

JRPP No:	2016STH032
DA No:	Development Application No. 10.2016.286.1
PROPOSED DEVELOPMENT:	Seniors Living Development - demolition of existing structures, construction of a mixed use seniors living development comprising fifty-nine (59) independent living units, three (3) caretaker apartments, one (1) retail shop of 169m ² and two (2) levels of basement car parking for eighty-three (83) vehicles. Lot 202, DP 1054190 and Lot 1, DP 473509, 23 Meares Place and 33 Collins Street, Kiama
APPLICANT:	DTB Architects Pty Ltd
REPORT BY:	Brendan Leo Senior Development Assessment Officer Kiama Council PO Box 75 KIAMA NSW 2533

Assessment Report and Recommendation

1. PURPOSE OF REPORT

The purpose of this report is to seek a determination from the Joint Regional Planning Panel for an integrated development application (DA) proposing a mixed use development for an independent living housing development for seniors or people with a disability.

The Panel is the determining authority for this DA pursuant to Part 3 of Schedule 4A of the Environmental Planning and Assessment Act 1979 (the Act), as the capital investment value (CIV) exceeds the CIV threshold of \$20 million (for general development) for Council to determine the application.

2. SUMMARY OF RECOMMENDATION

It is recommended that the Panel approve Development Application No. 10.2016.286.1 Seniors Living Development - demolition of existing structures, construction of a mixed use seniors living development comprising fifty nine (59) independent living units, three (3) caretaker apartments, one (1) retail shop of 169m² and two (2) levels of basement car parking for eighty-three (83) vehicles at Lot 202 in DP 1054190 and Lot 1 in DP 473509, 23 Meares Place and 33 Collins Street, Kiama, subject to conditions.

3. THE SITE

The subject site is described as Lot 202 in DP 1054190 and Lot 1 in DP 473509, 23 Meares Place and 33 Collins Street, Kiama. The site is zoned B2 – Local Centre zone under Kiama Local Environmental Plan 2011 (KLEP).

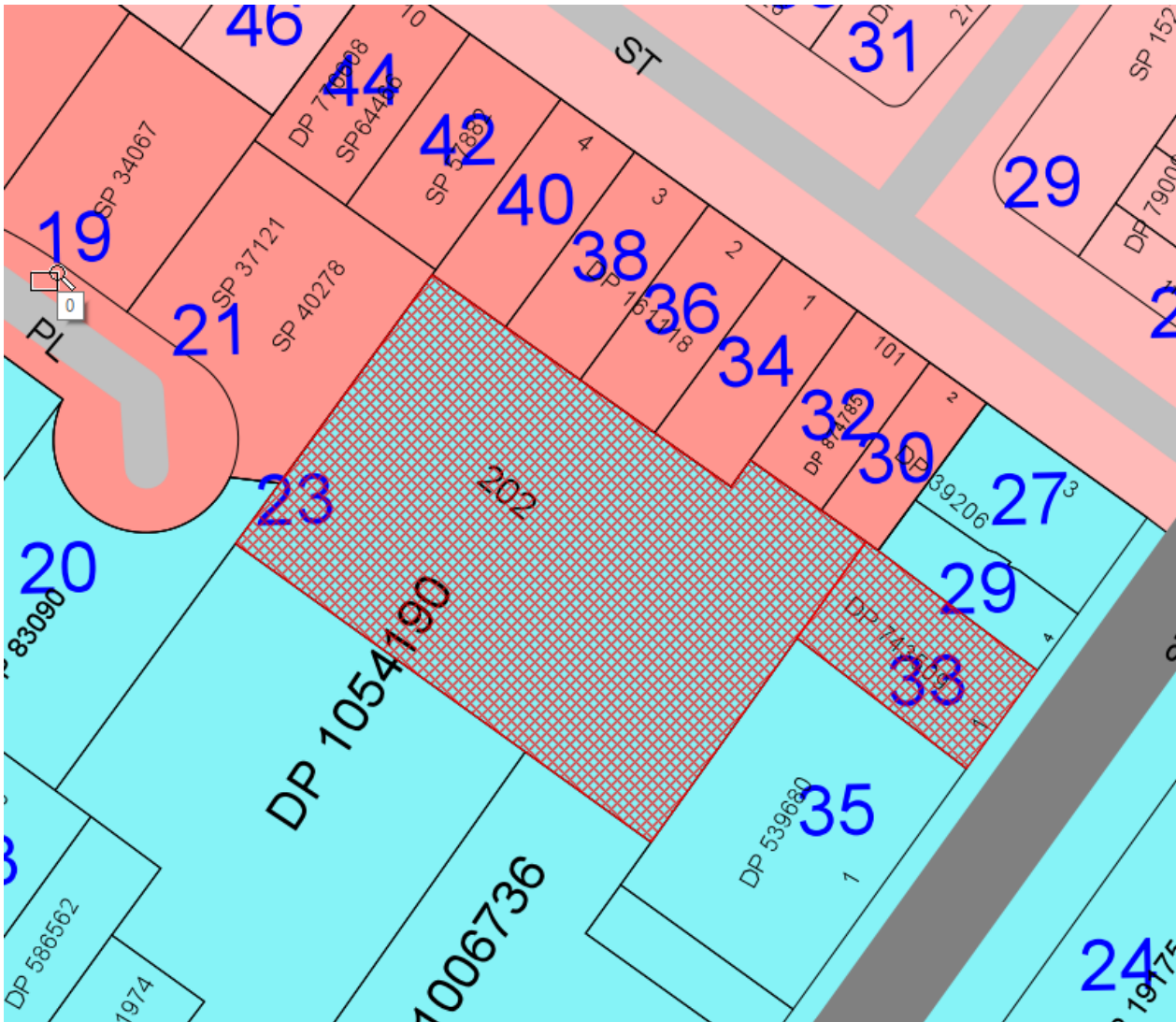


Figure 1 – Zoning map of the subject site. Light Blue = B2, Red = R3, Pink=R2

The site has a total area of 5,579sqm and is centrally located in the Kiama Town Centre. The site is generally cleared, with a dated retail/commercial building located on 33 Collins Street which is presently occupied by a furniture and bedding shop.

There is a steep fall of 18.5 metres from north west to south east across 23 Meares Place, with 33 Collins Street having relatively flat topography.

The site has 21m street frontage to Collins Street with vehicular access. The site also has access available to Meares Place via a nine (9) metre wide right of way of the adjoining property.

The site is located approximately 100 metres walking distance from the closest bus stop on Collins Street and approximately 650 metres from Kiama Train Station. Being in the Kiama Town Centre there is a wide variety of shops, services and recreational facilities located in close proximity to the site.

Adjoining the site on the north eastern boundary is a row of older single dwellings fronting Minnamurra Street. Adjoining the site on the north western boundary are several older residential apartment buildings. These parcels are zoned R3 – Medium Density Residential zone under KLEP 2011.

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Lot 202 in DP 1054190 and Lot 1 in DP 473509, 23 Meares Place and 33 Collins Street, Kiama



Figure 2 - Aerial Photo of Subject Site

At 29 Collins street is an older style commercial building used by a vet and for aquarium sales. 27 Collins Street is mixed use development. Adjoining the site to the south west is the Kiama Leagues Club car park which contains a drainage easement in favour of the subject site. To the south east at 35-41 Collins Street is an older service station, mechanic and shop. This site has approval for mixed use development under development consent 10.2005.280.1 approved by Council on 26/7/2007 for the demolition of existing structures, construction of six shops, fourteen units and a swimming pool. Prior to the expiry of this consent the owners undertook actions to commence the consent. All of these sites are zone B2 – Local Centre zone under KLEP.



Figure 3 – Perspective of mixed use development 35-41 Collins Street.

4. THE PROPOSAL

The application seeks approval for the demolition of the dated existing commercial building at 33 Collins Street and the construction on site of a three storey mixed use seniors living development comprised of:

- 59 independent living units;
- Three apartments for a facility manager and caretakers;
- A 169m² retail/business tenancy;
- Two levels of basement car parking for 83 vehicles;
- Turn table for Waste Trucks;
- Recreational, amenity and administration facilities; and
- Site landscaping.

The development is classified as 'seniors housing' as defined under the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (Seniors SEPP) and is a permissible land use with consent on the site under clause 4 of the Seniors SEPP as the site is 'land zoned primarily for urban purposes' and 'hospitals' are permitted land use within the B2 Local Centre zone under Kiama Local Environmental Plan 2011(KLEP 2011).

The proposed development has been designed to respond to the topography of the site and ranges from two to five storeys stepped at two-three storey increments with two levels of basement cut into the site below natural ground level.

The building will have a maximum perceivable height of three storeys when viewed from the public domain due to the steep topography of the site and the extensive excavation proposed. The building has been designed to step up the site in order to comply with the maximum 11 metre building height control under the KLEP 2011.

The stepped design of the building also attempts to maximise solar access to apartments as well as the central courtyard garden. The layout and orientation of the apartments have been focussed on the opportunity to offer generous internal and external areas, to provide amenity to future occupants and to provide for wheelchair accessible layouts. Residents will also have access to a multi-purpose communal room for entertaining and recreation along with a number of roof top communal open space areas.

The site will have an active street frontage to Collins Street of 11m by incorporating a 169m² retail/business tenancy at the ground floor level. Further passive surveillance to Collins Street and the entry to the facility is provided by the facility manager's living area and balcony, which is located above the retail/business tenancy apartment being orientation towards the street.

Vehicle access to the basement levels will be via a driveway off Collins Street, with pedestrian access for residents and visitors available from both Collins Street and Meares Place via identifiable and access compliant entries. Secured entry points will be provided to the basement levels and the building for safety purposes.

Table 1 - NUMERICAL OVERVIEW

Element	Required/Permitted	Proposed
Site area	Min. 1,000m ²	5,579.5m ²
Seniors independent living units dwelling mix	N/A	1-bedroom – 12 (20%) 2-bedroom – 41 (70%) 3-bedroom – 6 (10%) Total Units – 59
Caretakers dwelling mix	N/A	2-bedroom – 2 (67%) 3-bedroom – 1 (33%) Total Units – 3
Commercial tenancy area	N/A	169m ²
Car parking	82 spaces total (KDCP 2012)	Residents – 60 spaces (all accessible) Visitors – 15 spaces (2 accessible) Caretakers – 3 spaces Commercial – 5 spaces (2 accessible) Total – 83 spaces
Wash Bays	N/A	3 visitor spaces have been fitted out as wash bays
Motorcycle parking	N/A	4 spaces
Bicycle parking	N/A	16 spaces
Maximum height above existing natural ground level	11 metres (KLEP 2011)	11 metres
Gross floor area	8,369m ²	6,260 m ²
Floor space ratio	1.5:1 (KLEP 2011)	1.12:1
Landscaped area	1,395m ²	1,755 m ²
Deep soil zones	391m ²	1,010 m ²

Key aspects of the proposed development are described in detail below.

INDEPENDENT LIVING UNITS

The architectural plans prepared by DTB Architects Pty Ltd show the apartments have been designed to 'step down' following the fall of the site and to maximise views towards the ocean, harbour and headland. All apartments will be accessible from the ground floor and basement levels via the internal lifts provided. All apartments are dual aspect to provide natural ventilation and have been designed to allow for flexible arrangements with open plan living rooms, dining areas and kitchens. Skylights have been provided for the top floor apartments to maximise solar access.

All apartments exceed the minimum size requirements specified in the Apartment Design Guide (ADG) and relevant requirements under Australian Standards AS 1428.1 Design for access and mobility and AS4299- 1955 Adaptable housing.

CARETAKER APARTMENTS

The proposal includes three caretaker apartments above the proposed commercial tenancy and vehicle access ramp. The caretaker apartments will be occupied by staff employed on site to assist with the operation of the facility. There will be two 2-bedroom apartments and one 3-bedroom apartment. The 2-bedroom apartments will be split level apartments to maximise ventilation and natural light. A ventilated skylight has been provided for the 3-bedroom apartment to provide quality internal amenity.

COMMERCIAL/RETAIL TENANCY

A 169m² commercial/retail tenancy is provided at ground level fronting Collins Street to provide 11m of active street frontage. The fit out and any relevant signage associated with the commercial/retail tenancy is subject to a separate DA. Car parking has been accommodated in the basement car park to service the occupants and visitors to the commercial tenancy.

The tenancy will be accessed primarily via the entry fronting Collins Street. However, a secondary access is provided to the rear of the tenancy to provide improved access to and from parking in the basement levels. Toilets are provided at the rear of the tenancy and will have internal access.

ADMINISTRATION AND INTERNAL FACILITIES

The proposal includes the provision of a multi-purpose entertainment and recreational space on the ground floor for the use of residents and their guests. The communal space is located adjacent to the north-eastern boundary of the site and has bi-fold doors to open out into the 'summer garden' courtyard. Toilets have been provided with access from the communal space. An office area, service rooms and a reception foyer with waiting area is provided for the administration associated with the occupation and management of the independent living units. The communal open space is designed as a flexible space and will be fitted out to meet residents' needs.

LANDSCAPING AND COMMUNAL OPEN SPACE

The proposal includes the provision of four communal open space areas as follows:

- A 477m² central courtyard, known as the "Summer Garden". This will provide a landscaped area for relaxing or entertaining, as well as being an attractive outlook from apartment entries.
- Two connected rooftop terraces with areas of 70m² and 100m² are provided in the western corner of the Proposal. These areas will receive a high level of solar access and will have extensive views over the Kiama Township and out to the ocean and harbour.
- A 112 metre long landscaped walkway adjoining the south-western and south eastern boundaries of the site provides secure access across the site from Meares Place to Collins Street, as well as being a pleasant, light-exercise passage for less mobile residents and their guests.
- An 85 metre long landscaped walkway adjoining the northern boundary of the site, referred to as the "Winter Garden".

VEHICULAR ACCESS

Vehicle access to the basement car park will be provided via a two-way ramp from Collins Street. Entry and exit to the basement and visitor and commercial car spaces will be controlled by two boom gates, with residential parking spaces further separated by a roller security grille. The upper basement level has been designed to be accessed by a medium rigid vehicle (MRV), with a turntable provided adjacent to the garbage room to allow waste collection and delivery vehicles to enter and exit in a forward direction. The basement layout and circulation areas has been designed in accordance with AS2890.1 Parking facilities – Off-street car parking.

CAR PARKING

The two basement levels accommodate a total of 83 car parking spaces. The car parking provision exceeds the provisions of the KDCP 2012 and greatly exceeds the provisions Seniors SEPP, and in includes:

- 60 accessible residential spaces, (across both levels and segregated from other car spaces through a motorised security grille);
- 15 visitor spaces, two of which are accessible (three visitor spaces can also be used as wash bays);
- Five commercial spaces, two of which are accessible;
- Three caretaker spaces;
- 16 bicycle parking spaces are provided for residents and visitors; and
- four motorcycle spaces spread across the two basement levels, one of which is available for visitor use.

All car parking spaces and circulation areas have been designed in accordance with Australian Standard AS2890.1 Parking facilities – Off-street car parking.

A copy of the proposed architectural plans are provided at the end of this report in Attachment 1.

5. NOTIFICATION

The application was publicly notified for a period of fourteen (14) days from 23 November 2016. A total of twenty-two (22) properties were notified and a sign was erected onsite advising of the proposed development.

During the exhibition period thirteen (13) submissions were received all objecting to the proposal and the issues raised in these objections are discussed further below under heading “Submissions”.

6. PLANNING CONTROLS

The following are the relevant planning controls that have been considered in the assessment of this application:

- Water Management Act 2000.
- State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

- State Environmental Planning Policy No. 55: Remediation of Land.
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.
- State Environmental Planning Policy 71 - Coastal Protection.
- State Environmental Planning Policy No. 65: Design Quality of Residential Apartment Development and the Apartment Design Guidelines.
- Kiama Local Environmental Plan 2011.
- Kiama Development Control Plan 2012.

7. ASSESSMENT

This application has been assessed in accordance with Section 79C of the Act.

The following comments are made with respect to the proposal:

7.1. (1)(a)(i) The provisions of any Environmental Planning Instrument

7.1.2 Water Management Act 2000

The Water Management Act 2000 aims to manage the State's water sources in a sustainable and integrated manner. The Geotechnical Investigation submitted has identified that the groundwater table is located between RL13 and RL16.1 within the rock profile and above the proposed maximum excavation depth of RL11.9. The proposal therefore constitutes integrated development under Section 91 of the Water Management Act 2000 for "interference with an Aquifer," requiring consent from the NSW Office of Water.

The proposal was referred to NSW Office of Water who raised no objection to the proposal and issued General Terms of Approval should the development proceed.

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

The SEPP Seniors Living is the overriding planning instrument for the development of housing for aged and disabled people in NSW and provides for hostels, residential care facilities (nursing homes) self-contained dwellings and multi-storey buildings. SEPP Seniors Living is comprehensive in scope including land use planning provisions, design principles, development standards and standards specifically to meet the housing needs of aged and disabled people. SEPP Seniors Living also includes design guidelines for infill development.

SEPP Senior Living applies to the subject land as it is zoned for urban purposes and the dominant use proposed is permitted on the land by the operation of SEPP Seniors Living. The SEPP prevails in the event of any inconsistency with any other environmental planning instrument, including Kiama Local Environmental Plan.

The proposed development provides for independent self-contained living as defined under SEPP Seniors Living which is a permissible use under the terms of SEPP Seniors Living.

The SEPP Senior Living aims to increase the supply and diversity of housing for seniors or people with a disability and to ensure good design. The policy is the main environmental planning instrument applying to this development.

An assessment against the relevant clauses is provided below:

Clause 4 Land to which Policy applies - The site is zoned for urban purposes being B2 Local Centre zone under Kiama Local Environmental Plan 2011. Hospitals are a permissible land use in the B2 zone with development consent therefore the provisions of the SEPP Seniors Living applies to the land.

Clause 8 Seniors & Clause 9 People with a Disability - A restriction as to user is to be registered against the title of the property limiting the use of the self-contained dwellings to people aged 55 or more years, or people with a disability that either have permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantially affect their capacity to participate in everyday life. A recommended development consent condition has been applied requiring that this occurs.

Clause 10 Seniors Housing - The proposal will comprise of self-contained dwellings only. Self-contained dwellings are defined as:

a dwelling or part of a building (other than a hostel), whether attached to another dwelling or not, housing seniors or people with a disability, where private facilities for significant cooking, sleeping and washing are included in the dwelling or part of the building, but where clothes washing facilities or other facilities for use in connection with the dwelling or part of the building may be provided on a shared basis.

The proposal satisfies these provisions.

Clause 26 Location and access to facilities - The site is located within the Kiama Town Centre providing residents access to a wide range of goods, services and transport options within 400m. A Pedestrian Access Plan was provided with the application demonstrating existing footpaths servicing the site offer an acceptable overall average gradient between the site and services, and therefore complies.

Clause 27 Bushfire – The subject land is not shown as being bushfire prone land.

Clause 28 Water and sewer - The development is capable of being serviced with water and sewer and therefore complies. The existing sewer line traversing the property requires redirection to accommodate the development. The space for a sewer pump-out station is incorporated into the design.

Clause 30 Site Analysis - The application provided a detailed site analysis as required by this clause.

Clause 31 Design of in-fill self-care housing - The proposed development complies with the provisions of the *Seniors Living Policy: Urban Design Guideline for Infill Development*.

Clause 33 Neighbourhood amenity and streetscape - The proposal responds to both the current and future character of the Kiama Town Centre improving and activating the commercial streetscape on the western side of Collins Street. The development represents a reasonable

response to the heritage items located opposite in Collins Street and no concerns were raised by Council's heritage advisor.

The proposal will contribute to the residential identity of the area and not unduly detract from the neighbourhood amenity.

The frontage of the building to Collins Street has been setback in line with the desired future building line as expressed in the Kiama DCP. The building steps up the site following the contours of the land and the design will be consistent with the outcomes described in this clause.

Clause 3 Visual and acoustic privacy - The building is designed and sited to minimise potential impacts on the visual and acoustic privacy of future residents and neighbouring properties.

All proposed units are setback six (6) meters from side boundaries with the setback area being landscaped with a mix of decorative trees and shrubs. The development is cut into the site causing a significant difference in level between the neighbouring properties on both the northern western and north eastern sides. The lower units on these elevations are lower in height and separated from the adjoining neighbours by boundary fencing, existing and proposed landscaping affording good visual and acoustic privacy.

Transparent tinted glazed balustrade has been provided to the principal private open space areas of the proposed units along with decorative sliding privacy screens to afford privacy between the proposed units and the existing neighbours.

These privacy screens and tinted glazed balustrade are more important for units on the top floors on the northern western and north eastern sides as they will be at a level more commensurate with height of adjoining development. It is expected that the spatial separation between the top floor units on the northern western and north eastern sides and coupled with existing and proposed landscaping will afford visual and acoustic privacy between them and the existing adjoining neighbours. Spatial separation in between the proposed units and the neighbours ranges between 12 -30m with an average of approximately 20.7m. A condition has been placed on the development consent requiring additional privacy measures between the balcony of Unit 313 located on the western side of the northern corner of the building and the closest neighbour being Unit 6, 21 Meares Place. These measures are to include additional landscaping treatment and the inclusion of additional privacy screens on the balcony of unit 313.

Furthermore, the construction and operational noise assessment report produced by *TTM Consulting Pty Ltd* provided a series of recommendations to be incorporated into the development to ensure that relevant noise criteria will be met. This report considered the operational noise generated by mechanical plant on both the proposed units and the adjoining neighbours and found the levels to be acceptable subject to appropriate siting and shielding. The report also found that noise from neighbouring properties, adjoining streets, road and rail would not adversely impact the amenity of unit occupiers within the proposed development. All recommendations within that report have been imposed as development consent conditions.

Clause 35 Solar access and design for climate - The proposed development has been designed to provide daylight to the main living areas and private open space of the units. The design also allows adequate sunlight to substantial areas of private open space of adjoining neighbours in the vicinity. The development has been designed in order to reduce energy use through intelligent design and the installation of photovoltaic cells on the roof.

The design verification statement states that the proposed apartments will have high levels of thermal insulation to assist in maintaining good comfort conditions internally without undue heating and cooling energy inputs. Where exposed to more intense sunlight, windows would be

shaded. The design affords most units that do not face northwest or northeast with two balconies to allow opportunities for increased solar access during winter.

The steep, south facing slope of the site, as well as the north-south axis lying diagonally across the site, has meant that achieving good solar access for all apartments has not been possible however. This shortfall has been addressed in part through the provision of a variety of communal open spaces including at grade, ground and roof levels. The at grade and roof top communal open spaces will have good solar access year round while the central courtyard will provide a very pleasant and wind sheltered environment in the summer months.

Following the initial briefing to the JRPP, the Panel suggested a potential redesign of development in a 'U' shape to improve solar access across the development. In response DTB Architects provided a more detailed solar access model at intervals for all units to identify the levels of solar access which would be achieved and to confirm if the level of solar access achieved for the proposed development met the minimum requirements.

The Apartment Design Guide Objective 4A-1(2) requires:

- (2) *In all other areas [outside the Sydney Metro Area, and Newcastle and Wollongong LGAs], 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.*

The more detailed analysis of the solar access for the site indicated that only 17.5% or 11 apartments will receive 3 hours of solar access in both the living room and balcony on the winter solstice. However, 70% or 44 apartments receive at least 3 hours of solar access in the living room or balcony between 9am and 3pm on the winter solstice. While the solar access achieved for the proposal falls short of strict compliance with the ADG requirement, it should be noted that the site is highly constrained from a solar access perspective, specifically due to:

- The southern sloping topography of the site, which will result in any future development on the site being shadowed by the surrounding natural topography;
- The existing excavated ground level of the site, which dictates the levels of future development on the site; and
- Surrounding existing development and vegetation north and uphill from the site, which further limits solar access.

Given the site constraints identified above the proponents requested a variation on strict compliance with the standard arguing that whilst a redesign of development in a 'U' shape may increase solar access, it would result in the loss of approximately a quarter of the proposed development yield and would render the project financially unviable

While not ideal it is considered a satisfactory outcome having regard to the constraints of the site for 70% of apartments to receive at least 3 hours of solar access in either the living room or balcony between 9am and 3pm enabling residents to enjoy solar access within their dwelling.

These apartments will also benefit from several communal open space areas which obtain good solar access throughout the day. It is further noted that the site is within close proximity to key public open spaces such as Hindmarsh Park and the Kiama foreshore where residents can enjoy good solar access throughout the day.

Clause 36 Stormwater - The development maximises the use of water permeable surfaces on the site by achieving slightly above the minimum standard for deep soil zones. Furthermore,

water tanks will be provided as part of the development which will act as an alternative supply to water mains as required by subclause 36(b).

Clause 37 Crime Prevention - The proposed development has been designed in accordance with the principles of Crime Prevention through Environmental Design (CPTED). A CPTED Report prepared by The Design Partnership was submitted in support of the application. This report made a number of recommendation that have been included as conditions of development consent to ensure that the proposal provides a high level of personal and property security for residents and visitors alike.

Clause 38 Accessibility - The proposed development will have obvious and safe pedestrian links to local services and public transport which comply with minimum grades. It also proposes a safe environment for pedestrians and motorists alike, with clear and convenient access and parking for residents and visitors.

Clause 39 Waste management - The proposed development's waste facilities will maximise recycling through the provision of appropriate facilities utilising a shared bin service serviced by Council's Waste Contractors.

Clause 40 Development standards, minimum sizes and building height

- a. Site size - The site has an area of 5,579.5sqm. which is greater than the SEPP's 1,000m² minimum requirement.
- b. Site frontage - The standard requires a minimum frontage of 20m at the building line. The site will have a frontage to Collins street of 20.115m.

Clause 41 Standards for hostels and self-contained dwellings - The assessment of this part and in particular Schedule 3 concludes that the development has been specifically designed to comply with the various requirements provided in the Schedule including Australian Standards AS 1428.1, AS 1680, AS 1735.12, AS 2890 and AS4299. An Access Report prepared by Morris-Goding Accessibility Consulting found that the design exhibited an acceptable level of accessibility. A detailed assessment of all requirements contained under the Schedule is not possible with the level of detail shown in the plans provided. As a further precaution a condition has been imposed on the draft development consent requiring the proponents to ensure compliance is demonstrated prior to issue of the Construction Certificate.

Clause 50 Standards that cannot be used to refuse development consent for self-contained dwellings

Table 2 – Clause 50 Summary

Standard	Control	Comment
building height	if all proposed buildings are 8m or less in height (and regardless of any other standard specified by another environmental planning instrument limiting development to two storeys).	N/A - Refer to section 7.1.8 of this report.
density and scale	if the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less.	N/A - Refer to section 7.1.8 of this report.
landscaped area	a minimum of 30% of the area of the site is to be landscaped.	Complies Site area = 5,579.5m ² 30% of site area = 1,673m ² Actual landscape area is 1,755 m ²
Deep soil zones	15% of the area of the site. Two-thirds of the deep soil zone should preferably be located at the rear of the site and each area forming part of the zone should have a minimum dimension of 3m.	Complies - 16% of the site area is a deep soil zone.
solar access	if living rooms and private open spaces for a minimum of 70% of the dwellings of the development receive a minimum of three hours direct sunlight between 9.00am and 3.00pm in mid-winter	The proposal fails to meet this requirement only 17.5% or 11 units achieve a minimum of 3 hours direct sunlight into living rooms and private open spaces. 70% or 44 apartments receive at least 3 hours of solar access in the living room or balcony between 9am and 3pm on the winter solstice.
private open space for in-fill self-care housing	<ul style="list-style-type: none"> - Ground floor units = 15sqm with minimum dimensions 3m x 3m. - Any other dwellings = Balcony min 10sqm minimum dimension 2m length or width from living area. 	Complies - All apartments will have private balconies with a minimum area of 18m ² that are accessible and meet the minimum dimension of 2m.
parking for residents and visitors	<ul style="list-style-type: none"> - 0.5 car spaces for each bedroom where the development application is made by a person other than a social housing provider 	Complies - Parking has been provided at a rate in excess of 0.5 car spaces per bedroom to comply with KDCP 2012 requirements.

7.1.3 State Environmental Planning Policy No. 55: Remediation of Land (SEPP)

State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55) aims to promote the remediation of contaminated land for the purpose of reducing the risks of harm to human health or any other aspect of the environment by identifying what remediation work requires consent, and requiring that remediation work meets certain standards for the proposed use.

Clause 7 of SEPP 55 specifies that a consent authority must not consent to the carrying out of any development on land unless it has considered whether land is contaminated and, if the land is contaminated, that it is satisfied that the land is or can be made suitable for the proposed development.

A Contaminated Land Preliminary Site Investigation has been undertaken by *Douglas Partners*. The investigation identified that the site has the potential for contamination as a result of the:

- Migration of contaminants from the adjacent service station;
- Filling of the site associated with the previous development of 33 Collins Street; and
- Possible hazardous building material present in the commercial building at 33 Collins Street.

The investigation concludes that the site can be made suitable for the proposed development, subject to the results of further investigation and the successful implementation of a remediation action plan (RAP) (if required). The additional investigation will occur once the demolition of the existing structures is complete to allow for unobstructed access to the subsoils.

As the preliminary investigation concludes that the site can be made suitable for the proposed development the proposal satisfies Clause 7 of SEPP 55 and consent maybe grant for the proposal.

A condition has been in the recommended conditions of consent requiring the intrusive site investigation and a remediation action plan be conducted to the satisfaction of the accredited certifying authority prior to the commencement of earth works on the site.

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

A BASIX Certificate was lodged with the application which demonstrates that the proposal has been designed in accordance with the NSW Government's requirements for sustainability under BASIX.

7.1.5 State Environmental Planning Policy 71 - Coastal Protection

The subject land is within the coastal zone as defined within the Policy which therefore triggers considerations under this Policy.

The site is not located within a 'sensitive coastal location' as defined by SEPP 71. The site is approximately 300m from the foreshore and is separated by existing residential and commercial land including local roads. The proposed development will have no adverse impact on the coastal foreshore or its setting, including scenic quality and environmental amenity.

Consideration has been given to the aims of SEPP71 provided under Clause 2 and the matters for consideration prescribed by Clause 8. The proposed development is considered to be consistent with these aims and the matters for consideration are satisfied.

7.1.6 State Environmental Planning Policy No. 65: Design Quality of Residential Apartment Development (SEPP65)

State Environmental Planning Policy No. 65 (SEPP 65) aims to raise the design quality of residential apartment development across NSW through the application of a series of design principles. The accompanying regulation, the Environmental Planning and Assessment Regulation 2000, requires the involvement of a qualified designer throughout the design, approval and construction stages for residential apartment developments. SEPP 65 also requires consideration of the Residential Apartment Design Code, NSW Planning and Environment Department 2015. The Code includes development controls and best practice benchmarks for achieving the design principles of SEPP 65.

Clause 4 of the State Environmental Planning Policy 65 – Design Quality of Residential Flat Buildings (SEPP 65) states that:

“(1) This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:

- (a) the development consists of any of the following:*
 - (i) the erection of a new building,*
 - (ii) the substantial redevelopment or the substantial refurbishment of an existing building,*
 - (iii) the conversion of an existing building, and*
- (b) the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
- (c) the building concerned contains at least 4 or more dwellings.”*

As the proposed development will comprise the erection of a new mixed-use building being at least 3 or more storeys and containing at least four or more dwellings the provisions of SEPP 65 are applicable.

Clause 30(2) of SEPP 65 requires the consent authority, in determining a development application for consent to carry out residential flat development, to take into consideration the design quality of the residential apartment development when evaluated in accordance with the ‘Design Quality Principles’, and the Residential Apartment Design Code (RADC).

As per clause 50 of the Environmental Planning and Assessment Regulation 2000, the Applicant has submitted a Design Verification Statement prepared by registered architect Christopher Dunkerley Registration Number 4694. The submitted Statement contains comments and discussion responding to each of the nine Design Quality Principles. The Statement concludes that the residential apartment development generally meets the objectives and intent of the design quality principles set out in Part 2 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development and has been designed to comply with the requirements the Apartment Design Guide.

The review of the Verification Statement and Apartment Design Guide found that the proposal satisfactorily addresses / incorporates the Design Quality Principles of SEPP 65. It is considered

that the building will not compromise the aims and objectives of the SEPP will contribute positively to the current and future streetscape and is therefore an acceptable design response having regard to the site constraints created by the topography.

7.1.8 Kiama Local Environmental Plan 2011

The KLEP 2011 is the relevant local environmental planning instrument which prescribes the zoning, zone objects and other relevant development standards for the site. The subject land is zoned B2 Local Centre pursuant to this instrument. As discussed above, the provisions of SEPP Seniors prevail to the extent of any inconsistency with the KLEP 2011 as it is a higher planning instrument.

Under KLEP 2011 the development proposal would be defined as “*senior housing*” which is a form of “*residential accommodation*”. KLEP 2011 prohibits “residential accommodation” in the B2 Local Centre zone. To overcome the prohibition created by KLEP 2011 the proposal relies upon Clause 4(4) of the SEPP Seniors for permissibility. This clause permits the proposal to proceed as “*hospitals*” are a permissible land use in the zone with development consent.

The objectives of the B2 Local Centre zone are:

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

The proposed development is considered to be reasonably consistent with the B2 Local Centre zone objectives notwithstanding that it is a prohibited land use under the instrument. It is considered that the proposal will:

- Positively contribute to the range of retail and business uses in the local area by providing new retail tenancy at ground floor level fronting Collins Street;
- Provide additional jobs through the construction and operation phases of the development in an accessible location; and
- Is located within the Kiama Town Centre, providing future residents with excellent access to local facilities and services.

Specific clauses requiring consideration:

Clause 4.3 requires that the height of the building does not exceed the maximum height for the land shown on the Height of Buildings Map of 11m when measured from existing natural ground level.

The proposal satisfies the height clause objectives and responds with a design that steps down the site following the natural slope of the land.

The building design uses the slope of the site to step the building from a high point in the northern corner to the southern corner and down to Collins Street through excavation to set the development into the site. The proposal does not exceed the 11m height limit shown on the Height of Buildings Map.

Clause 4.4 requires that the floor space ratio does not exceed the maximum floor space ratio shown for the land on the Floor Space Ratio map of 1.5:1. The proposal will have a FSR of 1.12:1 and therefore complies with the Floor Space Ratio Map.

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Clause 5.9 stipulates that trees or vegetation in urban areas that do not meet the exempt provisions may not be ringbarked, cut down, topped, lopped, removed or injured or wilfully destroyed without development consent or a permit being granted by Council. The proposal includes a number of species on the site which meet these requirements and an arborist assessment has been provided to Council in support of their removal.

Council's landscape officer has considered this assessment and provided appropriate conditions of development consent.

Clause 5.10 lists requirements for heritage conservation for items listed in Schedule 5 of the Kiama LEP 2011. No items of heritage exist on the property nor is it within a heritage conservation area but heritage items are present opposite across Collins Street. These heritage items are listed on the State Heritage Register and include Kiama Terrace Houses at 24-44 Collins Street and the Kiama Masonic Lodge at 46 Collins Street. The subject property is also in the vicinity of other heritage items including the Minnamurra Street Precinct Group at 13-21 Minnamurra Street, containing Glennifer House, Bayview House, two cottages and Bellevue.

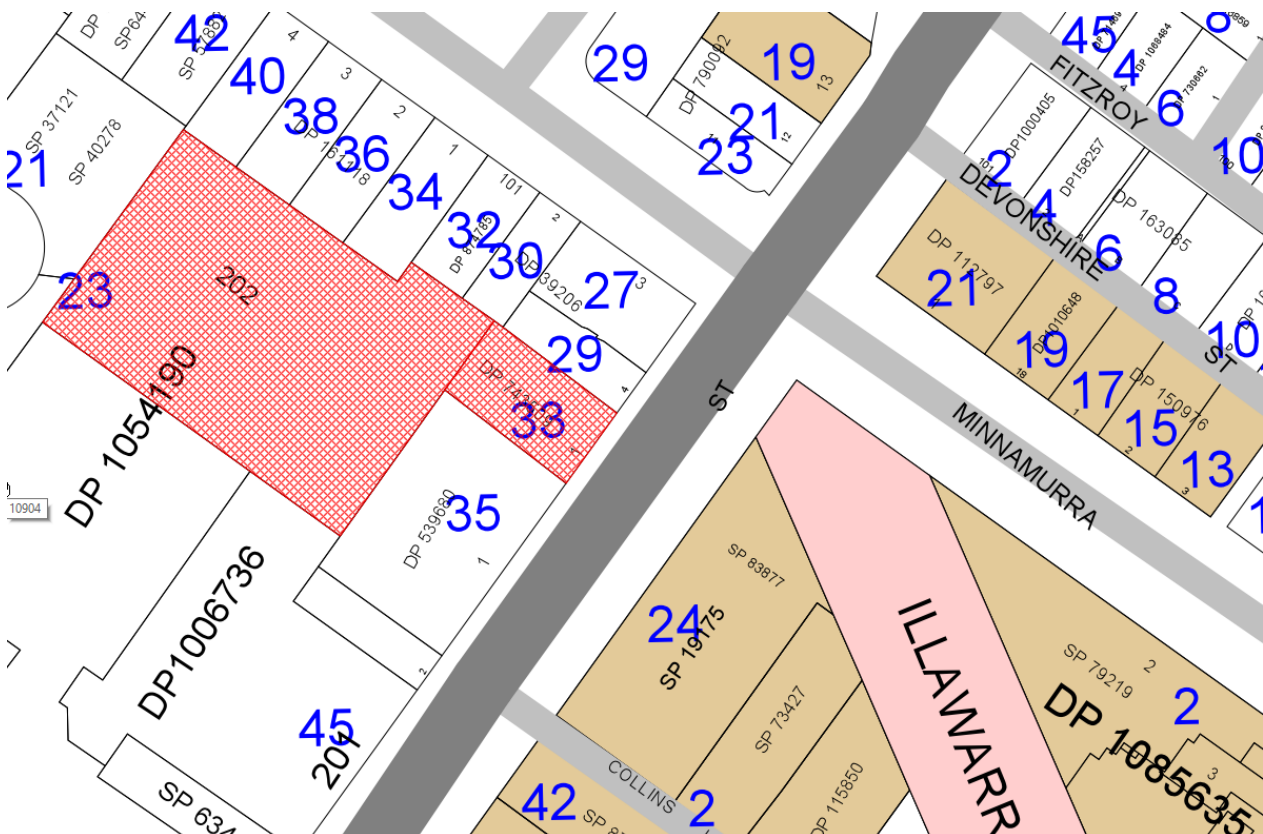


Figure 4 - Heritage properties in the locality shaded fawn.

A Heritage Impact Statement prepared by Urbis submitted with the application concluded that heritage items in the vicinity will not be adversely impacted. Council's Heritage Advisor agree with the conclusions of the Heritage Impact Statement noting the small portion of development fronting Collins Street would have minimal impact on the setting or visual appreciation of the timber terraces on the eastern side of Collins street. The proposal is therefore considered to meet the objectives of the clause and is not likely to adversely affect the heritage significance of the heritage items in the locality.

Clause 6.1 lists requirements for land affected by Acid Sulfate Soils. The northern portion of the site is identified as being Class 5 under the Acid Sulfate Soils Map. Development consent is required for works on Class 5 land where it occurs within 500 metres of adjacent Class 1, 2, 3 or 4 land that is below five metres Australian Height Datum and by which the water table is likely to be lowered below one metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land.

A Geotechnical Assessment prepared by Douglas Partners submitted with the application concluded there is no acid sulphate soil risk at the subject site and recommend no further testing be carried out. The assessment also states that the Wollongong Acid Sulphate Soil Risk Map, published by NSW Department of Land and Water Conservation, and web-based NSW state-wide mapping shows that the subject site is not impacted by acid sulphate soils. The site is therefore no considered to be subject to Acid Sulfate Soils and the proposal doesn't require an Acid Sulfate Soils management plan be prepared and lodged with the development application for the proposed work. This requirement has been satisfactorily addressed.

Clause 6.2 lists the following considerations for proposals which involve earthworks:

- *The likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality;*
- *The effect of the development on the likely future use or redevelopment of the land;*
- *The quality of the fill or the soil to be excavated, or both;*
- *The effect of the development on the existing and likely amenity of adjoining properties;*
- *The source of any fill material and the destination of any excavated material;*
- *The likelihood of disturbing relics;*
- *The proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area; and*
- *Any measures proposed to minimise or mitigate any impacts.*

The proposed development involves extensive excavation of up to 15 metres in depth to accommodate the proposed basement levels and lower levels of the apartments. A small amount of salvaged topsoil will be utilised in the proposed landscaping with the balance being required to be taken from the site for disposal. The destination of the excess fill material is unknown at this stage but will involve a high number of trucking movements.

A condition has been applied requiring a detailed construction traffic management plan to be prepared and proved by Council prior to the release of the construction certificate.

The development will incorporate suitable measures, such as retaining walls, anchored contiguous pile walls down to rock, soldier piles and rock bolts, to ensure the subject site and surrounding properties remain structurally sound during construction and occupation/operation of the development.

A Geotechnical Assessment Report and Preliminary Site Investigation Report both prepared by Douglas Partners was used to inform an Excavation Construction Methodology Report prepared by Partridge Pty Ltd. The Excavation Construction Methodology Report concluded that that the works proposed can be safely excavated provided the excavation is undertaken in accordance with standard engineering practice, good workmanlike manner, under the guidance and supervision of a suitably qualified and experienced structural engineer following the recommendations of the geotechnical assessment report. The recommendations of this report including Dilapidation Report on adjoining structures have been included as conditions of development consent.

As the excavation will encounter ground water General Terms of Approval have been issued by the Office of Water for aquifer interference to be applied to the development consent. Overall it is considered that subject to the preparation of detailed Construction Traffic Management Plan, adherence to the recommendations of the Excavation Construction Methodology Report, the General Terms of Approval and other relevant conditions of development consent proposal meets with the objectives of the clause and the matters prescribed for consideration are satisfied

Clause 6.8 of the KLEP 2011 requires that new buildings on land zoned B2 Local Centre incorporate an active street frontage at ground floor level. The proposed development includes a business/retail tenancy fronting Collins Street, pedestrian and vehicular access to the premises providing an active street frontage to this street. One of the caretakers units also looks out over Collins Street affording a surveillance opportunity. The future usage, fit out and signage associated with this tenancy will be subject of a separate DA. The requirements of this Clause to activate the street frontage if therefore satisfied.

7.2. (1)(a)(ii) The provisions of any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority

7.2.1 Draft Coastal Management State Environmental Planning Policy (dCM SEPP)

The dCM SEPP establishes a new, strategic land use planning framework for coastal management by consolidating and improve on current coastal-related SEPPs. It will replace SEPP 14 (Coastal Wetlands), SEPP 26 (Littoral Rainforests) and SEPP 71 (Coastal Protection) and ensure that future coastal development is appropriate and sensitive to our coastal environment, and that we maintain public access to beaches and foreshore areas. The proposed development is considered to be consistent with the aims and relevant requirements of the dCM SEPP.

7.3 (1)(a)(iii) The provisions of any Development Control Plan

7.3.1 Kiama Development Control Plan (KDCP) 2012

The proposed development is considered to be generally consistent with the requirements of KDCP.

The principal controls relating to the development are contained in the prevailing Seniors Living SEPP, SEPP 65 and the Apartment Design Guide that prevail over the KDCP in the event of any inconsistency. This has the effect of making many of the KDCP requirements superfluous.

To prevent duplication only relevant controls within KDCP that the development does not comply with or important issues have not been discussed yet will be presented below:

Chapter 2- Overall controls, Section 5 - Maintenance of Views and Vistas

This section of KDCP talks about sharing views and vistas where possible, but readily acknowledges that it is not always possible to protect existing views for all people in urban environments. This is especially so on a large undeveloped allotment which is at the interface between two zones. In this situation there is potential for unavoidable view loss from certain properties affected by any new development.

The proposal will have a minor impact upon views from neighbouring properties to the north east fronting Minnamurra Street with more significant view loss apparent for most of the units at 21 Meares Place. The loss of views associated with the development of the subject property is not unexpected given that one of the primary lots is undeveloped in the form of vacant land.

The proposed development complies with the height, setbacks and floor space ratio controls applying to the development so the view loss is not considered unreasonable in the circumstance. The expectation that the views currently enjoyed by neighbouring properties particularly from 21 Meares Place will be maintained post development is unrealistic.

If instead of the current mixed use development involving a significant amount of residential the proponents sought development consent for a commercial/retail building with a zero lot line at the maximum permissible height limit of 11m the views from all the units at 21 Meares Place would be more greatly impacted than they are under the current proposal.

The proposed development is of a size and scale that will alter some of the existing views within the locality but is not considered to have an unreasonable impact on the views and scenic qualities of the site and the surrounding area.

The following objectives have been considered:

- *To maintain view sharing principles through the development and redevelopment of areas.*
- *To ensure that where practical new development is designed and sited not to significantly alter views (including water and or escarpment views)*
- *To ensure that primary private views are maintained through the addition of new development.*
- *To retain views to and from the water.*

The development will most greatly affect the primary view from the first floor units of 21 Meares Place towards the Harbour and the Kiama Lighthouse but this is unavoidable in the circumstance because as mentioned above the primary allotment on the subject site is characterised by being undeveloped.

The proposal has been designed to comply with the building envelope controls being height limit, setbacks and floor space ratio. The loss of views to 21 Meares Place is an unavoidable consequence of the site being developed in accordance with the planning controls.

- *To protect conserve and maintain the landform of the municipality.*

The proposal is consistent with the newer surrounding developments in the area which represents and emerging streetscape guided by the zoning and relevant planning controls.

- *To limit potential for large bulky housing and development.*

The proposal is not out of character with other development in the area with respect to bulk and scale considerations. The proposal is consistent with the relevant planning controls for height, boundary setbacks and floor space ratio. The proposed building is considered to be well designed and provides visual interest.

- *To encourage sensitive siting of housing.*

The proposal is not unreasonably sited on the property and complies with setback controls

- To maintain or enhance significant public view corridors and other opportunistic views available from the public domain.

The proposal will not result in any unreasonable interference with views available from the public domain.

In the assessment of the impact on views resulting from the proposal the view sharing principles handed down in the Land and Environment Court where considered along with the Visual Assessment Report and detailed View Assessment Addendum Report prepared by Dr Richard Lamb and Associates in relation to the proposal.

Dr Lamb’s View Assessment Addendum Report prepared in September 2017 rated the extent of view loss based on the original proposed design. Since then the proponents of the development have further reduced the height of the development by deleting the highest unit in the northern corner of the site in a show of goodwill towards view sharing with their neighbours. This action was not required by the conclusions of the Addendum Report and reduced the yield of the development by one unit. This lowered of the overall height of the highest point of the roof from FRL 37.94 to FRL 36.02 consistent with the roof height for units 314 and 315. The loss of the highest unit and the lowering of the overall height of the proposal and reduced the extent of view loss from many of the units at 21 Meares Place.

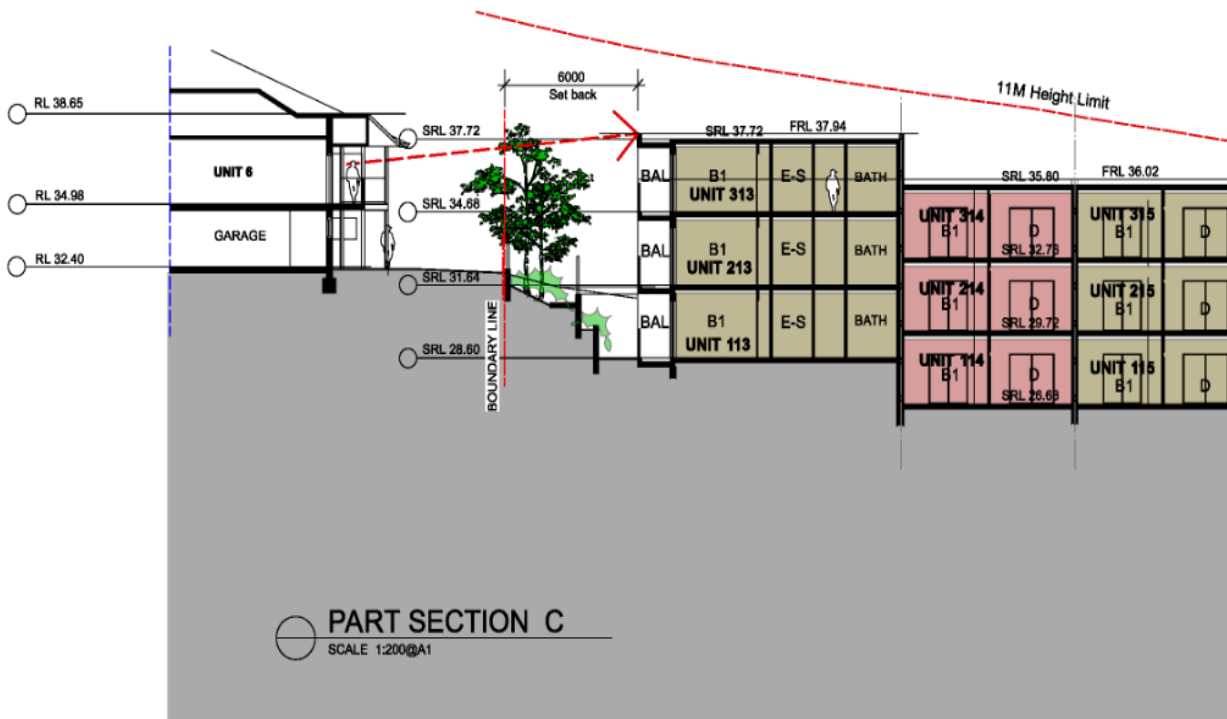


Figure 5 – Section showing relationship between unit 6, 21 Meares Place and the proposal as originally submitted, note the original proposal was significantly below the 11m height limit.

The development control plan refers to *Tenacity Consulting v Waringah [2004] NSWLEC 140* which provides the following guiding principles in the assessment of views:

Step 1 - Are views to be taken away?

The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."

The proposal will have a minor impact upon views from neighbouring properties to the north east fronting Minnamurra Street with more significant view loss apparent for most of the units at 21 Meares Place. Substantive views are taken away by the proposed development from units 2,3,4,5 and 6/ 21 Meares Place. The view south east towards Kiama Harbour and other scenic features from the first and second floors of units 2,3,4,5 and 6/ 21 Meares Place is considered to be highly valued and significant, as it includes glimpses of the Kiama Harbour shoreline and heritage items and their vegetation.

Step 2 - From where are view available?

"The second step is to consider from what part of the property the views are obtained. For example, the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic."

As mentioned the views to the south east towards the Harbour and other scenic features are obtained from the first and second floor of units 2, 3, 4, 5 and 6 - 21 Meares Place when both sitting and standing obliquely over the side property boundary. However, given that the views are available from the front living areas of many of the units, Dr Lamb classified the views as primary views in this instance.

Step 3 - Extent of Impact

"The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating."

The view loss experienced by units 2,3,4,5 and 6/ 21 at 21 Meares Place varies depending upon the location and orientation of the unit. Unit 1 on the western end is least impacted with Unit 6 at the eastern being most impacted. The view loss experienced is of varying degrees but can be equated on a sliding scale of from minor to moderate at the western end to severe and devastating at the eastern end. For Units 2-6 inclusive the impact is considered to be significant and could be categorised as severe for unit 6 as the view will be significantly diminished.

A copy of amended photo montages for all units at 21 Meares Place are provided at the end of this report in Attachment 2.

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Table 3 - Summary of view loss based on original and amended designs.

Address	View location/room type	View Loss Rating* based on original design (negligible, minor, moderate, severe, devastating)	View Loss Rating # based on amended design (negligible, minor, moderate, severe, devastating)
Unit 1/21 Meares Place	1 st floor balcony/living area	Minor	Nil
Unit 2/21 Meares Place	1 st floor balcony/living area	Severe	Moderate
Unit 2/21 Meares Place	2 nd floor balcony/bedroom	Moderate	Minor
Unit 3/21 Meares Place	1 st floor balcony/living area	Severe	Moderate
Unit 3/21 Meares Place	2 nd floor balcony/bedroom	Moderate	Minor
Unit 4/21 Meares Place	1 st floor balcony/living area	Severe/Devastating	Severe
Unit 4/21 Meares Place	2 nd floor balcony/bedroom	Moderate	Minor
Unit 5/21 Meares Place	1 st floor balcony/living area	Minor	Minor
Unit 5/21 Meares Place	2 nd floor balcony/bedroom	Minor/Moderate	Minor
Unit 6/21 Meares Place	1 st floor balcony/living area	Devastating	Severe

* Rating provided by Dr Lamb based on original proposal.

Rating based on Council assessment of amended design.

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The below four photo montages show the difference between the original and the amended design on views from the first floor balconies of the two units that will be most greatly impacted by view loss.



Figure 6 – Photomontage of View from first floor balcony 6/21 Meares Place based on original design.



Figure 7 – Photomontage of View from first floor balcony 6/21 Meares Place based on amended design.

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Figure 8 – Photomontage of View from first floor balcony 4/21 Meares Place based on original design.



Figure 9 – Photomontage of View from first floor balcony 4/21 Meares Place based on amended design.

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The below two photo montages show the difference between the original and the amended design on views from the second floor balcony.



Figure 10 – Photomontage of View from second floor balcony 4/21 Meares Place based on original design.



Figure 11 – Photomontage of View from second floor balcony 4/21 Meares Place based on amended design.

Step 4 Reasonableness

“The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.”

As a principle in considering reasonableness, a development which complies with development controls is generally considered to be more reasonable than one that breaches them, if the breach leads to view loss.

Severe to devastating view loss is caused to views that are available from standing locations on the first floor of units at the eastern end of the unit complex at 21 Meares Place with the greatest impact being on unit 6 the most eastern unit.

In this instance, the proposal complies with height and setback controls, which are the most relevant planning controls in respect of view loss. As a result, the conclusion of the Visual Assessment is that the view loss whilst devastating to some of the unit holders of 21 Meares Place, is not unreasonable in the circumstances as the development controls contemplate a built form that would be more likely to cause more severe view loss. Comparatively, the zoning of the site allows a commercial/retail building with a height limit of 11m if this was erected with a zero lot line the views from all the units at 21 Meares Place would be more greatly impacted than they are under the current proposal.

The next question arising in *Tenacity* with a compliant development is whether a more skilful design could retain the development potential and amenity of the development and result in better view sharing. The Visual Assessment concluded that it is unnecessary in the circumstances because the proposal more than complies with the relevant controls and it would be an unreasonable expectation for the adjoining units at 21 Meares place to retain their views from the first floor level. The Addendum Report did however consider the more skilful design question relying upon *Arnott v City of Sydney Council (2015) NSWLEC 1052* for additional guidance in their assessment.

In this regard the Addendum Report concluded whilst a more skilful design could result in the improved amenity and view sharing, the proponents need to *‘maintain the capacity to reasonably develop the site’*, and that modifying the proposal to improve view sharing would have a *‘profound effect on the design and development potential of the proposal’*. On this basis, that view loss arising from the proposal for the development at 21 Meares Place considered together would be moderate, and that while there will be devastating/severe view loss for some first-floor units at 21 Meares Place, Richard Lamb & Associates consider the proposal to be reasonable with regards to the principles of view sharing.

Notwithstanding the conclusion by Dr Lamb that design response is considered to be appropriate and reasonable in the circumstances and not devoid of skill, the proponents have further reduced the maximum height of the development in the northern corner to increase the opportunity for view sharing for adjoining residents by deleting one unit.

Given Council’s desire for productive and intensive use of land in the B2 zone as evidenced by the height limit of 11m and floor space ratio of 1.5:1 applying to the land it is unreasonable to expect uninterrupted views across the undeveloped property to be maintained in perpetuity from

the first floor. The DCP outlines controls with respect to maintaining views and vistas. It requires view sharing design principles to be incorporated into the building design were possible but acknowledges that in an urban environment it is not always possible to protect all views for all people. Furthermore, exceptions to compliance with view sharing principles may be granted in areas which have been targeted for higher density developments. In this regard the view loss is not considered to be unreasonable and this assessment has found it to be acceptable in the circumstance having regard to the guiding planning principles set down by “*Tenacity Consulting v Waringah [2004] NSWLEC 140.*”

7.4 (1)(a)(iia) The provisions of any Planning Agreement

There are no planning agreements applicable to this site or development.

7.5 (1)(a)(iv) The provisions of the Regulations

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

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

7.6 (1)(b) The likely impacts of the development

The likely impacts of this development include:

- **Streetscape**

The design of the proposed development is considered to be reasonable when considered in relation to the context of the site. The bulk, scale and design of the proposal is consistent with relevant planning instruments and is not inconsistent with the streetscape. The retail/business use on the ground floor fronting Collins Street will serve to activate this section of Collins Street adding to the vibrancy of the area adjacent the Heritage Terraces.

- **Privacy and Overlooking**

No significant concerns are raised in relation to privacy loss and overlooking resulting from the proposed development. The proposal has a 6 metre side and rear boundary setbacks and proposes landscaping to filter the views to adjoining neighbours. This is discussed further below in the public submissions section.

- **Overshadowing**

Shadow diagrams have been supplied with the development application which indicates that the overshadowing impacts of the proposed development will be reasonable for adjoining properties. This is discussed further below in the public submissions section.

- **Views**

The proposal will impact upon views from neighbouring properties more so for those located to the west, particularly from 21 Meares Place. The loss of views associated with the development of the subject property is not unexpected given that the primary lot is currently undeveloped in the form of vacant land. The proposed development complies with the height, setbacks and floor space ratio controls applying to this type of mixed use residential development so the view loss is not considered unreasonable in the circumstance. The expectation that the views

currently enjoyed by neighbouring properties will be maintained post development is considered unrealistic. This has been discussed above under Chapter 2 of KDCP and is discussed further below in the public submissions section.

- **Traffic, Public Transport, Vehicular Access, Parking and Manoeuvring**

A Traffic Impact Assessment has been undertaken by Bitzios Consulting for the proposed development and provides an overview of existing transport conditions, analyses the trip generation of the proposal on the surrounding road network, assesses site access and parking within the site, and outlines the anticipated construction details and assesses the impact.

The key findings of the traffic impact assessment are summarised below:

- **Traffic Generation:** all road links are forecast to operate within their nominated capacity, with the development placing no undue strain on the existing road network. The development is expected to generate 22 trips in the PM peak, with the split being 79% (17.4) of those trips being undertaken by residents. Trips generated as a result of this development are not expected to exacerbate intersection issues in the locality or carrying capacities along Collins Street to warrant the need for external traffic works to be imposed such as a central median.
- **Car Parking Requirement:** The *Seniors SEPP* outlines the car parking requirements for the seniors living component of the development as 0.5 spaces per bedroom with all resident spaces to comply with the parking requirements for persons with a disability, as set out in AS2890.6 and therefore, all residential parking spaces are to have an adjacent shared zone. The three caretaker apartments located above the commercial tenancy are required to have one space per dwelling. The Kiama DCP sets out the car parking rate for the commercial component of the development as 1 space/35sqm GFA. The provision of 60 resident car spaces all designed to AS2890.6 requirements and with a minimum width of 3.8 metres and 15 visitor car spaces for the proposed senior living units, three staff/caretaker car spaces and five commercial spaces complies and Kiama DCP requirements and exceeds the Seniors SEPP car parking requirements.
- **Bicycle and Motorcycle Parking Requirement:** No bicycle or motorbike parking rates are stipulated in the Seniors SEPP or Kiama DCP for the seniors living component of the development. The development does however makes provision for 16 bicycle spaces and four motorcycle spaces within the basement levels.
- **Internal Road and Car Park Layout:** the internal road and car park layout complies with the relevant Australian Standards (AS2890.1, AS2890.2, AS2890.6) and the Kiama DCP.
- **Vehicular Access:** Vehicular access to the basement car park is provided via two-way ramp to Collins Street. The 6m driveway width is designed in accordance with AS2890.1 driveway category 1 and the swept paths accommodate Medium Rigid Vehicles (MRV) and Refuse Collection Vehicles (RCV) entering and exiting the site. The MRVs and RCVs will enter the site and utilise the turntable to manoeuvre and then egress the site in a forward direction.
- **Alternative Transport Options:** Given the location of the site in the Kiama Town Centre, there is sufficient public transport facilities and active transport infrastructure within close proximity to the site. Kiama Railway Station is approximately 650m away with local bus stops available in closer proximity. Residents can call a Taxi or Uber drivers to convey them to their chosen destination.

- **Construction vehicles:** Construction vehicles are likely to cause a temporary congestion and short term minor disruption to traffic flows in the locality that will need to be carefully planned as part of the construction traffic management plan to minimise disruption to neighbours and the local road network. A condition has been applied requiring the proponents to submit a construction traffic management plan to Council for written approval prior to the release of the construction certificate. This is discussed further below in the public submissions section.

It is therefore considered that the proposal acceptable from a transport perspective as it is unlikely to have any significant detrimental impact in the locality on traffic, parking or access by service vehicles and the site is well located for public transport options and for accessing the local pedestrian footpath network.

- **Stormwater Management**

A Stormwater Concept Plan, Soil and Water Management Plan and Soil Erosion and Sediment Control Plans for the proposed development have been by Rienco Consulting. The proposed stormwater management system includes a range of stormwater quantity and quality controls to avoid unacceptable impacts on downstream properties. All stormwater will drain to rainwater tanks then to onsite detention systems before discharging to Council's stormwater system via the adjoining leagues club carpark over which a drainage easement exists in favour of the proposed development.

The proposed stormwater concept plan for the site has been designed to ensure that the post-development stormwater design matches the pre-development flow behaviour and does not direct more catchment area water to Collins Street or the car park. The proposal also includes water quality measures, including gross pollutant traps, to capture suspended solids and oils and avoid impacts on the quality of the downstream receiving waters of Kiama Harbour. Soil erosion and sediment control measures have also been incorporated into the proposed redevelopment which will be implemented during construction phase to comply with Council's requirements and avoid impacts on the local stormwater network. The proposal therefore presents a satisfactory drainage design for the proposal.

- **Environmental Impacts**

Vegetation Removal – All the existing vegetation on the site is proposed to be removed and replaced with new landscaping as outlined in the landscape plan. This removal of the existing vegetation has been considered by Council's Landscape Officer and no concerns have been raised.

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

Impact on Water Resources – A rainwater tank will be provided with overflow stormwater to be conveyed to Council's drainage infrastructure. Controls will be implemented during construction to minimise sedimentation. The proposal will alter the ground water flows in the locality due to the depth of the excavation. General Terms of Approval have been issued by Office of Water in relation to aquifer interference requiring the excavated basement to be tanked to divert groundwater around the proposal.

- **Social and Economic Impacts**

The proposal provides the following positive social and economic benefits:

- Increased provision and diversity of seniors housing allowing senior members of the Kiama community to 'age in place',
- Introduction of seniors housing within the Kiama Town Centre and close to transport infrastructure;
- Improvement to the physical appearance of the site through the replacement of vacant land and demolition of a dated commercial building;
- Introduction of a retail tenancy and increased activation of the western side of Collins Street through pedestrian activity;
- Increase in employment and demand for goods and services through the construction and operation phases of the development; and
- Introduction of a quality design outcome that is responsive to the site context.

The proposed development will likely have minimal adverse social or economic impacts. The amenity impacts of the proposed development have been considered in detail and no concerns raised in submissions warrant refusal of the application.

- **Contamination from previous land uses**

Discussed above a Contaminated Land Preliminary Site Investigation has been undertaken by *Douglas Partners* and the investigation concludes that the site can be made suitable for the proposed development, subject to the results of further investigation and the successful implementation of a remediation action plan (RAP) (if required). The additional investigation will occur once the demolition of the existing structures is complete to allow for unobstructed access to the subsoils.

As the preliminary investigation concludes that the site can be made suitable for the proposed development the proposal satisfies Clause 7 of SEPP 55 and consent may be granted for the proposal. A condition has been applied to the draft development consent requiring the intrusive site investigation and a remediation action plan be conducted to the satisfaction of the accredited certifying authority prior to the commencement of earth works on the site.

- **Effect on public domain**

The proposal will have little impact on the public domain as it enjoys a small frontage to Collins Street with the majority of the development situated on the larger lot which extends back to Meares Place. A pedestrian connection is being established from the development to Meares Place to allow residents a closer and more direct pedestrian access to the only supermarket in town located at Kiama Village Shopping Centre.

- **Utility needs and supply**

An 'Application for Connection of Load' was been lodged with Endeavour Energy by Henderson Consulting Engineers. Endeavour Energy have specified their requirements regarding the design of an electrical substation to supply the development, with full details to be provided with the Construction Certificate application. Spatial requirements for an electrical substation in accordance with Endeavour Energy's requirements and standards has been incorporated into the design.

There is an existing sewer line which services properties to the north of the site that runs through the site. The preferred option for the relocation of this sewer line will be negotiated with a Sydney

Water Coordinator as part of the Section 73 Certificate process. The probable solution is that the sewer line will be diverted at a high level along the driveway ramp and out to an existing sewer infrastructure in Collins Street. Spatial requirements for a sewer pump-out station have been provided by EFWW Consulting Engineers and have been incorporated into the design.

The proposal is located within an existing urban centre that has access to water, sewer, electricity and communication infrastructure to satisfy the needs of the development.

- **Safety, security & crime prevention**

As mentioned above the proposed development has been designed in accordance with the principles of Crime Prevention Through Environmental Design (CPTED). A CPTED Report prepared by The Design Partnership was submitted in support of the application. This report made a number of recommendation that have been included as conditions of development consent to ensure that the proposal provides a high level of personal and property security for residents and visitors alike. The safety and security of residents, staff and visitors to the site is a high priority and has been integrated into the planning and design of the proposed development. The design offers good surveillance, security, illumination and territorial reinforcement to prevent opportunistic types of situational crime from occurring.

- **Operational waste**

This chapter contains Council's requirements for waste minimisation, management and recycling for all development within the Kiama Municipality. It specifies the objectives and controls that are required to be addressed when designing, planning, demolishing and constructing development in order to incorporate best practice waste and recycling management into all stages of the development. Each unit has been provided with adequate kitchen space for bin storage and waste separation. There are 4 individual bin storage areas on each floor containing apartments. These bin storage areas will each contain 3 bins and are easily accessible to residents. These bin stores will be actively managed by the caretakers transferring full bins to the bin enclosure in the basement and replacing them with clean empty bins.

A suitably sized enclosed bin storage area has been included into the design of the proposed development adjacent to the main vehicle entry point of the building in the basement. This enclosure will have hot water for washing and be suitably drained to Sydney Water requirements. Provision has been made on site to allow a waste services vehicle to enter the site and to turn around using a vehicle turntable to allow them to leave in a forward direction. The waste service vehicle will service the bins adjacent to the vehicle turntable with the assistance of the facility caretakers. The proposal has therefore demonstrated a satisfactory arrangement for the collection of waste and recyclables.

- **Construction and Operational noise and vibration**

A Construction and Operational Noise Impact Assessment prepared by TTM Consulting was submitted with the proposal to address the potential noise impacts associated with the construction and operation phases of the development and recommend appropriate acoustic controls. The assessment makes the following conclusions:

- *'The construction noise assessment demonstrates for a realistic average-case scenario, eight to eleven residential and commercial premises surrounding the site will be 'highly affected' by all phases of the construction works;*
- *The impact of construction noise will generally be of short duration for a specific property due to the regular movement of plant and equipment around the site;*

- *The impact of construction noise will generally be less significant since plant and equipment will be used at different locations on the site and not all at the same time, resulting in a lower cumulative noise impact;*
- *The opportunities for practical physical noise control are few given the transient and constantly moving nature of the construction work. Therefore, it is recommended to use mobile noise barriers/enclosures to mitigate construction noise during certain activities, such as around stationary work activities and plant;*
- *In other circumstances, management measures should be employed to minimise the construction noise impact onto residential and commercial premises;*
- *The noise emissions of each mechanical plant must not exceed 51dB(A) when measured at one metre from the source. It is recommended to install the mechanical plant away from the noise sensitive areas and in an area where noise shielding by the building itself may be used to allow an increase in noise emission levels of the plant;*
- *Road traffic noise intrusion from Collins or Terralong Streets is not expected to adversely impact the development due to its low traffic volume and in accordance with NSW Road Noise Policy;*
- *The threshold noise transmission standards, from road traffic noise, rail noise and noise from adjacent car parks, as measured in the dwelling as defined in the Kiama DCP 2012 are expected to be achieved; and*
- *Rail noise intrusion from the South Coast railway is not expected to adversely impact the development due to low measured noise levels on the development site.'*

No ongoing significant noise impacts are expected as a result of the operation of the development. The proposed development will not have an adverse noise impact to adjoining properties and the amenity of future residents of the development will not be compromised by road, car parking or rail noise impacts.

- **BCA compliance**

All new buildings are required to comply with the design and operational requirements of the BCA as in force at the time of the issuing of a relevant construction certificate. A Building Code of Australia (BCA) Compliance Statement has been prepared by Blackett Maguire + Goldsmith and the assessment concludes that the proposed development is capable of complying with the relevant provisions of the BCA. Where there are areas that do not comply with the deemed to satisfy provisions, an alternate solution prepared by a suitable qualified person will be prepared to ensure compliance with the Performance Requirements of the BCA.

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

The proposal fits within the locality and the site attributes are considered to be conducive to development.

7.8 (1)(d) Any submissions

Notification letters were sent to neighbouring property owners who were provided with fourteen (14) days in which to comment on the proposal. At the conclusion of the notification period, thirteen (13) submissions were received which raised the following summarised matters of concern:

7.8.1 Development will generate excessive traffic in the locality

Response - The development is not expected to generate excessive traffic beyond the carrying capacity of the local road network. Given the close proximity to shops and services it is likely to discourage car usage by residents.

7.8.2 Proposed car parking is inadequate

Response - The car parking proposed exceeds the car parking requirements of the SEPP Seniors Living and the requirements of KDCP. The amount of car parking provided is considered more than adequate for the proposal and because it exceeds the requirements of the SEPP Seniors Living could even be seen as being generous. 83 car parking spaces are being provided in total.

7.8.3 Amount of accessible car parking spaces is excessive

Response - The proposal is for housing for seniors and people with a disability who require or are likely to require accessible parking. The amount of accessible parking is considered appropriate for the proposed use.

7.8.4 Excavation and vibration will damage adjoining structures and vegetation

Response - As discussed above the excavation will be supervised by a structural engineer to ensure damage to adjoining structures and vegetation is avoided. A dilapidation report and arborists assessment of trees on adjoining properties will be undertaken before works commence.

7.8.5 Power Lines in Collins Street should be placed with underground to make it more scenic

Response - This is not a valid reason for objection it is a suggestion.

7.8.6 Concerns the depth of excavation will disrupt ground water and overland flows

Response - A Stormwater Management Plan has been devised to manage rainwater and overland flows through the site that is supported by Council's development Engineer. Office of Water has reviewed the impact on ground water finding it to be acceptable and issuing General Terms of Approval for Aquifer Interference to manage this aspect of the proposal.

7.8.7 Concerns development will not respect lot boundaries

Response - The site will be pegged out by registered surveyors prior to works commencing it is not anticipated that the proposal will extent over the adjoining property boundaries. As mentioned above a dilapidation report of all structures on adjoining is required to be prepared prior to the release of the construction certificate.

7.8.8 Excessive noise of residents, air conditioning units and garage automatic roller door

Response - Noise issues have been discussed above and been found to be within acceptable limits. Amelioration measures include differences in level between adjoining properties and unit balconies, noise attenuation over distance. Noise generated by air conditioning units will be screened. Roller door location has been move to ensure the operation will not affect adjoining properties.

7.8.9 Concerns units will be used for short term holiday letting

The Statement of Environmental Effects does not propose short term holiday letting and this type of land use is difficult for Council to preclude.

7.8.10 Loss of privacy both visual and acoustic

As mentioned above The proposed development has been designed and sited to minimise potential impacts on the visual and acoustic privacy of future residents and neighbouring properties. All proposed units are setback six (6) meters from side boundaries with the setback area being landscaped with a mix of decorative trees and shrubs. The development is cut into the site meaning there is a significant change in level between the neighbouring properties on the northern western and north eastern sides. The lower units on these elevations are lower in height and separated from the adjoining neighbours by boundary fencing, existing and proposed landscaping affording good visual and acoustic privacy.

Transparent tinted glazed balustrade has been provided to the principal private open space areas of the proposed units along with decorative sliding privacy screens to afford privacy between the proposed units and the existing neighbours. These privacy screens and tinted glazed balustrade are more important for units on the top floors on the northern western and north eastern sides as they will be at a level more commensurate with height of adjoining development. It is expected that the spatial separation between the top floor units on the on the northern western and north eastern sides and coupled with existing and proposed landscaping will afford visual and acoustic privacy between them and the existing adjoining neighbours. Spatial separation is between the proposed units and the neighbours ranges between 12 -30m with an average of approximately 20.7m

7.8.11 Negative impact on heritage terraces and streetscape

The proposal has been considered by Council's Heritage advisor who found that the proposal would not have an adverse impact upon heritage items in the vicinity. The proposal once constructed and the business/retail premises are occupied will have a positive impact upon the streetscape in the locality, activating further this area of Collins Street.

7.8.12 Single point of access is inadequate especially in an emergency

The vehicular access and egress from Collins street is considered to be adequate for the development and doesn't pose an unacceptable safety risk.

7.8.13 Development will lead to unnecessary view loss, fails to adequately consider principles of "Tenacity case," fails to offer more skilful alternative design solutions, fails to foster view sharing

This aspect of the proposal has been discussed at length under KDCP and found to be acceptable.

7.8.14 Excessive noise and vibration during construction

Whilst some noise and vibration may be created during the construction phase it is not considered to be excessive and should be able to be managed on site to reduce the extent of noise and vibration nuisance to neighbouring properties. Construction noise and vibration will be managed within reasonable limits by the imposition of conditions on the development consent in accordance

with the recommendations of the Acoustic Assessment report submitted with the development application.

7.8.15 Construction will generate excessive dust

Whilst some dust may be created during the construction phase it is not considered to be excessive and should be able to be managed on site to reduce the extent of dust nuisance to neighbouring properties. A condition has been imposed upon the consent requiring management of dust during the construction phase of the project.

7.8.16 Proposal is excessive in bulk and scale being out of character with existing adjoining development, represents poor design outcome and will set undesirable precedent

The proposed development complies with boundary setbacks for a residential use, is under the maximum height limit and floor space ratio, whilst it is a large development for a large site it is not considered to be excessively bulky. The site is situated in the centre of the Kiama Township and given the size of the property the development of the site was likely to be of a reasonable scale. The zoning of the site being B2 would have permitted a retail/business use with a zero lot boundary which would have increased the perceived bulk of the building when compared to the proposal.

Furthermore, the proposal has been designed by a registered architect Christopher Dunkerley Registration Number 4694 to comply with the requirements of SEPP – 65 – Design Quality of Residential Apartment Buildings and the Apartment Design Guide. The architect has also supplied a comprehensive site analysis that was used to guide the development of the proposal and an Architectural Design Statement which explains how the proposed development responds to the nine (9) principles of good design. Whilst the design of the building may not be to everyone's taste it is considered to be well designed and will therefore not set an undesirable precedent in the locality.

7.8.17 Proposal will devalue property values in the locality

No empirical evidence has been presented that supports this contention and it is not a town planning matter that needs to be explored further.

7.8.18 Clothes drying on balconies is unsightly

Clothes drying lines on unit balconies can be shielded from view from public places and adjoining properties by manoeuvring sliding privacy screens to cover clothes drying areas. Each apartment has also been designed with sufficient space for a clothes dryer in the laundry if required.

7.8.19 Seniors living development is not supported as the local area needs more accommodation for young people

Whilst it is acknowledged that Kiama has an older demographic than the state average this creates a demand for seniors and disabled housing in the locality that the proposed development is trying to satisfy.

7.9 (1)(e) The public interest

The proposal is considered to be consistent with all relevant Environmental Planning Instruments and Development Control Plans, is not likely to cause significant adverse impacts to the natural or built environment, is not likely to cause significant adverse social and economic impacts. The proposal is considered to be suitable for the site and therefore is considered to be consistent with the public interest.

The development positively contributes to the public interest for the following reasons:

- a. the development provides a housing type that is in demand within the local community.
- b. the development activates the streetscape on the western side of Collins Street.
- c. the development will provide positive social and economic benefit in the locality.

Subject to compliance with the conditions listed below, it is expected that the proposed development will not create any significant or negative impacts on the surrounding area or compromise the public interest.

8. REFERRALS

During the assessment a number of internal and external technical referrals were made seeking expert opinion on key issues. Where relevant this has been discussed throughout the report and conditions have been recommended within the draft consent.

External Referrals

The application was referred to the following State Government Departments.

- The NSW Office of Water.

The Office of Water issued their General Terms of Approval.

Internal Referrals

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

- Senior Development Assessment Officer - Building

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

- Subdivision & Development Engineer

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

- Landscape Design Officer

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

Development Application No. 10.2016.286.1

Lot 202 in DP 1054190 and Lot 1 in DP 473509, 23 Meares Place and 33 Collins Street, Kiama

- Waste Management Officer

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

- Heritage Advisor

No objection has been raised in relation to the proposed development and no conditions of development consent have been recommended.

9. CONCLUSION

The proposed development has been assessed having regard to all relevant matters for consideration prescribed by Section 79C of the Environmental Planning and Assessment Act, 1979. The proposal is considered to be consistent with State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004, State Environmental Planning Policy No. 65: Design Quality of Residential Apartment Development, Kiama Local Environmental Plan 2011 and the relevant provisions of Kiama Development Control Plan 2012. The proposed development is consistent with the objectives of the B2 Local Centre zone.

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

The proposed development is considered to be reasonable and consequently it is recommended that the Panel approve the development application subject to the draft conditions of consent provided with this report.

11. RECOMMENDATION

It is recommended that the Panel approve Development Application No. 10.2016.286.1 Seniors Living Development - demolition of existing structures, construction of a mixed use seniors living development comprising fifty (59) independent living units, three (3) caretaker apartments, one (1) business/retail shop of 169m² and two (2) levels of basement car parking for eighty-three (83) vehicles at Lot 202 in DP 1054190 and Lot 1 in DP 473509, 23 Meares Place and 33 Collins Street, Kiama, subject to conditions.