

CONSULTANT ASSESSMENT REPORT

Panel Reference	2016STH031 DA		
DA Number	16/1079		
LGA	Wingecarribee		
Proposed Development	47 unit Residential Flat building with basement parking for 83 cars		
Street Address	164 – 178 Mittagong Road Bowral		
Applicant/Owner	Applicant: Mr G. Turland Owners: G. Turland, Coona Pty Lt ITF W&K Quinn Super Fund, RM Hanbury Pty Ltd, Travers Pty Ltd, Vikella Pty Ltd.		
Date of DA lodgement	7.11.16		
Number of Submissions	27 submissions (including one anonymous): <ul style="list-style-type: none"> • 22 objections • 4 with no fundamental objection/support/qualified support • 1 requesting matters to be dealt with by JRPP 		
Recommendation	Refusal		
Regional Development Criteria (Schedule 4A of the EP&A Act)	Total CIV \$22,770,000 (twenty two million seven hundred and seventy thousand dollars).		
List of all relevant s79C(1)(a) matters	<ul style="list-style-type: none"> • Water Management Act 2000 • State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 • State Environmental Planning Policy (Infrastructure) 2007 • State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011 • State Environmental Planning Policy no.44 (Koala Habitat Protection) • State Environmental Planning Policy no. 55 (Remediation of Land) • State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development • Wingecarribee Local Environmental Plan 2010 • Wingecarribee Development Control Plan (Bowral Town Plan) • AS 2601—1991: The Demolition of Structures 		
List all documents submitted with this report for the Panel's consideration	Drawing	Rev.	Title
	DA02	02	Site and Roof Plan
	DA03	10	Basement Floor
	DA04	07	Ground Floor
	DA05	06	First Floor
	DA06	07	Second Floor
	DA07	06	Elevations
	DA08	08	Sections
	Street view		View from North West

	Street view		View from South East	
	Street view		View from South West	
	Street view		View from West	
	Additional documents: <ul style="list-style-type: none"> Flood Assessment Report, FloodMit, October 2016. Statement of Environmental Effects and clause 4.6 submission, LEP, November 2016. SEPP 65 Design Principles Statement, MMA Architects 26 October 2016, updated 7 June 2017. 			
Report prepared by	Deborah Laidlaw (Consultant)			
Report date	14 August 2017			

Summary of s79C matters

Have all recommendations in relation to relevant s79C matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S94EF)? **No**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No***
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report.

**See Executive summary and report.*

1. Executive summary

1.1 The site is located at the Northern entrance to Bowral town centre with frontages to Mittagong Road (State Classified) and Victoria Street (local access). It:

- is within Bowral Conservation area;
- is not a heritage item or within the vicinity of a heritage item;
- does not include significant vegetation (mainly grassed);
- is within a flood planning area, including land affected by High Hazard flooding.

1.2 To the east is mainly low density residential within an R2 zone, to the north is a public reserve adjoining Mittagong Rivulet and to the south, across Victoria Street, is a two storey mixed use (residential/commercial) development. Mittagong Road and the Southern railway is to the west.

1.3 Proposed is a two and three storey development containing 47 apartments (1,2 and 3 bedroom) over a basement car park of 83 car spaces, to be accessed from Victoria Street. The parking basement sits below existing ground level at Victoria Street but projects above ground level to the north as the land falls in this direction. The apartments have their ground floor above this basement podium, and at (and above) the 100 year flood planning level. The northern wing of the apartments projects beyond the basement footprint and is suspended on columns above the High Hazard flood zone.

1.4 Excavation to a depth on average of 800mm is proposed between the northern wall of the parking basement and the site's northern boundary so as to create compensatory flood storage under one of the three flood mitigation options proposed by the applicant (Option 2).

1.5 The site is zoned B4 Mixed Use under Wingecarribee LEP 2010 (WLEP) and the proposed development is permissible with consent.

1.6 Under WLEP FSR is compliant. Height (WLEP) is non-compliant at up to 11.3 - 11.7 metres (13%-17% variation to the 10 metre standard). The breach extends over the much of the 3 storey component of the development (excepting most of the Victoria Street frontage). A clause 4.6 submission has been provided.

1.7 The proposed development is Integrated and requires referral to, and concurrence from, RMS and Water NSW¹. RMS has given concurrence subject to conditions as did WaterNSW. The applicant, however, subsequently amended its water management system and WaterNSW's response to this revised proposal had not been received as at the date of this report.

1.8 In accordance with SEPP 55 Remediation of Land a Phase 1 environmental site assessment indicates the site is suitable for development. An acoustic report has been submitted recommending construction standards to attenuate noise from Mittagong Road and the Southern Railway in accordance with State Environmental Planning Policy (Infrastructure) 2007. The proposed development is considered not consistent with SEPP 65 Design Quality Principles, 1 (Context and

¹ Concurrence required under State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

Neighbourhood Character), 2 (Built form and scale), 5 (Landscape), 6 (Amenity), 7 (Safety), 9 (Aesthetics) for reasons identified below.

1.9 The development is generally consistent with numerical standards under the Apartment Design Guide, with the main exceptions being:

- that the ground floor ceiling height is less than the 3.3metres recommended in a mixed use zone (this is not considered a reason for refusal); and
- building separation to the eastern boundary is non compliant (this is considered a reason for refusal, on grounds of the impacts of visual bulk and privacy at the interface with the low density Residential zone).

1.10 The development similarly does not comply with applicable setback controls under Council's DCP, as well as various other breaches. Care needs to be taken in applying these controls, taking into account they were formulated primarily for residential flat development in the lower density R3 zone.

1.11 The Key impacts/issues with the development are:

- a) **Flooding;** around 60% of the site is flood affected and the development occupies part of this area. To avoid increasing flood impacts compensatory flood storage is required. The applicant's 'Option 2'² requires excavation to a depth of around 800mm below existing ground level, on average, between the northern wall of the basement and the northern site boundary to provide this storage. Whilst this appears potentially workable, there remains an outstanding question as to the impact of groundwater on the flood storage capacity under all relevant conditions. Further investigation is required to resolve this issue satisfactorily.
- b) **High Hazard Flood zone.** The northern wing of the development is proposed to be suspended on columns over land designated High Flood Hazard, contrary to Bowral DCP's provisions which restrict residential development in this zone. The applicant submits that as the ground floor apartments are above the 100 year flood planning level a variation to the DCP should be allowed. However, having regard to the provisions of the DCP and the significant extent of encroachment into the High Hazard zone this variation is not supported. The extension of a suspended form over the High Hazard flooding area is also problematic from an urban design perspective.
- c) **Evacuation:** Flood free access by public road is not available for evacuation in the event of significant flooding, and the design does not provide sufficient accessible floor area to rely on a 'refuge in place' strategy. This is potentially able to be resolved by designating sufficient floor area above the Probable Maximum Flood ('PMF') as communal space, however this would need to be clearly detailed. Any amended design would also need to address accessibility concerns.
- d) **Height;** The uppermost level (third floor) is non-compliant with the WLEP 10 metre standard, other than on Victoria Street. Variation is greatest on the northern elevation, where the first residential floor is elevated above the basement/sub-floor. The apparent height of the building would be increased by reason of the excavation of the existing ground level below and adjacent to provide flood storage. The building design exaggerates the impact of height through use of:
- lengthy and insufficiently articulated/modulated planes associated with the roof form.

² Option 1 ('no compensatory storage') is not acceptable as it would increase flood levels on and off site. Option 3 is not acceptable as it proposes excavation within the adjoining Public Reserve to achieve the necessary flood storage.

- Building close to the street edge (Mittagong Road) and providing insufficient separation (eastern boundary).

A clause 4.6 submission has been made but is not supported, having regard to the impacts of height, bulk, scale and character and inconsistency with the Height standard objectives.

- e) **Bulk and scale;** A combination of building height and lack of sufficient modulation in the roof form results in a building of significant bulk and scale relative to its streetscape/environmental context. Although most evident in the northern elevation, the 3 storey+ element is also problematical as it turns the corner into Mittagong Road and to the side boundary shared with 4 Victoria Street in the adjoining low density R2 zone. Bulk is exacerbated by some poor design features (eg high blank walls to Mittagong Road) and insufficient setbacks.
- f) **Streetscape/character;** The elevations do not make any obvious reference either to the predominantly two storey commercial streetscapes extending into Bowral town centre, nor to the residential streetscape to the east in terms of height at the street edge, scale, proportions, articulation or architectural expression. The lengthy and largely unmodulated roof planes, along with design elements such as high blank walls adjacent to the street edge are of concern. The applicant submits this is a landmark/gateway site which demands an architecturally significant response. The development is well designed, but its scale, expression and reliance on repetitive design elements is more readily associated with an inner urban response as opposed to one that is sympathetic and respectful of its country town context.

Council's independent heritage advisor has raised no fundamental objection to the development, but recommended design changes to alleviate the monolithic appearance of the elevations. The applicant provided amended plans, including a pitched roof form to the Mittagong Road presentation. Whilst on one view this represents an improvement, the amendments have not addressed the fundamental concerns referred to above in relation to height, bulk, siting, scale and character.

- g) **Amenity;** the main amenity issue concerns the bulk and privacy impacts to the low density Residential zone to the east, arising in part from non-compliant height, but more particularly from separation/setbacks that do not comply with ADG or DCP requirements.

1.12 **Refusal is recommended** based primarily on the concerns noted above.

1.13 In the event the Panel is persuaded by the applicant's submissions that approval is warranted, **final determination would need to be deferred**, pending the resolution of a number of matters including:

- Receipt of WaterNSW's acceptance of the amended water management system;
- Redesign to achieve acceptable refuge above the PMF;
- Further investigation of the impact of groundwater on flood storage capacity;
- Confirmation that acceptable flood storage will be achieved with the revised water management system in place.

1.14 It should also be noted:

- (a) The applicant has made various revisions to the development application since its public notification. The revisions are generally minor in the context of the overall scheme and include:
- changes to the Mittagong Road presentation;

- amendment to unit configuration/layout to address SEPP 65/Apartment Design Guide considerations;
 - reduction in number of car parking spaces (so as to provide wider spaces for the adaptable units);
 - replacement of the originally proposed bio-retention system with an alternative water management design.
- (b) Included in community submissions was a concern raised that part of the site was zoned RE1 Public Recreation in which zone the development would be prohibited. That issue was investigated and found to be the result of a mapping anomaly/error which has now been corrected. Lot 1 DP 778892, together with the remainder of the site, is now shown on the NSW Government website as zone B4 Mixed Use, within which zone the development is permissible with consent.

Recommendation:

The development application has been assessed in accordance with the matters for consideration under section 79C of the *Environmental Planning & Assessment Act 1979*, and all relevant environmental planning instruments and Council policies, and cannot be supported in its current form. It is **recommended** that the development application be refused for the following reasons:

- 1) Pursuant to section 91A(4) and section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, approval cannot be granted as WaterNSW has not granted concurrence to the proposal in its current form or in the alternate, approval should not be granted as the consent authority is not satisfied that the development is consistent with clause 10 of State Environmental Planning Policy (Sydney Water Catchment) 2011.
Note: This reason may be satisfactorily addressed if WaterNSW provides a favourable response subject to satisfactory conditions prior to the determination meeting.
- 2) Pursuant to section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with Clause 7.9 WLEP (Flood Planning) and Section A4 Flood Liable Land of the Bowral Development Control Plan in that it proposes to extend a significant part of the residential development over land designated as High Flood Hazard (Section A4.3.3 of the Bowral Town Plan and associated Flood Planning Matrix).
- 3) Pursuant to section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with clause 7.9 WLEP (Flood Planning) and Section A4 Flood Liable Land of the Bowral Development Control Plan in that it has failed to make adequate provision for the safe evacuation or refuge in place for occupants of the building in a significant flooding event (Section A4.3.3 of the Bowral Town Plan and associated Flood Planning Matrix).
- 4) Pursuant to section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the consent authority is not able to be satisfied that the proposed development complies with Section A4 Flood Liable Land of the Bowral Development Control Plan and clause 7.9 (Flood Planning) of Wingecarribee Local Environmental Plan 2010 (WLEP) in that it has not been demonstrated that adequate flood storage will be available under all conditions, having regard to the interaction of the ground water table with proposed finished levels of the site (Section A4.3.3 of the Bowral Town Plan and associated Flood Planning Matrix).

- 5) Pursuant to section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with the Height Standard under clause 4.3 WLEP and the submission under clause 4.6 WLEP is not well founded.
- 6) Pursuant to section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, the development would result in an adverse impact on streetscape and the character and amenity of the locality by reason of its siting, design, height, bulk and setbacks, contrary to objective (c) of the B4 zone WLEP (To ensure that new development has regard to the character and amenity of adjacent and nearby residential areas'); Objective 4.3(b)(Height) WLEP ('to ensure that the heights of buildings are compatible with the character of the existing development within the surrounding area'); clause 5.10 WLEP (Heritage Conservation) and the provisions of Bowral Town Plan Part A, particularly the residential amenity objectives and Part A2.2.6, A4.4, A4.4.3, A6.6, B2.2 and B2.3, Section 14(c) & (d) and C1.2 Bowral DCP.
- 7) Pursuant to section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, the development would result in adverse impacts on residential amenity in the locality by reason of its siting, design and setbacks and consequent unacceptable adverse impacts in terms of privacy and bulk.
- 8) Pursuant to section 79C(1)(e) of the *Environmental Planning & Assessment Act 1979*, the development is not in the public interest.

2. Proposed development

2.1 The proposed development is for:

- (a) Demolition of existing cottage;
- (b) Removal of existing trees; and
- (c) Construction of a 3 storey and basement residential building of 47 apartments and 83 car spaces including:
 - 3 x 1 bedroom apartments;
 - 26 x 2 bedroom apartments; and
 - 18 x 3 bedroom apartments.

2.2 Car parking is provided in a floor nominated as a 'basement' for 83 cars, including 16 visitor car spaces and 1 accessible space. 14 spaces are designed to accommodate parking for the adaptable units. A two-way vehicular access driveway to Victoria Street is provided adjacent to the eastern boundary of the site, approximately 65 metres from the intersection with Mittagong Road.

2.3 The proposed apartments incorporate a flat roof parapet roof form to the north, east and south, with the units to Mittagong Road having a pitched roof. The apartments are of two and three storeys, arranged around a central courtyard. Adding to the height of the development, however, the basement protrudes above existing ground level and this forms a podium for the apartments above. At its northern wall the basement is approximately 1.7 metres above existing ground level.

2.4 The proposed apartment floor plan extends on a suspended slab approximately 10 metres further northwards beyond the northern basement wall over High Hazard, flood prone land below. At the northern elevation the nominated Ground Floor is a maximum of approximately 2.1 metres above natural ground level. Under 'Option 2' for flood storage, excavation to a variable depth will occur so as to lower natural ground levels (including the space beneath the suspended slab) by a variable depth but on average 800mm. The Ground Floor level of the apartments at the northern elevation will therefore be at a level approximately 2.9 metres above the finished ground level.

2.5 As well as the central courtyard (which is above the 100 year flood planning level), communal open space is proposed to be provided:

- on the northern side of the development, adjacent to the public parkland and occupying the land to be excavated for flood storage; and
- Beneath the suspended northern end of the building.

2.6 The communal open space at the northern end of the site is within flood liable land, including High Hazard flood risk.

3. The subject site

3.1 The subject site is known as 164-178 Mittagong Road, Bowral, incorporating³;

- Lot 1 DP 778892

³ As per DA form, reference to Lot 1 DP 778892 is omitted from the SEE and cl.4.6 submission.

- Lot 1 DP794957
- Lot 3 74728
- Lot 1 DP 1091496
- Lot 1 DP 916166
- Lot 4 DP 916166

3.2 The site is located at the Northern Entrance of Bowral, with frontages to Victoria Street (to the south) and Mittagong Road (to the west).

- Victoria street is a local access 'dead-end' road serving low density residential development, Thomas Aquinas Primary School and the Jan Dee swimming pool at 11 Victoria Street.
- Mittagong Road (in this location) is a State classified road managed by Roads and Maritime Services (RMS).

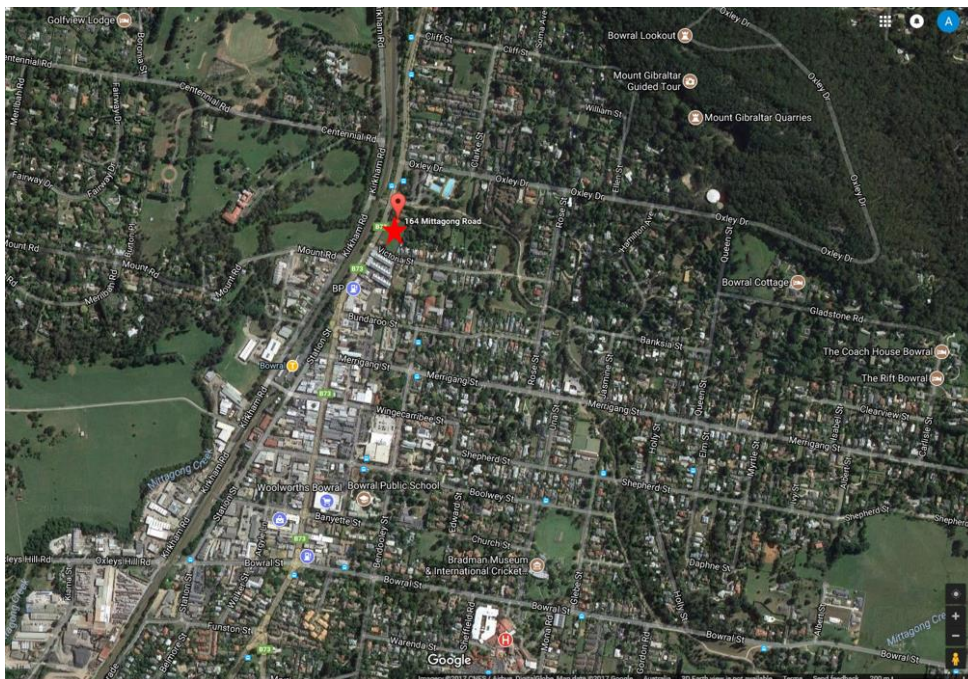


Figure 1: Site location (Source: Google Maps)

3.3 The site slopes gently down from Victoria Street in a north/north-westerly direction, with a low point adjacent to the site's north-west corner at the Mittagong Road frontage. There is a vacant cottage located at the corner of Victoria Street and Mittagong Road. Otherwise it is mainly grassed with some residual evidence of the other cottages that formerly occupied the site and a few trees.

3.4 The site:

- has an area of 5484 square metres;
- is roughly rectangular with frontages of 90.8 metres to Mittagong Road and 62 metres to Victoria Street;
- is within a flood planning area. Mittagong Creek has a history of flooding with significant floods occurring in 1915, 1975, 1986, 1999 and June 2016. Approximately 60% of the site would be inundated in the 100 year flood with flood levels varying from RL 672.5 – 672.6. The includes land varying from Low Flood Risk to High Flood Risk, the latter occurring at the

northern end of the site;

- is within the Bowral Conservation Area;
- is not within the vicinity of any heritage item and does not contain any heritage item.

3.5 The site is crossed by Wingecarribee Council 150mm Sewer pipes at depths ranging from 1.22 metres to 2.93 metres, including pipes located within the proposed building footprint which would need to be relocated in the event approval was to be granted.

3.6 A geotechnical report by MHK Geotechnical⁴ indicates a sub-surface profile including residual Sandy Silt/Silty Clay and Sandy soils over weathered Siltstone with a site classification of P for problem site. Moderate water seepages and possibly a groundwater table were identified with groundwater encountered at depths of between 680mm and 2.4 metres towards the north of the site, with the consultant's added qualification that groundwater levels and seepages may fluctuate due to seasonal conditions and weather events.

Surrounding development:

- South (across Victoria Street); the 'Floria' mixed use (residential/commercial) development. This development has a two storey frontage incorporating pitched/gable ended roof form to Victoria Street and, turning the corner into Mittagong Road, a two storey/flat parapet style roof form.
- East: along both sides of Victoria Street, low density cottage style development, predominantly single storey with pitched hipped and gabled roof form, Thomas Aquinas Primary School and the Jan Dee swimming pool at 11 Victoria Street.
- North: Public reserve, bordering Mittagong Rivulet.
- West: Mittagong Road and the Southern Railway line.

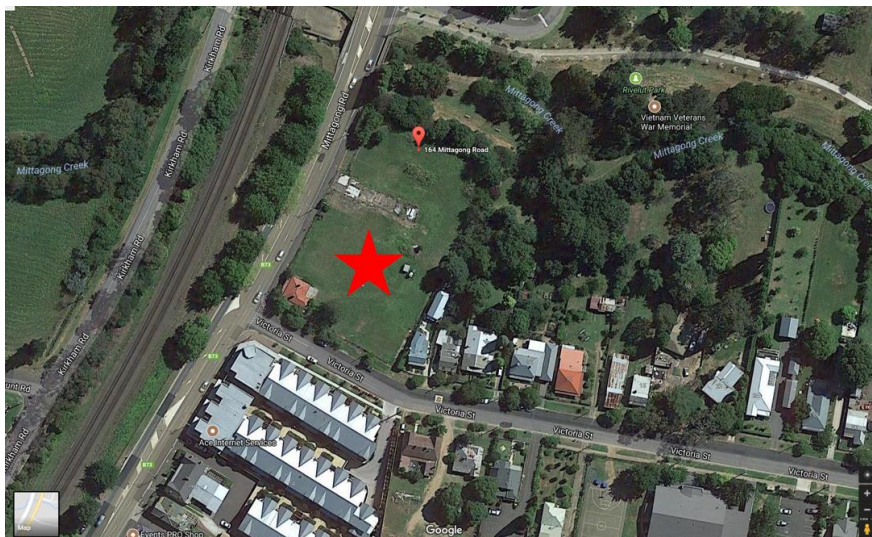


Figure 2: Adjoining development (Source: Google Maps)

⁴ MHK Geotechnical 28 August 2016



Figure 3: View south-east from Mittagong Road over site (source: Google Maps)



Figure 4: View east from Mittagong Road along Victoria Street (source: Google Maps)



Figure 5: View west along Victoria Street showing development in R2 zone to right (source: Google Maps)



Figure 6: View south along Mittagong Road from the Victoria Street intersection (source: Google Maps)

4. History of approvals on the site and surrounding properties

Site

4.1 **LUA 1999/1754** seeking consent for a 72 Bed Motel, function centre and 90 car spaces was approved on 6 April 2000. It proposed retention of the original cottage together with a part one, part three storey hipped roof development with the third floor contained within the roof space. The development extended close to the northern boundary into flood liable/high flood hazard land. It is understood that Council has previously confirmed this consent to be 'substantially commenced'.

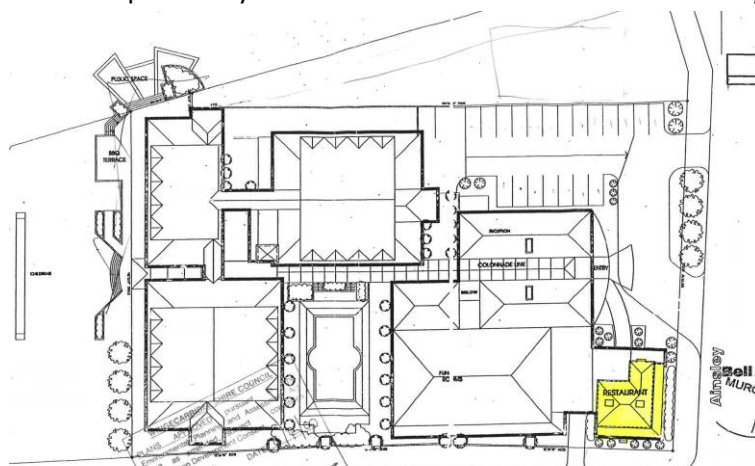


Figure 7: Extract, stamped site plan DA 99/1754

4.2 **LUA04/1899** was approved in 2004 for 28 seniors living units in a two storey hipped roof design (above parking basement) and retention of the cottage at the corner of Mittagong Road and Victoria Street. This consent has lapsed.

Adjoining properties

4.3 In 2010 consent was granted (**LUA10/0863**) to development opposite the site, on the southern side of Victoria Street, known as the 'Floria Apartments (now constructed). Consent was for 4 retail units (facing Mittagong Road) 44 residential units and basement parking.



Figure 8: 'Floria' development - northern elevation to Victoria Street

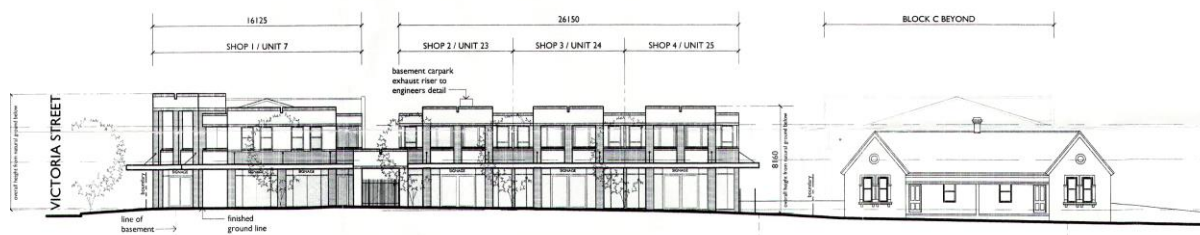


Figure 9: 'Floria' development - West elevation to Mittagong Road

5. Legislation and statutory planning

5.1 The following are applicable:

- Water Management Act 2000;
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;
- State Environmental Planning Policy (Infrastructure) 2007;
- State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011;
- State Environmental Planning Policy no.44 Koala Habitat Protection;
- State Environmental Planning Policy no. 55 (Remediation of Land);
- State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development;
- Wingecarribee Local Environmental Plan 2010;
- Wingecarribee Development Control Plan (Bowral Town Plan);
- AS 2601—1991: The Demolition of Structures.

Water Management Act 2000

5.2 Under s91 of the Water Management Act 2000 works within 40 metres of a waterway are controlled activities requiring approval under the Act. The Mittagong Rivulet is approximately 25 metres from the northern boundary of the site. The Department of Primary Industries (Water) has provided General Terms of Approval for the development.

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

5.3 BASIX Certificate 749560M prepared by BCA Energy Pty Ltd has been provided.

State Environmental Planning Policy (Infrastructure) 2007

Cl 101 (2) provides that 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 of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

5.4 The proposed development provides its vehicular access from Victoria Street, consistent with Clause 101(2)(a). Construction access was originally proposed to be from Mittagong Road, however RMS has required this to be relocated to Victoria Street. A revised site management plan has been provided to comply with this requirement.

5.5 RMS provided its concurrence on 29 June 2017 and advised it does not object to the development. Its support of the development application is subject to conditions, including

requirements relating to geotechnical investigation and design of support structures adjacent to Mittagong Road.

5.6 An acoustic report has been submitted recommending construction standards to attenuate noise from Mittagong Road and the Southern Railway in accordance with Clause 101(2)(c).

Clause 102 provides (as applicable):

(2) Before determining a development application for development to which this clause applies, the consent authority must take into consideration any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.

(3) If the development is for the purposes of a building for residential use, the consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following L_{Aeq} levels are not exceeded:

- in any bedroom in the building—35 dB(A) at any time between 10 pm and 7 am,*
- anywhere else in the building (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.”*

Clause 87 provides that before determining a development application for a building for residential use that is on land in or adjacent to a rail corridor and that the consent authority considers is likely to be adversely affected by rail noise the consent authority must take into consideration any guidelines that are issued by the Director-General for the purposes of this clause and published in the Gazette.

The consent authority must not grant consent to the development unless it is satisfied that appropriate measures will be taken to ensure that the following L_{Aeq} levels are not exceeded:

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

5.7 The applicant has submitted a Noise Assessment Report by Benbow Environmental Consulting, April 2017, to address the requirements of the SEPP and NSW Department of Planning – Development Near Rail Corridors and Busy Roads – Interim Guideline. The report identified that for apartments located away from Mittagong Road standard construction would provide sufficient acoustical amelioration to meet relevant standards. For apartments in Zone 1, adjacent to Mittagong Road and on the western side of the development additional attenuation, including double glazing of windows would be required. It should also be noted that all calculations in the acoustical report assume all windows, doors and openings are closed and that mechanical ventilation is provided to the units.

5.8 In summary, appropriate acoustical standards will be achieved assuming the recommendations of the acoustical report are imposed by condition, however for the western side apartments achievement of the appropriate standards will only be achieved with windows closed, and with mechanical ventilation used which is a sub-optimum outcome from an amenity perspective.

State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011

The aims of this Policy (cl.3) are:

- (a) *to provide for healthy water catchments that will deliver high quality water while permitting development that is compatible with that goal, and*
- (b) *to provide that a consent authority must not grant consent to a proposed development unless it is satisfied that the proposed development will have a neutral or beneficial effect on water quality, and*
- (c) *to support the maintenance or achievement of the water quality objectives for the Sydney drinking water catchment.*

Clause 9 provides:

- (1) *Any development or activity proposed to be carried out on land to which this Policy applies should incorporate Water NSW's current recommended practices and standards.*
- (2) *If any development or activity does not incorporate Water NSW's current recommended practices and standards, the development or activity should demonstrate to the satisfaction of the consent authority or determining authority how the practices and performance standards proposed to be adopted will achieve outcomes not less than those achieved by Water NSW's current recommended practices and standards.*

Clause 10 provides:

- (1) *A consent authority must not grant consent to the carrying out of development under Part 4 of the Act on land in the Sydney drinking water catchment unless it is satisfied that the carrying out of the proposed development would have a neutral or beneficial effect on water quality.*
- (2) *For the purposes of determining whether the carrying out of the proposed development on land in the Sydney drinking water catchment would have a neutral or beneficial effect on water quality, the consent authority must, if the proposed development is one to which the NorBE Tool applies, undertake an assessment using that Tool.*

5.9 Water NSW issued its concurrence, subject to conditions, on 2 May 2017. Those conditions included a requirement, however, for the (then) proposed bio-retention basin to be located above the 1:50 year flood level and designed to include management measures to protect the basin from flooding impact. As that would have reduced the available flood storage capacity below the minimum required the applicant has prepared a new water management system so as to rely on a below ground level water treatment tank in a similar position to the originally proposed bio-retention basin. Water NSW requested this revised proposal to be submitted to them for approval. At the date of this report Water NSW's response has not been received. In the event the Panel was otherwise satisfied as to the impacts of the proposed development, any determination would need to be deferred, therefore, pending receipt of WaterNSW's response and assessment of any implications arising from it.

State Environmental Planning Policy no.44 Koala Habitat Protection

5.10 Clause 7(1) and (2) provide that before a council may grant consent to an application for consent to carry out development on land to which this Part applies, it must satisfy itself whether or not the land is a potential koala habitat and this may be only on information obtained by it, or by the applicant, from a person who is qualified and experienced in tree identification. This verification has not been provided albeit that it is unlikely that the site contains potential koala habitat. This would need to be confirmed by a qualified person in the event an approval was contemplated.

State Environmental Planning Policy no. 55 (Remediation of Land).

Cl.7(1) provides that a consent authority must not consent to the carrying out of any development on land unless:

- (a) it has considered whether the land is contaminated, and*
- (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
- (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

5.11 A Phase 1 environmental site assessment was undertaken by Benbow Environmental Consulting, 18 April 2017. This assessment found no strong evidence from the detailed search into the site's history that contaminating activities had occurred. The site inspection found no visual evidence of past contamination and further investigation such as a Phase II Environmental Site Assessment is not considered warranted by the consultant.

5.12 Prior to demolition of the cottage a further inspection is required. This needs to also include an inspection of the soils under the concrete floor of the removed dwelling. The inspection will also need to include soils beneath the stockpile of vegetation and building material.

5.13 Having regard to the foregoing, it can be concluded that the site is suitable for the proposed residential development. In the event of an approval being issued, conditions addressing the use of asbestos within remaining structures on the site would need to be included, as well as conditions relating to the discovery of any remaining asbestos fragments around the existing cottage or on the site together with the requirements of AS 2601—1991: *The Demolition of Structures*.

State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development

Under Clause 28:

In determining the development application the consent authority is to take into consideration:

- (a) the advice (if any) obtained from the design review panel [note: Council does not have a Design Review Panel], and*
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and*
- (c) the Apartment Design Guide.*

Under Clause 30

(2) Development consent must not be granted if, in the opinion of the consent authority, the development ... does not demonstrate that adequate regard has been given to:

- (a) the design quality principles, and*
- (b) the objectives specified in the Apartment Design Guide for the relevant design criteria.*

5.14 The proposed development has been assessed in accordance with SEPP 65, the Design Quality Principles and the provisions of the Apartment Design Guide, as follows.

SEPP 65/Design Quality Principles

5.15 The proposed development is considered not consistent with Principles 1 (Context and

Neighbourhood Character), 2 (Built form and scale), 5 (Landscape), 6 (Amenity), 7 (Safety) and 9 (Aesthetics) for reasons discussed under Section 7.

Apartment Design Guide

5.16 The proposed development is generally consistent with the ADG numerical controls/guidelines in terms of internal performance (see Appendix):

- 35 apartments (74.4%) have required solar access for a minimum 3 hours during midwinter.
- 34 (72%) of apartments have cross ventilation (certain of these, however, are impacted by the requirement for windows/doors to be kept closed for acoustic reasons).
- Room sizes, depths and dimensions are generally consistent.
- Ceiling heights (other than ground floor – see note below) are consistent with ADG requirements.
- Private open space provision is generally consistent.
- There are some minor variations to the minimum internal separation distances, however any privacy issues arising could be addressed by conditions requiring screening or further offset of windows.
- Requirements for apartments served from lift cores are achieved, with the exception of the ground floor, western side of the building, where 11 apartments are served from a single corridor (maximum 8 recommended).

5.17 The main variations to the ADG numerical requirements are:

- Building separation to the eastern boundary; and
- Ground floor ceiling height in a mixed use zone.

Building separation eastern boundary

5.18 The separation distance to the single storey cottage to the east at 4 Victoria Road does not comply. The ADG requires, for buildings up to 4 storeys:

- 12m between habitable rooms/balconies;
- 9m between habitable and non-habitable rooms;
- 6m between non-habitable rooms; and
- At the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m

5.19 No information has been provided by the applicant as to the use of rooms served by windows of the adjoining cottage at 4 Victoria Street. The proposed development has boundary setbacks at this location of 3 metres to the ground floor elevated terrace and upper level balconies, and 5.35 – 6.3metres to the wall of the proposed building. Noting that the proposed building provides ‘habitable’ spaces within these setbacks and even assuming the windows to the adjoining building to be ‘non habitable’ the required setback to be achieved within the site would be 7.5 metres (ie 4.5 metres and 3 metres). This would increase to 9 metres were it assumed the windows in the adjoining cottage are ‘habitable’.

5.20 The applicant has attempted to address this issue by placing privacy screens along the balconies and terraces. This does not deal, however, with acoustic privacy impact, nor with all

aspects of visual privacy impact. It also tends to exacerbate the bulk of the development. The breach of the separation distance to the eastern side boundary is considered significant numerically and in terms of its impact, and is a reason for refusal of the development.

5.21 As well as the ADG the proposed development is required to be assessed under Part C of the Bowral Town Plan/DCP for residential flat development. Clause 4.2(c) of the DCP requires the setback to be 1.5 metres, plus the height of the development. As set out in the compliance table below, the proposal presents significant non compliances with the side setback requirements under the DCP.

Ground floor ceiling height.

5.22 Part 4C-1 of the Apartment Design Guide requires minimum 2.7m ceiling heights for habitable rooms (2.4m Non habitable) which is achieved. For apartments in mixed use areas, however, an increased ceiling height of 3.3m applies to allow for flexibility of use at ground and first floor levels. Noting that the site is within a Mixed Use zone the Ground floor level of the development is therefore 600mm below the required ceiling height.

5.23 The applicant submits that there is little or no demand for commercial development in this location and that the Bowral Town Plan/DCP anticipates and supports residential use within the Northern Entrance Precinct. These submissions are accepted and the failure to comply with this ADG requirement is therefore not a reason for refusal.

Wingecarribee Local Environmental Plan 2010

Summary of relevant provisions

Clause 1.2 – Aims of Plan

Clause 2.2 – Zoning

Clause 2.3 - Zone objectives and land use table

Clause 2.7 – Demolition requires consent

Clause 4.3 – Height of Buildings

Clause 4.4 – FSR

Clause 4.5 – Calculation of FSR and Site Area

Clause 4.6 – Exceptions to development standards (Clause 4.3 – Height standard is exceeded)

Clause 5.9/A – Preservation of trees or vegetation

Clause 5.10 – Heritage Conservation (Conservation Area – Bowral Conservation Area)

Clause 7.3 – Earthworks

Clause 7.5 – Natural Resources Sensitivity – water (site adjoins Riparian Land, Category 2)

Clause 7.9 – Flood Planning (around two thirds of the site is within Flood Planning Area)

Details

5.24 The site is zoned B4 Mixed Business, as illustrated on the extract below from the current NSW legislation website (revised 28 July 2017). Residential flat buildings, a sub-set of ‘residential accommodation’, is permissible with consent as an innominate land use in the B4 zone.

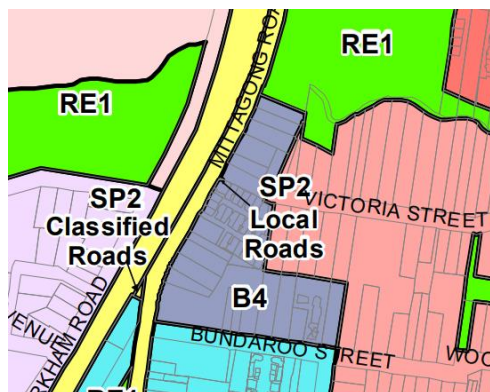


Figure 10: Site zoning as per extract, NSW Legislation website, accessed 11 August 2017.

Note: At the date the development application was submitted an apparent mapping error indicated that Lot 1 DP 778892 could have been interpreted as being under a Public Recreation RE1 zone. As illustrated in the current extract, this has now been corrected.

5.25 The consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone (cl.2.3(2)WLEP). The B4 Zone objectives are:

- *‘To provide a mixture of compatible land uses’.*
Comment: Although located in a Mixed Use zone, the proposed development provides exclusively for residential apartment use. The objectives apply to the zone, however, not simply to any particular site. As such, the proposal is not inconsistent with the zone objectives, as other sites within the zone provide for compatible uses.
- *‘To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.’*
Comment: The site is well located in terms of accessibility to public transport and to shops and services within Bowral Town Centre and is well suited for higher density residential.
- *‘To ensure that new development has regard to the character and amenity of adjacent and nearby residential areas’.*
Comment: The bulk and design of the development is considered problematic in terms of the character and amenity of adjacent and nearby residential areas – see assessment under Section 7.

Clause 4.3 specifies a maximum height of 10 metres for this site. The objectives of this clause are:

- (a) *to identify maximum heights of buildings,*
- (b) *to ensure that the heights of buildings are compatible with the character of the existing development within the surrounding area.*

5.26 The applicant submits the proposed development presents a Height variation of maximum 11.3 metres (13% variation). The proposed development has been assessed against the survey, however, as having a maximum height of approximately:

- 11.7 metres on part of the northern elevation;
- 11.4 metres adjacent to Mittagong Road; and
- 11.3 metres opposite the eastern boundary.

5.27 There is therefore a breach to the Height standard of up to 1.7 metres or 17% and reducing to 11.3 metres or 13% on the northern elevation, where this three storey (above basement/subfloor) section of the building is non-compliant along its full width.

5.28 The other three storey section of the building on Victoria Street breaches the standard by up to 520mm. In this regard, the amended plans show a lowered parapet on Mittagong Road, but the parapet at the originally proposed height (of 683.41) on Victoria Street.

5.29 A Clause 4.6 submission has been submitted (Annexure 2). In accordance with Clause 4.6 of WLEP and relevant Court judgments, the applicant must demonstrate consistency with objectives of the clause and in summary:

- (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; and*
- (c) *the consent authority must be satisfied the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

5.30 The applicant has made the following submissions in support of the cl. 4.6 variation (in summary):

1. The proposed development seeks to complete a substantially constructed building that was approved at the height to which it has been built. **Comment:** *this appears to be an error.*
2. Proposed development achieves a far better outcome than the current disused and unfinished state of the land. **Comment:** *Little weight should be applied to an argument that an alternative scenario would be 'worse' particularly in circumstances that the present state of the land is that of an open grassed area with a cottage on part of it, being arguably untidy but not otherwise inconsistent with the character of the locality or conservation area.*
3. There are no particular public benefits that would accrue from strict adherence. **Comment:** *It is considered there would be public benefit from strict adherence – see discussion.*
4. Strict compliance is unreasonable or unnecessary because:
 - It is a result of the development responding to the flood constraints of the land with floor levels required to be elevated above flood levels. It would be unreasonable to penalize the development for working to the required flood levels. **Comment:** *it is agreed that compliance with required flood planning levels have the effect of raising the height of the development above that which could otherwise be achieved had there been no flooding constraint.*
 - The building design/form is not affected by the variation sought. Regardless of the flood level, the building would be a part two storey part three storey above a basement. **Comment:** *this is possibly true, however it is not agreed that the building design/form is appropriate, particularly having regard to inconsistency with the character of the locality.*
 - Building height is compliant at the southern and western street frontages which are the critical frontages viewed from public roads. The view from the north will be screened by landscaped open space. Building is height compliant where it adjoins other development to the east. **Comment:** *these submissions are not entirely correct. The submitted survey does not provide levels beneath all relevant parts of the building however, by extrapolation:*

- i. **Southern elevation** facing Victoria Street is largely compliant, with only the westernmost corner exceeding the standard (parapet 683.41 – Ground level 673 minimum = 410mm variation). As noted, the amended plans lower the parapet facing Mittagong Road, but not on Victoria Street.
 - ii. **Western elevation** facing Mittagong Road: the three storey element is non compliant at a height of 11.4 metres (1400mm non compliant). As noted the south western corner is also non compliant, depending, however, on whether the parapet form is, or is not, included. The two storey element on this elevation is compliant.
 - iii. **Northern elevation** facing public reserve (and visible from Mittagong Road): three storey elevation above void is non compliant along its full length, with height varying from 11.3 metres (1.3 metres non compliant) to 11.7 metres (1.7 metres non compliant). These are measurements above existing ground level (as per the relevant definition) not proposed ground level, which is some 800mm lower).
 - iv. **Eastern elevation** (facing 4 Victoria Street): the part of the development that adjoins the dwelling house at no. 4 has the uppermost level set back, so that the resident of No. 4 would see a compliant elevation of two storeys. The northern, three storey element that would be visible from the garden, however, is non compliant, ranging from 10.3 metres to 11.3 metres (300mm to 1.3 metres non compliant).
5. No impacts arise to adjoining properties by way of overshadowing, privacy, loss of views.
Comment: The proposed development maintains around 3 hours of solar access to the rear of the adjoining dwelling and to around 50% of its private open space. As this part of the building is two storeys, the greater impact arises from the side setback as opposed to non complying building height. Likewise, although it is assessed that the proposed development has unacceptable privacy impacts to the eastern boundary, this is associated more with the lack of effective separation, rather than building height. It is agreed there is no adverse impact by way of loss of views. The bulk of the three storey northern element is considered a significant impact.
6. The proposal would be consistent with the objects in s5(a)(i) and (ii) of the Act as the site is a prime site in proximity to the town centre and a requirement for strict compliance with the Height standard would not allow the allowable FSR to be utilized. **Comment:** it is agreed that the site is well located for higher density residential. The site is also constrained, however, as a consequence of its flood affectation and this constraint may mean that it is not possible to achieve the full FSR allowed upon it.
7. Within the Mixed Use zone the scale and character is clearly intended to be different to that of the low density residential land to the east. The 10 metre height limit specifically allows for three storey development as proposed, whereas the land to the east is expected to be either single level or at most two storey. **Comment:** it is agreed that the zoning controls anticipate a different form of development on this land compared to the land to the east in the low density R2 residential zone. However, the DCP notes 'It should not be assumed that the specified building height may be applied as a blanket maximum across the entire site, particularly if the site is large. Council wants to ensure that an attractive streetscape is maintained and this may require lower building heights on the street frontage with the maximum being allowed in the centre of the site only.'

Consideration/assessment

5.31 The uppermost level of the proposed development is substantially non-compliant with the Height Standard. The breach is most significant over the northern end of the building, wrapping round towards the Mittagong Road and Eastern elevation, however there are breaches adjacent to Victoria Street as well. To the extent that amended plans have reduced the variation, this has not been applied consistently at the corner of Mittagong Road and Victoria Street, and the reduced non compliance has been achieved at the cost of compromise to the integrity of the originally designed parapet.

5.32 The building design emphasizes the impact of height through use of a flat roof form in lieu of a pitched roof (where impact of bulk and height reduces with the receding roof plane).

5.33 The extent to which a flat roof/parapet form is used in this development, particularly over the three storey elements, demonstrates no obvious appreciation of the site's location at a zone interface with low density residential area and land within the Bowral conservation area. The expansive scale and repetitive architectural expression of the facades is reflective of a style of residential flat development found within the inner urban Sydney Metropolitan area. The design shows no obvious reference to the finer grained and more varied character of development within Bowral town centre (as relevant more appropriately to elevations visible from Mittagong Road) nor the adjoining residential area (as relevant in terms of elevations visible from the area to the east or north).

5.34 The proposed development is compliant with the FSR standard, but not with the Height Standard. In the usual course of events the two standards should be consistent. There are two significant circumstances of this site and this development that explain why in this case, compliance is achieved with FSR but not height, namely:

- The site is constrained by flood affectation, which means that part of the site is unable to be developed and floor levels need to be elevated (with freeboard) above the flood planning level;
- The fact the applicant has opted for a wholly residential development, in lieu of a mixed use development more likely to incorporate a larger footprint commercial (or some other permissible non-residential use) at the lower levels of the development.

5.35 The Height standard under WLEP has the objectives:

- (a) to identify maximum heights of buildings,*
- (b) to ensure that the heights of buildings are compatible with the character of the existing development within the surrounding area.*

5.36 In this regard, the height of the development – particularly as expressed in a flat-roofed form - is considered not compatible with the character of existing development in the surrounding area (objective (b)):

- 'Floria' (under the same zoning and controls as the subject site) includes commercial at ground floor facing Mittagong Road with residential above, under a two storey parapet roof form at FSR 0.9:1⁷. The Floria development's residential dwellings extend along Victoria Street in a two storey pitched roof form. The proposed development, in contrast, includes long planes of two and three storey elements in a design heavily reliant on a flat roofed/parapet form and repetitive design elements which do not reflect the rhythm of established streetscapes. The northern elevation – being wholly in excess of the Height standard – is the equivalent of 3.5 storeys in height above existing ground level, and close to

⁷ See Summary on cover sheet

the equivalent of four storeys above finished ground level (under 'Option 2' for flood mitigation).

- Within Bowral CBD generally, the clear majority of buildings attain a maximum of two storeys in height, most commonly with a parapet roof form.
- The character in the side streets moving away from the CBD is predominantly one and two storeys with pitched roof form. Single storey cottages are the prevalent form with increasing distance from the centre. There is no suggestion that development on the subject site should be restricted to this low density form, however greater sensitivity is required to the fact the site is at a zone interface.

5.37 Having regard to the above it is considered that the cl.4.6 Height variation is not well founded.

5.38 **Clause 4.4** specifies a maximum FSR of 1.1:1. The objectives of this clause are as follows:

(a) *to identify maximum floor space ratios in major centres,*

Comment: The proposed development has been assessed to have an FSR of 1.056:1 which complies with the FSR standard⁸.

(b) *to ensure that floor space ratios provide development opportunities that are compatible with building heights,*

Comment: there is a distortion between FSR and Height on this site arising from flooding constraints as well as the decision to pursue a wholly residential land use, as commented upon previously.

(c) *to encourage development in locations readily accessible to public transport and services that will provide increased employment opportunities.*

Comment: The proposed development is consistent with this objective.

5.39 **Clause 5.9(7) (7) (Tree Preservation)** **Comment:** the applicant's landscape architect has provided a report dated 4 November 2016 indicating that an existing Spruce tree (*Picea sp.*) located to the east of the existing cottage is potentially structurally unsound. No other vegetation of significance exists upon the site.

5.40 **Clause 5.10 Heritage conservation.** The site is within Bowral Conservation Area. Consent is required for demolition of the existing dwelling on the site. The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned⁹. Council's Heritage Advisor has commented as follows:

'The whole of the land is in a conservation area and a gateway site to Bowral from the north. I think there are two main issues here:

1. Is the proposed demolition of the remaining cottage on the site justified.
2. Is the proposed new development appropriate to the conservation area and the gateway site to Bowral.

Is proposed demolition of the remaining cottage on the site justified

The cottage is of brick construction with iron roof and verandas to both the west and south. Brickwork to verandah is tuck-pointed and in excellent condition. The cottage has been vandalised e.g. windows broken but restorable.

⁸ The applicant calculated 1.04:1 – the difference in the calculation arises from the applicant's exclusion of internal corridors at ground floor level

⁹ CI5.10(4)

But I agree with the Heritage Report that it has lost its setting and I see little point in its retention.

Recently I commented on the proposed demolition of three cottages further south. My view there was that demolition was acceptable, provided the replacement was of a reasonable design.

Is the proposed new development appropriate to the conservation area and the northern gateway to Bowral

Generally, there are retirement villages in Bowral. But there are not many apartments where people can buy a strata title property and be close enough to walk into town for a coffee or shopping. Bowral might therefore benefit from more apartments close to town. In general terms then, a proposal for apartment in town has benefits.

In recent times, I have had referrals for a major development of the southern corner of Victoria Street, now known as Floria. At the start, a Brutalist street style was proposed. But I worked with the designer and council DA assessor. It improved as a result of my advice. At the start the design was monolithic, but finished with a street frontage that was expressed as townhouse units and gave the street frontage a clear rhythm. This has set the pattern for newer development.

The proposed building finishes appear to be of good quality. While it is a flat roofed building, it is of a reasonable design – especially the Victoria Street elevation.

However, the street frontage should still be improved. The current proposal is monolithic in street appearance. Some consideration should be given to breaking up the elevation into clearly discernible units. If council undertook this, it would require the designers to make some adjustments to the elevations.

Conclusion

Some improvement to the street elevations is recommended. This would require the designers to be willing to work with me and council staff, to fine-tune the street frontage. Such items could be resolved over one or two short meetings. I would be happy to do this, if that is the wish of the consent authority. I have no vigorous objection to the proposal as it now stands.

5.41 **Comment:** The applicant has submitted an amended design which improves the modulation of the two storey element of the Mittagong Road elevation. These amendments did not, however, address the broader planning concerns relating to the Height, bulk, scale and character of the proposed development.

5.42 **Clause 7.3 – Earthworks.** The development involves ancillary earthworks, including the excavation of the northern section of the site. The modification of the northern section of the site is approximately 800mm. The impacts of the excavation and other earthworks have been addressed under relevant headings of this report.

5.43 **Clause 7.5 Natural resources sensitivity – water.** This clause applies as the site adjoins and may include land identified as riparian land, relevantly land within 30 metres of Mittagong Rivulet. The objective of this clause is to maintain the hydrological functions of riparian land waterways and aquifers, including:

- (a) protecting water quality, and
- (b) protecting natural water flows, and
- (c) protecting stability of the bed and banks of waterways, and
- (d) protecting groundwater systems.

5.44 These matters that are required to be addressed under sub-clause (3) are addressed under separate headings below. There is some overlap with matters requiring to be addressed under SEPP 11 – Sydney Drinking Water Catchment. In this regard, WaterNSW's final response on the amended water quality management system has not as yet been received or assessed. Further, the indication

of ground water close to the proposed surface of excavated levels over the north (particularly north west) of the site require further assessment.

5.45 **Clause 7.9 Flood Planning.** This clause applies as the northern two thirds (approximately) of the site is shown as “Flood Planning Area” on the Flood Planning Area Map. The objectives of this clause are as follows:

- (a) *to minimise the flood risk to life and property associated with the use of land,*
- (b) *to allow development on land that is compatible with the land’s flood hazard, taking into account projected climate change,*
- (c) *to avoid significant adverse impacts on flood behaviour and the environment.*

Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development:

- (a) is compatible with the flood hazard of the land, and*
- (b) will not significantly adversely affect flood behaviour resulting in detrimental increases in the potential flood affectation of other development or properties, and*
- (c) incorporates appropriate measures to manage risk to life from flood, and*
- (d) will not significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses, and*
- (e) will not be likely to result in unsustainable social and economic costs to the community as a consequence of flooding.*

5.46 **Comment:** Flooding impacts are addressed under a separate heading below. In summary;

- (a) The proposed development is not considered compatible with the flood hazard of the land, noting the proposal for part of the residential accommodation to be built over the High Hazard flood zone;
- (b) Option 2 for flood mitigation, involving excavation over the northern portion of the site, may potentially comply with sub-clause (b), however further investigation is required as to the impact of groundwater on flood storage capacity and confirmation that this capacity will be achieved under the final engineering design for the water quality management system.
- (c) The application has not demonstrated consistency with sub-clause (c). A flood free evacuation route is not available and the application has not demonstrated sufficient accessible area complying with Council’s requirements for a ‘refuge in place’ strategy.
- (d) There is no apparent inconsistency with sub-clause (d); and
- (e) The proposed development may be able to comply with (e), however this has not been satisfactorily demonstrated as yet.

Wingecarribee Development Control Plan (Bowral Town Plan DCP)

5.47 The following table sets out performance against specific controls and requirements.

Part A	Provision (as relevant)	Assessment
	In assessing a Land Use Application (LUA), Council will consider the extent to which the proposal contributes to the achievement of both zone objectives and [relevant] Economic Function objectives.	No inconsistency.
	In assessing a land use application, Council will consider the extent to which the proposal contributes to the achievement of both zone objectives and the following Heritage Conservation objectives: (c) Ensure that redevelopment within or immediately adjacent to Conservation Areas reflects the high heritage value of the Area and	Council’s Heritage Advisor has no fundamental objection but recommended design amendments. See Assessment.

	contributes to that value.	
	<p>In assessing a land use application, Council will consider the extent to which the proposal contributes to the achievement of both zone objectives and the following Residential Amenity objectives:</p> <p>(a) (NA)</p> <p>(b) Encourage new residential development that is sympathetic to existing or desired future streetscapes and neighbourhood character.</p> <p>(c) Ensure that residential development includes sustainable principles such as energy and water efficiency, using sustainable building products where ever possible.</p> <p>(d) Contribute to the enhancement of the urban amenity.</p> <p>(e) Ensure that there is no light spill from any new development which would adversely impact on surrounding residents, including diminishment of the night sky experience.</p>	<p>Inconsistent: (b), (d).</p> <p>Acceptable: (c)</p> <p>Conditions required: (e)</p>
A2.2.5	<p>Residential Diversity: In assessing a land use application, Council will consider the extent to which the proposal contributes to the achievement of both zone objectives and the following Residential Diversity objectives: (a) Promote a mix of housing types to increase residential choice within the town, particularly around bus and rail connections. (b) Encourage appropriate site amalgamation and redevelopment to provide a range of residential opportunities throughout the town.</p>	<p>Acceptable. Development provides a mix of one, two and three bedroom apartments.</p>
A2.2.6	<p>Visual Amenity - Council does expect that all new development should at least respond to the essential elements that make up the character of the surrounding urban environment. In particular, all new development should:</p> <p>(a) Demonstrate an appreciation of the existing streetscape.</p> <p>(b) Enhance the character of individual streets within the town through appropriate built form design.</p> <p>(c) Provide areas of private open space which can make a positive contribution to the overall visual amenity of the locality.</p>	<p>Inconsistent: (a), (b) – see assessment.</p> <p>Acceptable: (c)</p>
A2.2.7	<p>Public Views and Vistas; In assessing a land use application, Council will consider the extent to which the proposal contributes to the protection of public views and vistas.</p>	<p>Acceptable.</p>
A2.2.8	<p>Environmental Sustainability; In assessing a land use application, Council will consider the extent to which the proposal contributes to the achievement of both zone objectives and the following Environmental Sustainability objectives:</p> <p>(a) Retain and protect those individual remnant native specimens that are found scattered throughout the township of Bowral.</p> <p>(b) Maintain and enhance existing public open space areas.</p> <p>(c) Maintain and enhance the existing pattern of street tree plantings.</p> <p>(d) Encourage on-site tree plantings which enhance the urban environment and provide additional tree canopy for wildlife habitat.</p> <p>(e) Ensure that buildings are designed incorporating the principles of ESD by requiring the construction of 'energy smart' buildings which meet required standards for water and air quality, noise, biodiversity and energy apart from BASIX.</p>	<p>Inconsistent: (b) Height, bulk and design do not maintain and enhance amenity of adjoining public open space to the north.</p> <p>Acceptable/Neutral: (a)</p> <p>Conditions: (c), (d), (e).</p>

A3.2 Development on land within the Urban Ecological Setting.		
A3.2.1	<p>The objectives for the development of land classified as being part of an urban ecological setting are:</p> <p>(a) to that ensure that there is no net loss of riparian condition, remnant vegetation, biodiversity values, wetland values, wildlife habitat or stormwater quality.</p> <p>(b) to ensure the protection of vegetation, threatened species or ecological communities, hydrological aspects, watercourses</p>	<p>(Awaiting Water NSW response and requirements).</p> <p>Acceptable: (b).</p>
A3.3 Development in Sydney's Drinking Water Catchments		
A3.6	<p>Water Sensitive Design</p> <p>Objective 2: Protection of natural ecosystems and waterways Controls: 2. Development should not occur within riparian buffer zones outlined in Wingecarribee Shire Council Local Environment Plan 2010 (Clause 7.5 Natural Resource Sensitivity – Water and related maps) and vegetation within the riparian buffer distances is to be maintained and intact.</p> <p>Objective 3: Protection of water quality entering natural ecosystems and waterways Controls: 3. All development within the shire must comply with the requirements of SEPP (Drinking Water Catchment) 2011 to ensure water quality exiting a site post development achieves a neutral or beneficial effect (NorBE) in comparison to pre-development water quality runoff.</p>	<p>Acceptable: no development occurs within the riparian buffer zone.</p> <p>Still under review: Objective 3 (Awaiting Water NSW response and requirements).</p>
A4.4 Controls for General Development		
A4.4.2 Performance Criteria	<p>(f) Development does not detrimentally increase the potential flood effects on other development or properties either individually or in combination with the cumulative impact of development that is likely to occur in the same floodplain. Development should not change the height or behaviour of floodwaters elsewhere in the floodplain in a manner which is likely to affect other property.</p> <p>(g) Development does not result in significant impacts upon the amenity of an area (e.g. by way of unacceptable overshadowing of adjoining properties) or privacy impacts (e.g. by unsympathetic house-raising).</p> <p>(h) Development must be compatible with the existing and planned streetscape and character of the locality.</p>	<p>(f) See detailed assessment of flooding impact and risk management;</p> <p>(g) Not acceptable – see assessment.</p> <p>(h) Not acceptable – see assessment.</p>
A4.4.3 Prescriptive Controls	<p>(a) Compliance with the requirements of the flood plain matrix as contained in Figure A4.3 above.</p> <p>(b) Development within the commercial centres must ensure that design solutions address flood risk management objectives as well as providing appropriate urban design outcomes, particularly in regard to:</p> <p>(iii) An overall building height that is compatible with the existing and planned streetscape.</p>	<p>(a) Not acceptable – see assessment.</p> <p>(b) (iii) Not acceptable; the development presents non compliant height arising from elevating floor levels above the flood planning level. The urban design outcome is not satisfactory. The overall building height is</p>

		not compatible with the existing and planned streetscape.
A4.5	Controls for Fencing on Flood Liable Land (a) Fencing is to be constructed in a manner that does not affect the flow of flood waters so as to detrimentally change flood behaviour or increase flood levels on surrounding land. (b) Ability to be certified by a suitably qualified engineer, that the proposed fencing is adequately constructed so as to withstand the forces of floodwaters, or collapse in a controlled manner to prevent the undesirable impediment of flood waters.	(a) Applicant advises that its flood calculations include allowance for both landscaping and the proposed fencing. (b) Matter able to be conditioned.
A4.5.3	Provides prescriptive controls for fencing design	
A4.6	Controls for Overland Flow	Further assessment required.
A4.7.3	Information Requirements (flooding).	Further assessment required.
Section 5 Vegetation Management & Landscaping		
	Note: Proposal involves the removal of one significant (Spruce) tree, determined by the applicant's landscape architect to be potentially structurally unsound.	Acceptable
A5.2	Private Landscaped Open Space	Acceptable/able to be conditioned.
A5.3	Landscaped Area objectives	
	Section 6 Subdivision, Demolition, Siting and Design	
A6.2	(b) An application for demolition [of a property within a Heritage Conservation Area] shall be accompanied by a Landscape Plan, prepared by someone considered by Council to be suitably qualified for such a task.	No objection raised by Council's Heritage advisor.
A6.4	Cut and Fill	
A6.4.3	b) For allotments equal to or greater than 4,000 m2 of area, cut and fill is not to exceed 750 mm of cut and 750 mm of fill, measured over the building footprint. c) Excavation above these levels can generally only be approved where it is retained by the wall of a proposed building, e.g. underfloor garage. d) If the cut/fill is to be retained is over 600mm then a retaining wall designed by a Professional Engineer is required.	Primarily relevant under Option B of flood mitigation proposal where up to 800mm cut is proposed to create a flood compensation basin.
A6.6	Design Principles within a Heritage Context.	
A6.8 A6.10	General guidance: new development in areas of lesser heritage value, particularly in the Commercial Area may provide more opportunity for innovative design, but such design must demonstrate, in the opinion of Council, a positive contribution to the streetscape and urban amenity of the town. New development in commercial areas of the town must address existing heritage character elements such as scale, fenestration materials, roof and parapet treatment and the provision of awnings.	Not acceptable – see assessment.
Section 7 Safer by Design		
	Crime Prevention Legislative Guidelines into the Environmental Planning and Assessment (EP&A) Act, 1979, as amended. These guidelines require consent authorities to ensure that development provides safety and security to users and the community.	To note.
A7.4	Council requires all development to demonstrate that it provides: a) Well-defined building entrances which are clearly visible from the street.... b) Internal spaces must be open and visible, eliminating hidden corners.	Not acceptable: (b) the void space allocated for recreation purposes benefits from no passive surveillance from residents of the development.

	<p>c) Walkways and connecting paths must be open with good visibility.</p> <p>d) Signs and vegetation should be located so that they do not create 'entrapment' points where people are hidden from view.</p> <p>e) On-site garaging must provide clearly defined exit points and be lit at night, both inside the garaging and around the entrance/exit points...</p> <p>f) Building entrances, walkways, connecting paths and garaging must be well lit in accordance with the provisions of Section A8 of this Plan to ensure that such lighting is down-ward focussed and effective without generating glare or annoyance beyond the area being lit.</p>	<p>Also includes High Flood Hazard land.</p> <p>Sub-clauses (a), (c)-(f) are able to be conditioned.</p>
Section 8 Construction Standards & Procedures		
	Information on material to be submitted and standards of construction and engineering requirements. Includes A8.3 Building near or over Council Mains and Easements	To note.
A8.5	Subfloor Areas of Buildings	
	Subfloor enclosures, using a material compatible with the subject structure, shall be provided. Where visible from the public road, (note: the provision of landscaping does not affect the visibility from the road) subfloor enclosure is to be provided along the road frontage with a return to the first pier on the side elevations.	Proposal does not provide for the enclosure of the sub-floor beneath the suspended northern element of the building as this area is required as part of the flood storage. This sub-floor treatment is considered a negative urban design aspect of the proposal.
A8.12	Waste Management and Disposal	
A8.12.3	<p>An acceptable waste management plan is to be submitted.</p> <p>Applicant identifies the need for: 16 x 240L bins for general storage; 8 x 240L bins for recycling 8 x 240L bins for green waste.</p>	<p>Acceptable (waste management plan submitted).</p> <p>Conditions to apply. Waste/recycling to be removed from the kerb by private contractor. Building manager will be responsible for transfer of bins from basement collection area to kerb and back again.</p>
Section 11 Development Near Rail Corridors & Busy Roads		
	General guidance and controls.	An acoustic report has been submitted.
Part B – Business zoned land		
B1.3	The subject site is within the Northern Entrance precinct	To note.
B2.2 & 2.3	Height and FSR controls as per LEP. "It should not be assumed that the specified building height may be applied as a blanket maximum across the entire site, particularly if the site is large. Council wants to ensure that an attractive streetscape is maintained and this may require lower building heights on the street frontage with the maximum being allowed in the centre of the site only."	Not acceptable. Building Height at 3 storeys (plus void) at the building edge is inconsistent with the local character, including Bowral CBD where predominant height is two storeys at street edge.
B2.4	B2.4 Designing for Pedestrian Access within the Town	
	(f) Land that has frontage to any public space, including pedestrian	Not acceptable (f(ii)).

	<p>footpath, arcade, walkway, open space or thoroughfare shall make adequate provision to:</p> <p>(i) incorporate an active pedestrian frontage to such public space, and</p> <p>(ii) complement the character, public use, security and enjoyment of such public space, and to provide an outlook to such space.</p>	<p>Development provides limited contribution to the amenity of public spaces as a consequence of its height and (in respect of Mittagong Road in particular) lack of visual relief by way of landscaped setback.</p>
Section 11 Residential Development in Business Areas		
B11.3	<p>(a) The proposed development shall comply with the relevant design controls contained in Part C of this Plan.</p> <p>(b) The proposed development shall comply with the height controls applicable in Part C of this Plan.</p> <p>(c) Additional glazing and other design requirements shall be provided at Council's direction to address potential noise issues associated with neighbouring commercial activity.</p> <p>(d) The location of residential development shall ensure that there is no overshadowing from neighbouring commercial development.</p> <p>(e) A Landscape Plan shall be provided for all development other than detached dwellings.</p> <p>(f) On-site private open space shall be provided to improve the residential amenity of the development.</p> <p>(g) Access to the subject site shall be located to ensure adequate vehicular and pedestrian safety.</p>	<p>Noted: (a), (b)</p> <p>Conditions (c),</p> <p>Acceptable: (d), (e), (f), (g)</p>
Section 14 Northern Entrance Precinct		
	<p>The location of the B4 Mixed Use zones within each of the three principal towns has been selected by Council to provide opportunities for site amalgamation and for redevelopment which achieves a cohesive, layout and design. Council particularly seeks such an outcome where the B4 zone is at the entrance to the town. Council considers the Bowral Northern Entrance Precinct to be of particular importance. Not only does it make a significant contribution to the northern entrance to the town, it is also largely within the Bowral Heritage Conservation Area.</p> <p>Council therefore considers this Precinct most suited to medium density residential development at the northern and southern boundaries, preferably fronting either the parkland or Victoria Street in the northern section, or Bundaroo Street in the south. Development in the northern part of the precinct should seek to integrate Landscaped Private Open Space with the public parkland on the northern boundary.</p> <p>Within this Precinct Council seeks to:</p> <p>(a) encourage site amalgamation and redevelopment in order to achieve efficient and co-ordinated redevelopment within this precinct.</p> <p>(b) provide a mix of residential development and low traffic-generating commercial activities.</p> <p>(c) provide a style and scale of development which respects the precinct's inclusion in the Bowral Heritage Conservation Area.</p> <p>(d) provide an attractive streetscape with appropriate landscaping and screen planting along both Mittagong Road and Bundaroo Street.</p> <p>(e) ensure that ingress and egress directly on to Mittagong Road is limited and appropriately located and designed to provide for existing high traffic volumes.</p>	<p>Noted/Advice.</p> <p>Acceptable (a),(b), (e). Not acceptable (c), (d). See assessment.</p>

Part C Provisions Applicable to Residential zoned Land		
	Note: Part C applies by virtue of B11.3.	
C1.2	<p>This Part of the Plan aims to achieve:</p> <p>(a) Conservation of the unique characteristics of the residential areas of Bowral, particularly in the case of the identified Conservation Areas,</p> <p>(b) New residential development which is sympathetic with existing streetscapes and neighbourhood character,</p> <p>(c) New residential development that is energy efficient, provides good amenity, and is safe and attractive.</p> <p>(d) Residential development which meets the needs of a range of community and demographic types, including smaller households, older people, people with a disability or people requiring group accommodation.</p>	<p>Inconsistent: (a), (b) – see assessment.</p> <p>Acceptable (with conditions): (c), (d).</p>
Section 4 Residential Flat Buildings - Sections C1-16 apply.		
	<p><i>[Report Author's note: this section applies to the R3-C sub-zone which is an area not regulated by a Height standard under the LEP as is the case for the subject site (10 metres). Development under this zone is subject to a three storey control and 0.6:1 FSR (contrasted to the subject site at 1.1:1). These differences need to be borne in mind in applying the controls under this section to the subject development].</i></p> <p>(a) A residential flat building shall not exceed three (3) storeys in height.</p> <p>(b) The maximum density for residential flat buildings shall be 0.6:1;</p> <p>(c) Side setbacks will equal 1.5m + the height of the building metres;</p> <p>(d) Setbacks shall be measured to the outermost projection of the building excluding balconies;</p> <p>Note also <u>C4.3(k)</u> A balcony shall not encroach more than 2 metres or 25 per cent, whichever is the lesser, on the setback to the front, rear and side boundaries. No part of any means of enclosure of a balcony shall exceed a height of 1.2 metres.</p> <p>(e) Residential flat buildings shall be set back a minimum of 9 metres from the front alignment (ie street frontage) of an allotment of land;</p> <p>(f) Buildings shall be designed and sited so as to preserve the visual and acoustic privacy of adjoining residential development and to ensure adequate privacy of dwellings and courtyards within the proposed development;</p> <p>(g) An absolute minimum separation of 6 metres shall be achieved between buildings on any site.</p>	<p>Inconsistent:</p> <p>(a) 3 Storey Height limit: Development is 4 storeys¹⁰ including basement.</p> <p>(b) 0.65:1 FSR (development is 1.056:1).</p> <p>(c)(d) Side setbacks east side:</p> <p><u>2 Storey element:</u> (N) Required 9.8m provided 6.3m. (S) Required 7.86m. Provided 5.35m</p> <p><u>3 Storey element:</u> (N) Required 12.8m. Provided between 1.86m and 5.365m</p> <p>C4.3(k): balconies (and terraces/roofs) do extend beyond the allowed margin.</p> <p>(e) Front setback reqd. 9m. Provided: negligible;</p> <ul style="list-style-type: none"> Mittagong Road – nil – 4.525m Victoria Street – 3m – 6.6m <p>(f) (Merit Consideration – see assessment).</p> <p>Acceptable: (g) (Minimum separation generally 6m)</p>
4.3	Design Standards Merit Assessment	
C4.4	Private Open Space	See ADG assessment

¹⁰ under the applicable definition for storeys under C1.5 as the basement is not excluded.

	<p>(a) All flats must have a principal private open space area;</p> <p>(b) All ground floor flats must provide a minimum private open space area of 30 m² with a minimum length of 4 metres;</p> <p>(c) All above ground floor flats must provide a minimum private open space area of 15 m² with a minimum length of 3 metres;</p> <p>(d) Private open space must be located to maximise solar access;</p> <p>(e) Private open space must allow for a variety of activities by providing a combination of hard surface, landscaping and deep soil areas.</p> <p>(f) The primary private open space should be located adjacent to, and be immediately accessible from, the primary living area.</p>	<p>(Clause 6A SEPP 65 provides that Development Control Plans cannot be inconsistent with the Apartment Design Guide, in relation to specific matters including private open space.)</p>
C4.5	Landscaping and Communal Open Space	
	<p>(a) Fifty per cent (50%) of any site developed for a residential flat building shall be landscaped to the satisfaction of Council.</p> <p>g) A tradesman's toilet, independent of a sole occupancy unit, will be required where 10 or more units are envisaged on a site. The toilet shall be appropriately screened from any public road, public place or public open space.</p>	Numerically acceptable.
C4.6	Off Street Parking	
	<p>(a) Off street parking will be provided at the following rates: Dedicated resident parking at a rate of 1 space per 1 and 2 bedroom dwellings (c) Dedicated resident parking at a rate of 2 spaces per 3 or more bedroom dwellings (d) Dedicated visitor parking at a rate of 1 space per 3 dwellings (rounded up to the nearest whole number)</p> <p>(b) (m) The provision of car parking facilities at basement level is permitted provided that entrance to such a parking space is from the side or rear of the building, and that the height of the building does not exceed 8 metres.</p>	<p>Acceptable parking provision (a).</p> <p>Required parking spaces: 3 x one bed units requires 3 spaces.</p> <p>26 x two bedroom apartments requires 26 spaces.</p> <p>18 x 3 bedroom apartments requires 36 spaces.</p> <p>Total resident car spaces required = 65 spaces.</p> <p>Visitor spaces required at 47 units/3 = 15.7 (16) spaces.</p> <p><u>Total required 65 resident spaces and 16 visitor spaces = 81 spaces</u></p> <p>83 spaces in total provided – complies.</p> <p>Inconsistent (b) (Height of building exceeds 8 m)</p>
Section 5 Universal Design for Adaptable Housing		
	<p>(b) In respect of residential flat development, all dwellings located on the ground floor will be constructed to comply with not less than Class C level of Australian Standard 4299 – Adaptable Housing.</p>	<p>Applicant's access report identifies 14 of the ground floor units are compliant. Other units are two storey</p>

		with bedrooms at ground floor
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6. Referrals

Water NSW

6.1 The proposed development requires concurrence from Water NSW under State Environmental Planning Policy (Sydney Drinking Water Catchment) 2011. Water NSW gave its conditional concurrence on 2 May 2017, including conditions which required the then proposed bio-retention to be located above the 1:50 year flood and protected from flooding. As these conditions could not be met without exacerbating flooding impacts the applicant subsequently amended its water management system. WaterNSW's response to this revised proposal had not been received as at the date of this report.

Roads and Maritime Services

6.2 RMS has confirmed by letter dated 29 June 2017 that it will not object to the DA subject to conditions (including matters relating to geotechnical investigation and structural support) with conditions to be imposed on any development consent. RMS recognises that any proposed works on Mittagong Road would require Section 138 consent from Council and concurrence from RMS under Section 138 of the Roads Act, 1993. Noting the works required, RMS will issue its concurrence under Section 138 of the Road Act, 1993 subject to the developer demonstrating to Council that the proposed works are acceptable and comply with relevant standards.

Department of Primary Industries (Water)

6.3 Under s91 of the Water Management Act 2000 works within 40 metres of a waterway are controlled activities requiring approval under the Act. The Mittagong Rivulet is approximately 25 metres from the northern boundary of the site. The Department of Primary Industries (Water) has provided General Terms of Approval for the development.

Council – Traffic Engineering

1. The traffic generation and impact on the Mittagong Road and Victoria Street intersection, which is a "seagull" intersection is being assessed by the Roads and Maritime Services (RMS). Whilst Council did not support the installation of the "seagull" due to it not meeting a number of criteria in the Austroads requirements, the Land and Environment Court accepted it to address the impacts of the development on the south eastern corner of the intersection.
2. The traffic generation as included in the Traffic Report is consistent with the Traffic Generation Rates provided in the RTA Technical Direction TDT 2013/04.
3. RMS have advised that they have requested a traffic count at the intersection of Victoria Street and Mittagong Road to enable SIDRA analysis to be undertaken to assess the adequacy of the existing arrangement to support the predicted additional traffic loading. Council will review any information if requested by the RMS.
4. The access to the proposed underground car park may not be readily accessible for visitor parking. Parking in the Bowral precinct is highly utilised and off street visitor parking should be readily accessible and should not impact on the operation of traffic movement on Victoria Street.

5. Waste collection (garbage and recyclable) should be undertaken off road. Details of how this activity will take place should be provided. It is advised that details showing swept path analysis of an 8.8m service vehicle should be provided from access from Victoria Street, into the site, manoeuvring on-site and then leaving the development onto Victoria Street in a forward direction. Swept path analysis must conform to Austroads requirements and be in accordance with RTA Technical Direction TDT 2001/06a. Waste collection often utilises overhead lifters. Analysis should consider the head clearance of these vehicles and the maximum lift height clearance with a waste bin lifted.
 6. No provision has been made for delivery vehicles, especially removalist trucks. Details of how this will be accommodated and managed is required.
 7. Regardless of any intersection improvement to Victoria Street and Mittagong Road intersection, the north eastern kerb return is required to be reconstructed to provide a 8.5m radius (face of kerb radius). The reconstruction must provide a kerb ramp meeting Australian Standards. A minimum 4m x 4m property boundary splay is required on the north eastern corner of Victoria Street and Mittagong Road.
 8. Footpaths adjacent to the site should be reconstructed in accordance with the Bowral Town Centre paving requirements.
 9. Water main may need to be upgraded in the Mittagong Road footway – this should be undertaken prior to the replacement of footpaving.
- 6.4 These matters were raised with the applicant and following comment is provided:
- Visitor parking is provided at the base of the access ramp and could be conditioned to ensure unimpeded access, with the resident spaces secured internally.
 - Waste/recycling would need to be removed from the kerb by private contractor and any amended submission would need to incorporate a storage space designed and located to facilitate this. The Building manager will be responsible for transfer of bins from basement collection area to kerb and back again. Conditions would be imposed in the event of any approval to ensure that bins are not left out overnight.
 - Servicing by delivery vehicles and removalist trucks would need to occur on Victoria street. It would be desirable for a loading bay to be considered.
 - It is noted that the amended design indicates provision for internal car spaces to be individually enclosed. This aspect was not incorporated in the original design and has apparently not been assessed in the applicant's traffic and parking report. In the event an approval were to be contemplated the applicant should provide a statement from its traffic expert confirming that internal dimensions of the car spaces comply with AS:2890 or alternatively conditions should be attached which delete all reference to the enclosure of parking spaces.

Council – Flooding and Drainage

Building within the High Flood Risk Zone

- The proposed development is shown to be constructed in the “High Flood Risk” zone in the northern section of the site. The Bowral Town Plan DCP does not allow any Residential development within the High Flood Risk Zone. Although the proposed building is shown to be suspended above the surface/flood level in the High Flood Risk Zone, the DCP does not clearly make provision for this to be allowed. In the Bowral Flood Plain Matrix (Figure A4.2 – see below) it simply precludes Residential Development in the High Flood Risk zone, regardless of how far above the flood level the floor levels are.

- Subsequent to a meeting with the applicant, the following points were raised in relation to the above point:
 - General Note “c” in Figure A4.2 Bowral Flood Plain Matrix states “Filling of the site, where acceptable to Council, may change the FRP [Flood Risk Precinct] considered to determine the controls applied in the circumstances of individual applications”. In this case, rather than filling the site, the building is proposed to be cantilevered/suspended over the High Flood Risk precinct. It is then assumed that suspending the building above the Probable Maximum Flood (PMF) may also allow the FRP to be changed as per note c (if acceptable to council). The next most sensible FRP to assess the development in would be the Medium Flood Risk zone, which would allow the development provided it satisfies the prescriptive controls set out in the Matrix.
 - Section A4.3.1 outlines how compliance of Flood Liable Land is to be determined. This section lists the three main categories of controls which apply to flood liable land, that is, The Objectives, The performance criteria, and The prescriptive controls. It also suggests that achieving the Objectives and performance criteria is of more importance than satisfying the prescriptive controls (which as stated in my email below cannot be done as the Matrix does not allow residential development in a High Flood Risk precinct). If this viewpoint was adopted, the development could be assessed against the Objectives and performance criteria in section A4.4.1 and A4.4.2 of the DCP. If the proposed development is able to satisfy these objectives and criteria (there are several planning criteria which appear to be outside the scope of engineering assessment and fall under the care of Town Planners), then the proposed development would be allowable if acceptable to Council.
- It is not black and white that the DCP can be interpreted as per the two above points raised by the applicant. This decision should be made and accepted by Council.

Emergency Evacuation/Refuge in Place

- As shown on the flood extent map the carriageway of Mittagong Road is in the High Flood risk zone to both the north and south of the development site. This does not allow reliable access for vehicles during the 100 year flood as required for evacuation in the Bowral Flood Plain Matrix.
- The applicant then proposed that as an alternative to evacuation it intends to rely wholly on a ‘refuge in place’ strategy which is discussed in the DCP. The Bowral Town Plan DCP states when referencing Planning Consideration given to Evacuation of developments in the medium flood risk zone, that “Reliable access for pedestrians or vehicles is required from the building, commencing at a minimum level equal to the lowest habitable floor level to an area of refuge above the PMF level, or a minimum of 20% of the gross floor area of the dwelling to be above the PMF level”. Given that reliable access from the building to above the PMF is not possible, at least 20% of the gross floor area is required to be above the PMF level for a ‘refuge in place’ scenario to be a possibility. As the only areas on the first and second floors readily access able to the residents of the ground floor are the lobby’s, it is unlikely that these areas add up to 20% of the gross floor area of the dwellings on the ground floor. The consultant later confirmed that only 12% of the gross floor area of dwellings on the ground floor is available above the PMF level. Therefore, the ‘refuge in place’ alternative to evacuation still does not comply with the requirements in Council’s DCP.
- Any variance to the DCP in regards to allowing a development which does not provide flood free access or suitable refuge in place should be made and accepted by Council.

Groundwater infiltration

- The applicant has proposed to provide compensatory excavation at the northern section of the site to offset any impacts to flooding levels/extents caused by construction of the building within the high-medium 100yr flood zones. Previous investigation has shown that this proposed excavation will likely be impacted by ground water levels, which are in many areas above the proposed level of excavation. This in turn will reduce the amount of detention volume available to offset the impact of construction within the flood zone. This item likely needs further investigation/design, however, ultimately any compensatory excavation provided on the site will need to remain well above existing ground water levels.

6.5 Town planning comment on these flood engineering matters is provided under a separate heading below.

Council – Building

6.6 Conditions provided in the event approval is granted.

Heritage

6.7 The advice of Council's Heritage Consultant is as set out previously. Further advice was requested of Mr Kabailah as to amendments appropriate to the elevations of the building and which were referred to the applicant for consideration in the amended plans subsequently submitted.

Section 94 Contributions

6.8 Section 94 contributions of \$227,700 have been assessed, and would need to be updated to account for the final apartment configuration. Council's mapping indicates that the subject site is within the Developer Servicing Plan (DSP) area for reticulated water and reticulated sewer. The subject site is within the dimensions required for connection to Council water and sewer reticulation network therefore these charges will apply.

7. s79C(1) Environmental Planning and Assessment Act 1979

7.1 All relevant environmental planning instruments, proposed/draft instruments, development controls plans and matters otherwise referred to under **s79C(1)(a)(i) – (v)** have been addressed in this assessment report.

S79C(1)(b) Impacts of the development

7.2 The Key impacts/issues with the development are:

- a) Flooding impacts;
- b) Building over the High Hazard flood zone;
- c) Evacuation/refuge in place strategy;
- d) Traffic and Parking;
- e) Height;
- f) Bulk and scale;
- g) Streetscape/character;
- h) Amenity.

a) Flooding impacts



Flood Planning Map extract

Around 60% of the site is subject to flooding. The proposed building footprint (that is, the parking basement) is located mainly within the 'Fringe Low Flood risk' and 'Medium Flood Risk' area. The northern section of the proposed building, however, is suspended on columns over the High Flood Risk Zone. The void beneath this part of the building is proposed to be used as a recreation space.

7.3 As the proposed building footprint will displace flood storage, three flood mitigation options have been offered by the applicant:

- **Option 1** provides no compensatory flood storage. The proposed basement displaces a volume of some 997 m³ and prevents any conveyance through this part of the floodplain. The applicant's flood report indicates a maximum flood level increase of 25mm immediately upstream of the proposed development, including affection of 4,6,8,10 Victoria Street. Option 1 appears inconsistent with LEP objectives and Council controls under clause 7.9 WLEP 'Flood Planning' and is not supported.
- **Option 2** provides for compensatory excavation over the northern portion of the site (including the void beneath the suspended ground floor slab) to a variable but average depth of around 800mm below existing ground levels. This basin would be inundated at times of flood, leaving a volume of 990m³ of floodwater within this excavated area when the flood subsides. In order to drain this to Mittagong Creek the applicant submits it would be necessary to undertake additional drainage works and repair to Council drainage infrastructure.

The applicant's flood report indicates this option would lower flood levels upstream of the site however there is an increase of 5-10mm within the subject site and extending into Mittagong Road. The applicant submits that Mittagong Road is not traffickable during major floods and this impact is therefore not of any consequence.

Council's contract engineer and flooding engineer have confirmed that Option 2 for Compensatory Excavation appears to be the most suitable. The calculations provided in the applicant's Flood Assessment Report shows the capacity of the Medium Flood Risk zone occupied by the proposed building can be provided through compensatory excavation on the northern end of the site. This conclusion is dependent on:

- Water NSW's support of the amended water management system which places all required infrastructure beneath the finished (ie post excavation) level of the northern section of the site (advice from WaterNSW had not been received at the date of writing this report ; and
- Further investigation of the impact of groundwater on flood storage capacity.

In relation to the second dot point, the applicant's geotechnical report includes limited testing of ground water levels, however when compared to the proposed excavation depth

(ie to provide compensatory flood storage) the finished level of the ground is very close to the identified ground water level, especially in the north west section of the site, and may at times be below the groundwater level, noting the geotechnical report's qualification to the effect that groundwater levels and seepages may fluctuate due to seasonal conditions and weather events. The effect of groundwater interaction with the proposed flood storage requires further investigation and assessment by experts qualified in this field. That further assessment should include more comprehensive testing of the groundwater regime, investigate the nature and likelihood of the events which could cause elevated groundwater levels, and the prospect for this to affect the flood storage capacity of the site under all foreseeable conditions.

- **Option 3** provides for shallower compensatory excavation over the northern portion of the site but partly extending into the adjoining public reserve. To provide the same compensatory storage and effect it would also be necessary to remove the masonry wall and mound within the public reserve. Under this option a constant grade is achieved towards the Creek and the existing drain (and damaged flood gate) is not relied on. This option results in slight reductions upstream of the site, and elsewhere impacts up to 5mm. Option 3 is not considered acceptable as it involves the use of public land, including the public reserve, for flood mitigation.

(b) Building over the High Hazard flood zone;

7.4 The northern portion of the residential apartments is in the form of a suspended structure, supported on columns over the High Flood Hazard zone.

7.5 Section A4.3.3 of Bowral Town Plan/DCP includes the prescriptive controls of the flood planning matrix and this provides that within the High Hazard zone residential development is 'an unsuitable development type'. General note 'b' provides that the relevant environmental planning instruments identify development permissible with consent in various zones...notwithstanding, constraints specific to individual sites may preclude Council granting consent for certain forms of development on all or part of a site'.

7.6 Clause 7.9 WLEP (Flood Planning) further provides 'Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development: (a) is compatible with the flood hazard of the land'.

7.7 The applicant's flooding engineer makes the following submissions in response to this concern (as paraphrased):

- General Note "c" in Figure A4.2 Bowral Flood Plain Matrix states "Filling of the site, where acceptable to Council, may change the FRP [Flood Risk Precinct] considered to determine the controls applied in the circumstances of individual applications". In this case, rather than filling the site, the building is proposed to be cantilevered/suspended over the High Flood Risk precinct. It is then assumed that suspending the building above the Probable Maximum Flood (PMF) may also allow the FRP to be changed as per note c (if acceptable to council). The next most sensible FRP to assess the development in would be the Medium Flood Risk zone, which

would allow the development provided it satisfies the prescriptive controls set out in the Matrix.

- Section A4.3.1 outlines how compliance of Flood Liable Land is to be determined. This section lists the three main categories of controls which apply to flood liable land, that is, *The Objectives*, *The performance criteria*, and *The prescriptive controls*. It also suggests that achieving the *Objectives* and *performance criteria* is of more importance than satisfying the *prescriptive controls*. If this viewpoint was adopted, the development could be assessed against the *Objectives* and *performance criteria* in section A4.4.1 and A4.4.2 of the DCP. If the proposed development is able to satisfy these objectives and criteria then the proposed development would be allowable if acceptable to Council.

7.8 The applicant's town planner has also submitted that disallowing development within the High Hazard zone is contrary to State Planning Policy that flooding constraints should not act to sterilize land and that Council has the discretion to approve development in the High Hazard zone without need for amendment to the DCP. It is argued that the proposed development approach is not inconsistent with the Floodplain Manual or Council's DCP.

7.9 The following town planning comments are provided in response to the applicant's submissions.

7.10 S79C(1)(3A) of the Environmental Planning and Assessment Act provides 'if [DCP] provisions set standards with respect to an aspect of the development and the development application does not comply with those standards— [the DCP] is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development'. Notwithstanding, having considered all of the applicant's submissions, it is not recommended that the DCP controls be varied to permit the extent of development proposed within the High Hazard flood risk zone of the site.

7.11 The DCP's flood management controls are developed within the framework of the State Government's flood planning policy, which together provide land use planning controls regulating a matter of significant public interest. The DCP provides that most development – including Residential – is not suitable in the High Risk flood zone. Had the DCP intended that Residential of a particular design could in fact be allowed in the High Flood Hazard zone – for example, a design such as in this application which suspends floor levels above the 100 year or PMF – then the DCP could readily have been drafted so as to include those controls/parameters. The DCP, however, is drafted to disallow such development. Moreover, since Residential is not contemplated in the High Hazard zone it follows the DCP has not formulated any controls at all over Residential development in that zone – it therefore provides no guidance as to how to regulate such development or ensure the planning objectives of the LEP/DCP – including WLEP Clause 7.9 - should be achieved. It would not be appropriate, as the applicant suggests, to simply assume that the 'Medium Risk Controls' should apply, because the underlying characteristic of the land remains 'High Risk' not 'Medium Risk'.

7.12 There were doubtless numerous considerations that were brought to bear in the drafting of the DCP's flood management provisions and specifically, the flood planning matrix. Whilst the consent authority does have the ability to vary a provision of a DCP there comes a point where the revision is

of such significance as to amount to the ‘setting aside’ of the flood management controls, in a manner that would be likely to influence other developers of High Hazard land within the LGA – that is, act as a precedent. It is noted, in this regard, that it is not a small or incidental part of the building that encroaches the High Hazard zone, but all of the units along the northern side of the building. Noting the scale involved, a proposal to vary such a fundamental provision of the DCP would most appropriately be made not through piecemeal decision making on an individual development application but through a request for a formal amendment of the DCP, where those considerations could be re-visited and re-examined with all the checks and balances provided under the strategic land use planning system.

7.13 With regard to the applicant’s reliance on the note at item ‘c’ to the land use matrix, the proposed development does not include filling of the land that would remove it from the High Hazard category. In this case what is proposed is the suspension upon structural columns of part of the building which sits over the High Hazard zone and without altering the flooding characteristics of the land on which it sits.

7.14 With regard the applicant’s argument as to sterilization of land, the site in fact includes land under the low to medium risk categories which allows that part to be developed in accordance with LEP and DCP controls.

Related urban design issues

7.15 Aside from the issue of flooding and risk management, the approach of suspending part of the building over the High Hazard zone raises urban design and safety issues, including the creation of a void/sub-floor wholly affected by High Hazard flooding and proposed for recreation use with no natural surveillance available to it.

7.16 The building, moreover, with or without the enclosure of the void, would present a height the equivalent of close to four storeys above the proposed finished level of the site adjoining to the north, taking into account the excavation required to provide flood storage. The apparent height of the building and visual impact of the sub-floor would be exacerbated by the extent to which it extends into the High Hazard flood zone, producing a negative urban design outcome. This same part of the building is the part that breaches the Height standard under WLEP most significantly.

7.17 The impacts of the siting and design approach proposed therefore extend beyond concerns related simply to flood hazard management. In that regard, the proposed development does not achieve a number of the DCP objectives and performance criteria¹² taking into account the urban design concerns over the suspended element. WDCP A.4.4.3 requires for example (b) ‘Development within the commercial centres must ensure that design solutions address flood risk management objectives as well as providing appropriate urban design outcomes’ and (b)(ii) seeks ‘An overall

¹²BDCP 4.4.1(a) To require development with high sensitivity to flood damages or danger to life to be sited and designed so that it is subject to minimal flood hazard.

BDCP 4.4.1 (c) To ensure that the design and siting controls and built form outcomes required to address the flood hazard do not result in unreasonable impacts on the: (i) amenity and character of an area; (ii) streetscape and the relationship of the building to the street; BDCP 4.4.2 (g) Development does not result in significant impacts upon the amenity of an area (e.g. by way of unacceptable overshadowing of adjoining properties) or privacy impacts (e.g. by unsympathetic house-raising). (h) Development must be compatible with the existing and planned streetscape and character of the locality.

building height that is compatible with the existing and planned streetscape’.

7.18 For the above reasons, the extension of the proposed building into, or over, the High Hazard flood zone is not supported. Such development would be inconsistent with clause 7.9 WLEP (Flood Planning) *‘Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that the development [a] is compatible with the flood hazard of the land’*.

(c) Evacuation/refuge in place strategy

7.19 Clause 7.9(1)(a) WLEP provides the objective ‘to minimise the flood risk to life and property associated with the use of land’. Clause A4.4.2 BDCP provides ‘(a) The flood risk associated with the development comprising danger to life and damage to property is minimised and not increased beyond the level acceptable to the community’. Clause A4.4.2 BDCP provides ‘Effective warning time and reliable access is available for evacuation from an area potentially affected by all floods to an area free of risk from flooding.’

7.20 Council’s contract engineer and flooding engineer have raised concern that the carriageway of Mittagong Road is in the High Flood risk zone to both the north and south of the development site. This does not allow reliable access for vehicles during the 100 year flood as required for evacuation in the Bowral Flood Plain Matrix.

7.21 The applicant has submitted, in response, that it intends to rely on a ‘refuge in place’ strategy. In other words, that up to the 100 year flood the ground floor of the development is protected, and in events greater than the 100 year flood up to the Probable Maximum Flood, residents would be able to seek refuge on the upper level of the building. The applicant’s flood engineer has provided the following comments:

‘The flood risk management planning controls for Bowral were formulated by Don Fox Planning, in association with Bewsher Consulting, as part of the Bowral Floodplain Risk Management Study and Plan (Bewsher 2009).

These planning controls (Schedule 5 of Appendix I) were derived considering the flooding characteristics of the catchment, including the duration of flooding. In relation to evacuation controls, it was considered that shelter in place was an acceptable alternative to physically leaving the premises for this catchment. Flooding at Mittagong Road would typically be from short duration storms. The critical storm duration (that provides the highest flood levels) is 9 hours for the 100 year design event (Page 11, Bewsher 2009). More extreme floods, such as a PMF event, are derived from more intense, shorter duration events. The critical duration for the PMF event is 2 hours (inspection of flood model files, Bewsher 2009). In relation to persons with mobility limitations, both stairways and lifts have been proposed whereby residents in the ground floor units can relocate to a higher floor level above the PMF flood level. Safeguards should be incorporated in the design of the lifts to ensure that they remain operable during extreme floods, and to ensure that access to the basement is prevented prior to flooding being experienced.’

7.22 It is noted that this option is problematical however in that:

- The upper levels of the building provide only very limited communal space in the form of the lift/stairwell lobbies. Whereas the DCP requires 20% of gross floor area to be above the Probable Maximum Flood level and this is not achieved in the development; and
- Lifts would need to be relied on by non ambulant (or restricted mobility) residents.

7.23 These matters are potentially capable of being addressed through an amended design complying with the DCP requirements, including demonstration that the lift system would be specified so as to be operable in situations of flood, however these matters are not suitable for condition and would need to be incorporated into an amended proposal.

(d) Traffic and Parking

7.24 Significant concern has been raised by the community over parking and traffic impacts. Notwithstanding, the parking provision complies with Bowral Town Plan DCP and RMS has raised no objection, subject to conditions. Council's engineers have raised a number of concerns relating to access to visitor parking, waste collection, delivery and removalist truck access, and have recommended a number of design standards regarding footpath and kerb design. Conditions could be imposed in relation to these matters.

(e) Height

7.25 The impacts of the building's height have been addressed previously. In summary, there is a significant breach of the WLEP Height Standard, coupled with a design which tends to exacerbate the visual amenity and character impacts associated with Building Height.

7.26 The applicant has submitted that:

- this is a landmark or gateway site and demands an architectural significance which this development delivers;
- further it is argued that the planning controls clearly allow three storey development;
- the proposed development provides for a combination of two and three storeys and is considered to have architectural merit.

7.27 In response, it is agreed that this is a gateway site, however the architectural solution under this proposal, whilst of architectural merit, does not respond well to the character of its context, that is, predominantly two storey parapet roofed forms extending towards the Bowral CBD and lower scaled, predominantly pitched roofed forms extending eastwards of the site along Victoria Street. Whilst it is agreed a three storey development could be achieved under a 10 metre height limit, this might be more sensitively achieved with the third storey in a more recessive/roof form. Moreover, the DCP makes clear it should not be presumed this height limit should necessarily be achieved over the whole of the site. The additional height of the development, as well as its three storey expression at the street edge (and 3.5 – 4 storey expression over the northern façade taking into account the void/sub-floor) is a key point of differentiation with the character of this locality.

7.28 Reference has also been made by the applicant to the fact that three storey development is permitted at the Southern Entrance residential flat zone and this will create a precedent for other three storey development to occur within the Bowral centre. Controls in this Southern Entrance zone, however, anticipate a quite different building typology to that which is proposed here, including a much lower FSR and a significantly increased requirement for street setbacks.

(f) Bulk and scale;

7.29 A combination of the height and flat roof form results in a building of significant bulk and scale relative to its streetscape/environmental context. This is most evident in terms of the northern elevation, however the 3 storey+ northern element is also problematical as it turns the corner into Mittagong Road and to the side boundary shared with 4 Victoria Street. Bulk is exacerbated by some poor design features such as:

- blank walls to Mittagong Road. This is most evident at the northern end of the development where the wall height is 11.3 metres above footpath level at a setback less than one metre to Mittagong Road boundary. Although the treatment of the remainder of Mittagong Road

frontage is improved under the amended plans, there remain uncharacteristic/unsympathetic expanses of blank wall adjacent to the public footpath, as well as uncharacteristic fenestration in the form of angled windows designed to increase solar access.

- lack of effective separation to the western and eastern boundaries. The greater part of the Mittagong Road elevation is set within 1.5 metre of the boundary, precluding the use of effective landscaping to break down the building length and bulk, other than at the corner with Victoria Street. On the eastern boundary, the setbacks are less than recommended under both the ADG and BDCP as discussed previously – this is coupled with a building of considerable length, running almost the entire length of the common boundary with 4 Victoria Street at two storeys and (at the northern end) three storeys (plus undercroft).

(g) Streetscape/character;

7.30 As noted, the elevations do not make any obvious reference either to the commercial streetscapes extending into Bowral town centre, nor the residential streetscape to the east in terms of height at the street edge, scale, proportions, roof form, modulation or detailing. The design includes articulation, but the siting and massing of the development is not arranged in a manner that reflects the surrounding built form context. It lacks the variety and interest of the individual forms that contribute positively to the local character, whether that be development within the Business or the Residential zones. The design is good quality, but more akin to an 'inner Sydney' style of flat development as opposed to one that draws upon the distinct country town character of the Bowral locality and conservation area.

7.31 Amended plans prepared in discussion with Council's Heritage Advisor have improved aspects of the two storey section to Mittagong Road, by modulating the two storey element in a manner more consistent with the verticality of development extending towards Bowral CBD.

7.32 Some alleviation of the massing impact of this elevation, through setting back a central part of the development to permit amenity landscaping, would have assisted both in improving amenity for apartments located adjacent to Mittagong Road as well as in softening the impact of the development, particularly in recognition of its transitional location.

(h) Amenity

Overshadowing

7.33 The proposed development will start to overshadow 4 Victoria Street from late morning. Although the applicant's shadow diagrams are unclear, it appears around 50% of the rear (northern elevation) of this property as well as 50% of its garden would retain solar access for 3 hours at Midwinter.

Visual bulk

7.34 The visual bulk of the two and three storey elevation that extends along much of the length of the common boundary shared with 4 and 6 Victoria Street, exacerbated by the siting of the building close to the boundary is of concern.

Privacy

7.35 The design relies on extensive use of screening to achieve privacy, in place of ADG/BDCP setbacks and the appropriate positioning of windows and balconies. The screening does not address all visual privacy aspects, nor does it address the acoustic privacy impact of balconies and terraces so close to the common boundary.

s79C(1)(c) The suitability of the site for development

7.36 A Phase 1 environmental site assessment was undertaken by Benbow Environmental Consulting, 18 April 2017. This assessment has found no strong evidence from the detailed search into the site's history that contaminating activities had occurred. It can be concluded that the site is suitable for the proposed residential development.

7.37 The site is flood affected. Part of the site is suitable for development in accordance with Council's flood planning controls, however part of the site is within the High Hazard zone where residential development is restricted.

7.38 The site is otherwise suitable for development, subject to appropriate conditions and controls.

s79C(1)(d) Any submissions made in accordance with this Act or the regulations.

7.39 The notification of the development application gave rise to:

- 18 objections to the development;
- 3 submissions raising no fundamental objection and/or providing support or qualified support;
- 1 submission requesting matters to be considered by JRPP.

7.40 Matters raised in objections are discussed below, with reference to the relevant sections of this assessment report where appropriate.

Flooding impacts:

- *Concern the land is flood prone/way/high risk and unsuitable for development;*
- *Proposal will exacerbate flooding impacts upstream and impact neighbouring properties;*
- *It is proposed to address the flooding impacts by excavation of the banks of the Mittagong Rivulet either on the side of the development or on Council's land. Proposal involves associated tree removal and construction of a wall. These consequential impacts are not acceptable as the riparian zone should not be impacted by development;*
- *Impacts of excavation works on the ecology of the Mittagong rivulet have not been addressed;*
- *Council's 2009 Flood Study concluded this site was unsuitable for development as a High Risk Flood area;*
- *DA includes option for flood mitigation by excavation within the public reserve and removal of trees, other planting an a concrete block wall along the south boundary of the public reserve*

Comment: flooding impacts of the development are addressed previously in this report. If the proposal were to be approved, Option 2 is most suitable, subject to further investigation as identified previously. This option does not involve works to the banks of Mittagong Rivulet or land outside of the site.

Part of land is zoned RE1 Public Recreation

- *The northern most lot Lot 1 DP 778892 is zoned RE1 Public Recreation (LEP LZN 007F). This lot is shown only to benefit the development site.*

Comment: this issue was investigated and found to be the result of a mapping anomaly/error which has now been corrected. Lot 1 DP 778892, together with the remainder of the site, is now shown on the NSW Government website as zone B4 Mixed Use, within which zone the development is permissible.

Proposed height/design/character/landscaping is inappropriate:

- *The flat roof nature of the design is only to accommodate the 3rd storey.*
- *Exceeds the 10 metre height limit in total;*
- *Proposal is uncharacteristic;*
- *Achieves a three storey height plus basement whereas buildings in the locality generally do not exceed two storeys. Floria was required to reduce height and increase response to local character before approval;*
- *Is unsuitable for the Bowral heritage precinct;*
- *Impacts adversely on streetscape and view to Mt Gibraltar;*
- *Design is big, bulky and box-like and does not reflect local character. It looks like a hospital;*
- *Building is too close to the street and other boundaries;*
- *Site is at the northern entrance of Bowral and it is important it reflect local character;*
- *Development is too large, too high and too many units;*
- *A four level building including the exposed basement will be seen from the local park;*
- *Object to flats. Development should be single storey only;*
- *Will create overshadowing of Victoria Street properties opposite.*

Comment: these submissions are generally supported, as discussed elsewhere in this report. The proposed development will not, however, adversely impact on the Floria development by way of overshadowing or adversely impact on views to Mount Gibraltar. The submission that the development should be single storey only is likewise not supported, having regard to the height standard under WLEP and the environmental context of the site.

Privacy impacts

Comment: Concern is raised as to the visual and aural privacy impacts arising from the proximity of the development to the eastern side boundary. The owner of this property has made a submission on the DA and has made various requests for privacy treatment. The owner also has assumed that a 5 metre strip of land will be provided to her by the developer and she would be able to plant it out as an extension of her garden. No application for subdivision is included in the development application, however, and the excision of part of the development's landscaped area to an adjoining property owner would not be supported, particularly as the area concerned would be important for softening the impact of the development and should therefore be maintained on an ongoing basis by the owner of the development.

Traffic and parking impacts.

- *Traffic will impact on Victoria Street causing congestion;*
- *Victoria Street is of restricted width;*
- *The proposed access is poorly sited at a bend and opposite the access to Floria;*
- *Sight lines will be obscured by bend and by parked cars;*
- *Traffic study is inadequate. Impacts of school and swimming pool not sufficiently accounted for;*
- *Parking will impact Victoria Street and its residents;*
- *Do not want traffic lights.*

Comment: RMS has not raised objection to the proposed development. Car parking provision complies with the standards under Bowral DCP. Council's engineers have raised a number of concerns relating to access to visitor parking, waste collection, delivery and removalist truck access, and have recommended a number of design standards regarding footpath and kerb design. In the

event that approval was considered appropriate, conditions would be imposed in relation to these matters.

Heritage impacts

- *Proposal is out of keeping with the Bowral Conservation area;*
- *The existing cottage on the site has important historical links as the site of the early 'Make Bowral Beautiful' competition (now 'Tulip Time') and should be retained;*
- *Impact on Cherry Tree Walk Vietnam Memorial from Flood mitigation works.*

Comment: Council's Heritage Consultant has not recommended that the existing cottage on the site be retained. Option 2 for flood mitigation will not impact on land outside of the site. Council's Heritage Advisor has recommended amendments but raised no fundamental objection to the development.

Sewerage and stormwater infrastructure will not be able to cope.

Comment: Council's engineers have confirmed that Bowral STP has sufficient capacity for the development.

Amenity impacts

- *Headlight glare into the development ('Floria') opposite and noise from car park door opening and closing;*
- *Units will be affected by noise from the railway line;*
- *Garbage collection: concerned the development will result in a long row of garbage and recycling bins left on the footpath for collection;*
- *Concern proposed apartments will be used as short term/tourist accommodation.*

Comment: An acoustic report has been submitted by the applicant which addresses noise impact from the Southern Railway and Mittagong Road. In the event approval is considered appropriate conditions would be imposed to limit the impact of garbage/recycling bins on the street. It is agreed there may be some impact as a consequence of headlight glare from vehicles exiting the development, however the driveway position is preferably located at the eastern end of the site on traffic engineering grounds. With regards to the concern as to use for short term accommodation, the proposal is for a residential flat development. Any proposed future use for holiday accommodation by individual (future) owners would be subject to the statutory planning limitations as applicable at that time.

Construction impacts.

Comment: In the event approval is considered appropriate, conditions would be imposed to limit the impacts of the construction process.

Inadequate information

- ADG not addressed.
- Development application documentation is vague and difficult to understand.

Comment: Further information was requested of the applicant including the performance of the development against the ADG and is assessed in this report.

Letters in support/not objecting

- One letter not raising fundamental objection but concerned over traffic impacts and requesting that a vehicular bridge be constructed connecting Victoria Street to Rose Street;
- One letter strongly in support but raising energy issues;

- Inadequate time allowed for objections over Christmas period;
- 4 Victoria Street (next door to development). Understands that a 5 metre buffer will be provided to her along her western boundary and seeks conditions to be applied concerning privacy and landscaping and construction management. Would like a development next door as the land is an eyesore;
- Proposed development is good for sustainability and will prevent urban sprawl;

Comment: noted.

S79C(1) (e) The public interest

All matters relevant to the public interest have been addressed in this assessment report.

8. Conclusion and recommendations

8.1 The proposed development is considered inconsistent with Council's flood policy, including the prescriptive terms of the WDCP flood planning matrix and its associated controls. Despite the applicant's argument the DCP can be interpreted in a manner which allows development over the High Hazard Flood zone that approach is considered inconsistent with the public interest. Further investigation is required to demonstrate that appropriate flood compensatory storage can in fact be achieved as well as re-design to demonstrate an acceptable refuge in place strategy.

8.2 The proposal raises fundamental concerns in respect of its height, scale, siting, design and massing with associated impacts relevant to both urban design/character and amenity and streetscape presentation. Significant variation arises in terms of the Height standard under WLEP and the clause 4.6 submission is not considered well founded, for reasons discussed in this report.

8.3 The development application has been assessed in accordance with the matters for consideration under section 79C of the *Environmental Planning & Assessment Act 1979*, and all relevant environmental planning instruments and Council policies, and cannot be supported in its current form. It is recommended that the development application be refused for the following reasons:

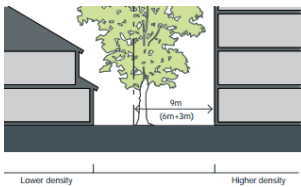
1. Pursuant to section 91A(4) and section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, approval cannot be granted as WaterNSW has not granted concurrence to the proposal in its current form or in the alternate, approval should not be granted as the consent authority is not satisfied that the development is consistent with clause 10 of State Environmental Planning Policy (Sydney Water Catchment) 2011.

Note: This reason may be satisfactorily addressed if WaterNSW provides a favourable response subject to satisfactory conditions prior to the determination meeting.

2. Pursuant to section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with Clause 7.9 WLEP (Flood Planning) and Section A4 Flood Liable Land of the Bowral Development Control Plan in that it proposes to extend a significant part of the residential development over land designated as High Flood Hazard (Section A4.3.3 of the Bowral Town Plan and associated Flood Planning Matrix).
3. Pursuant to section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the development does not comply with clause 7.9 WLEP (Flood Planning) and Section A4 Flood Liable Land of the Bowral Development Control Plan in that it has failed to make adequate provision for the safe evacuation or refuge in place for occupants of the building in a significant flooding event (Section A4.3.3 of the Bowral Town Plan and associated Flood Planning Matrix).

4. Pursuant to section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the consent authority is not able to be satisfied that the proposed development complies with Section A4 Flood Liable Land of the Moss Vale Development Control Plan and clause 7.9 (Flood Planning) of Wingecarribee Local Environmental Plan 2010 (WLEP) in that it has not been demonstrated that adequate flood storage will be available under all conditions, having regard to the interaction of the ground water table with proposed finished levels of the site (Section A4.3.3 of the Bowral Town Plan and associated Flood Planning Matrix).
5. Pursuant to section 79C(1)(a) of the *Environmental Planning and Assessment Act 1979*, the proposed development does not comply with the Height Standard under clause 4.3 WLEP and the submission under clause 4.6 WLEP is not well founded.
6. Pursuant to section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, the development would result in an adverse impact on streetscape and the character and amenity of the locality by reason of its siting, design, height, bulk and setbacks, contrary to objective (c) of the B4 zone WLEP (To ensure that new development has regard to the character and amenity of adjacent and nearby residential areas'); Objective 4.3(b)(Height) WLEP ('to ensure that the heights of buildings are compatible with the character of the existing development within the surrounding area'); clause 5.10 WLEP (Heritage Conservation) and the provisions of Bowral Town Plan Part A, particularly the residential amenity objectives and Part A2.2.6, A4.4, A4.4.3, A6.6, B2.2 and B2.3, Section 14(c) & (d) and C1.2 Bowral DCP.
7. Pursuant to section 79C(1)(b) of the *Environmental Planning and Assessment Act 1979*, the development would result in adverse impacts on residential amenity in the locality by reason of its siting, design and setbacks and consequent unacceptable adverse impacts in terms of privacy and bulk.
8. Pursuant to section 79C(1)(e) of the *Environmental Planning & Assessment Act 1979*, the development is not in the public interest.

Annexure 1: Apartment Design Guide Assessment

Apartment Design Guide (ADG)		
2F	<p>Building Separation:</p> <p>Up to four storeys (approximately 12m):</p> <ul style="list-style-type: none"> • 12m between habitable rooms/balconies • 9m between habitable and non-habitable rooms • 6m between non-habitable rooms 	<p>Inconsistent:</p> <p><u>External (East):</u></p> <p>Reqd. 12m¹³ Provided: 4.4 – 5.35 (3-5.35m in site).</p> <p>Note: ADG - At the boundary between a change in zone from apartment buildings to a lower density area, increase the building setback from the boundary by 3m – see diagram 3F.5.</p>  <p>Figure 3F.5 To resolve amenity impacts, apartment buildings should increase the building separation distance (+3m) when adjacent to a different zone that permits lower density residential development</p> <p><u>Internal:</u></p> <p>Acceptable. There are some minor numerical variations however in all cases amenity is addressed by alternative design means or is able to be conditioned.</p>
3D/4A	<p>Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space and 4A Solar and daylight access.</p> <p>Solar access to living rooms, balconies and private open spaces of neighbours should be considered</p> <p>Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%</p>	Acceptable/complies.
3D-1	<p>Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)</p> <p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid winter).</p> <p>Objective 3D-3:</p> <ul style="list-style-type: none"> • Communal open space and the public domain should be readily visible from habitable rooms and private open space areas while maintaining visual privacy; • Where communal open space/facilities are provided for children and young people they are safe and contained. 	<p>Compliant numerically (1,534m² at north side including area with void).</p> <p>Compliant in terms of solar access.</p> <p>Not acceptable in design against ADG Objective 3D-3. The void allocated to recreational use is not subject to any passive surveillance and is considered unacceptable for this purpose. If the application were to be approved, this</p>

¹³ Assumes window to side of 4 Victoria St is habitable

		space should be securely fenced off.
3E	Deep soil zones: Sites greater than 1,500m ² – 7% of site area with minimum dimension 6 metres.	Acceptable: exceeds minimum area and dimensional requirements (830 m ² approx to north side = approx. 15%)
3A-1	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid winter (non metropolitan area); A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid winter	Complies.
4B-3	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line	Complies. Complies.
4C	Ceiling height 2.7 metres for residential levels 3.3 metres ground and first floor if located in mixed use areas 'Ceiling heights of lower level apartments in centres should be greater than the minimum required by the design criteria allowing flexibility and conversion to non-residential uses (see figure 4C.1)'	Acceptable/complies Non-compliant (2.7m at ground and first floor). See also objective 4C-3
4D-1	Apartments are required to have the following minimum internal areas: 1 bedroom – 35m ² 2 bedroom – 70m ² 3 bedroom – 90m ²	Complies.
4D-2	Habitable room depths are limited to a maximum of 2.5 x the ceiling height (6.75). In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Generally acceptable. Minor variations generally up to 9m for open plan apartments. 10 metre depth for apartments 37,38,39
4D-3	Bedrooms/living rooms – minimum areas and dimensions.	Generally complies.
4E-1	Private Open Space: 1 bedroom – 4m ² minimum depth 2m 2 bedroom 8m ² minimum depth 2m 3 bedroom 12m ² minimum depth 2.4m Ground level apartments 15m ² with minimum depth 3m	Generally complies (minor variation to depth for ground floor apartments facing Mittagong Road).
4F	Maximum 8 apartments sharing a service core	Generally complies, with the exception of the ground floor, western side of the building, where 11 apartments are served from a single corridor (maximum 8 recommended).
4G	Storage is required at the following rates: <ul style="list-style-type: none"> 1 Bedroom 4m³ (3 units so 12 m³) 50% = 6m³ 2 bedroom 8m³ (10 units so 80 m³) 50% = 40m³ 3+ Bedroom 10m³ 34 units, so 340m³) 50% = 170m³ Total 216m ³ in basement and 216 m ³ in apartments	Proposal provides 338 m ³ of storage volume in basement assuming full height cages at 2.6m ceiling height.

	At least 50% of required storage is to be located within the apartment. Storage not located in apartments is secure and clearly allocated to specific apartments	
4H/4J	Acoustic privacy/Noise Pollution (Design Guidance)	Acoustic report submitted.
4K	Apartment Mix	Acceptable
4L	Ground Floor Apartments Design Guidance. Ground floor apartment layouts support small office home office (SOHO) use to provide future opportunities for conversion into commercial or retail areas. In these cases provide higher floor to ceiling heights and ground floor amenities for easy conversion	Proposal does not provide higher floor to ceiling heights at ground floor. However DCP encourages residential development in this location and no objection is raised to this aspect of the proposal.
4M	Facades – Design Guidance. The pattern and repetitions of the facade, the proportions and articulation of external walls and the detailed design of facade elements are all important considerations.	Not acceptable – see assessment.
4N	Roof Design – Design Guidance Roof design relates to the street.	Not acceptable – see assessment.
4O / P	Landscape Design – Design Guidance	Soil depth for planters able to be conditioned in accordance with ADG standards.
4Q/4R	Universal Design/Adaptable Housing	See assessment (DCP).
4S	Mixed Use Design In areas zoned for mixed use development building design should allow for a range of non-residential uses. Where the location or site constraints are not suited for retail uses, the design should accommodate other uses such as commercial offices. Non-residential uses should be located on lower levels of buildings in areas where residential use may not be appropriate or desirable, such as along main roads or railway lines.	Non compliant with ceiling heights for ground and first floor levels – no objection raised (see previous comments).
4U/V/W	Energy Efficiency and Water management. Waste Management	

Appendix 2:

Statement of Environmental Effects incorporating cl.4.6 submission.