of Council's records identifies the following constraints:

Aboriginal Heritage

A due diligence assessment under Section 8 of the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales concluded that an AHIP application is not necessary and works can proceed with caution, as the site is deemed to be disturbed land as it has been the subject of human activity that has significantly changed the subject lands surface.

If the development is in accordance with the proposed conditions of consent, the site is considered suitable for the proposed development. There are no other constraints that would render the site unsuitable for development.

Section 4.15(1)(d) *any submissions*

All submissions received were taken into consideration and addressed previously in the report.

Section 4.15(1)(e) *the public interest*

There are no matters associated with the proposal that would be considered contrary to the local or community interest. The proposal will create additional employment and aged care facilities for the Central Coast Region.

The proposed development is in the public interest as the development is providing a residential care facility to the community that complements the existing development within the vicinity of the site.

Other Matters for Consideration:

Section 94 Contributions

Section 94A Contributions applies to all land within the former Wyong Shire Council, now Central Coast Council. It is applicable to development applications, where the value of proposed development exceeds \$100,001 and where there are no other Section 94 contributions being imposed (as distinct from Water and Sewer Contributions payable under the *Water Management Act 2000*).

The proposed development will be subject to Section 94A contributions (\$236,218.30) in accordance with the Section 94A Development Contributions Plan.

Water and Sewer Contributions

Water and sewer contributions are payable for the proposal under the *Water Management Act 2000* and will be included under the Section 306 Notice of Requirements for the proposal.

Water and sewer developer contributions will be applicable for the development based on the ET rate to construct a new three storey 122 bed residential aged care facility (0.35/bed). An existing water and sewer credit of 22.8 (18.8ET + 4ET) will be available for the previous use as a caravan park (Lots 1 to 8 in DP 29025 and Lot 39 in DP8320) and the four (4) existing serviced residential lots (Lots 9 to 12 in DP29025).

CONCLUSION:

The development is considered to be consistent with the objectives of the controls of SEPP HSPD 2004, Council's LEP and other DCP requirements. The proposal will deliver significant public benefit to the community by providing a care facility to cater for the needs of the community. The proposed development is suitable for the site and will represent a positive opportunity to provide additional services and employment opportunities within the local area.

The proposal is recommended for approval subject to conditions.

ATTACHMENTS

Attachment 1 – SEPP No.71 Matters for Consideration Table

Attachment 2 – Proposed conditions of consent

Attachment 3 – Architectural plans

Attachment 1: SEPP 71 Matters for Consideration

CI.8	Matters for Consideration	Proposed
a	The aims of the Policy	The proposal is compliant with the objectives of the Policy in terms of protection of the coastal zone and environment; and the maintenance of pedestrian access to foreshore areas.
b	Existing public access to and along the coastal foreshore for pedestrians or persons with a disability should be retained and, where possible, public access to and along the coastal foreshore for pedestrians or persons with a disability should be improved.	The proposal does not affect public access to foreshore areas.
c	Opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability.	N/A - The subject site does not adjoin the coastal foreshore
d	The suitability of development given its type, location and design and its relationship with the surrounding area.	The site is suitable for the residential care facility and is suitable with the surrounding uses.
e	Any detrimental impact that development may have on the amenity of the coastal foreshore, including any significant overshadowing of the coastal foreshore and any significant loss of views from a public place to the coastal foreshore.	The proposal has no adverse impact on the foreshore in terms of view loss or overshadowing.
f	The scenic qualities of the New South Wales coast, and means to protect and improve these qualities.	The proposal will have no adverse impact on the scenic qualities of the coastline.
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 subject site does not contain any threatened species or habitat.
h	Measures to conserve fish (within the meaning of Part 7A of the Fisheries Management Act 1994) and marine vegetation (within the meaning of that Part), and their habitats.	The proposal has no impact on the conservation of fish and marine vegetation.
i	Existing wildlife corridors and the impact of development on these corridors.	The proposal will not affect any identified wildlife corridor.
j	The likely impact of coastal processes and coastal hazards on development and any likely impacts of development on coastal processes and coastal	N/A - The subject site does not adjoin the coastal foreshore

	hazards.	
k	Measures to reduce the potential for conflict between land-based and water-based coastal activities.	The proposal has no impact on water-based coastal activities.
l	Measures to protect the cultural places, values, customs, beliefs and traditional knowledge of Aboriginals.	The subject site does not contain any aboriginal sites or relics, and there are no known sites within the immediate locality.
m	Likely impacts of development on the water quality of coastal water bodies.	The proposal will not adversely affect the downstream water quality.
n	The conservation and preservation of items of heritage, archaeological or historic significance.	The proposal has no impact on items of heritage, archaeological or historic value.
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.	Not applicable.
p(i)	The cumulative impacts of the proposed development on the environment.	The proposal is not considered to have any adverse cumulative impacts on the environment.
p(ii)	Measures to ensure that water and energy usage by the proposed development is efficient.	Water and energy usage is efficient.