

## 2<sup>nd</sup> COUNCIL ASSESSMENT REPORT

Panel Reference	2016STH032
DA Number	10.2016.286.1
LGA	Kiama Municipal Council
Proposed Development	Mixed Use –Seniors Living Development / Commercial - Demolition of existing structures, construction of an (amended) mixed use seniors living development comprising fifty-five (55) independent living units, three (3) caretaker apartments, one (1) retail shop of 157m <sup>2</sup> and two (2) levels of basement car parking for seventy-eight (78) vehicles.
Street Address	Lot 202, DP 1054190 and Lot 1, DP 473509, 23 Meares Place and 33 Collins Street, Kiama
Applicant/Owner	DTB Architects Pty Ltd
Number of Submissions	Four (4)
Regional Development Criteria (Schd 4A of the Act)	Clause 3 General development over \$20 million The CIV for the proposed development is \$33.35M.
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> <li>• Water Management Act 2000</li> <li>• SEPP (Housing for Seniors or People with a Disability) 2004</li> <li>• SEPP No. 55: Remediation of Land</li> <li>• SEPP (Building Sustainability Index: BASIX) 2004.</li> <li>• SEPP 71 - Coastal Protection.</li> <li>• SEPP No. 65: Design Quality of Residential Apartment Development</li> <li>• SEPP 65 Apartment Design Guidelines</li> <li>• Kiama Local Environmental Plan 2011</li> <li>• Kiama Development Control Plan 2012</li> </ul>
Clause 4.6 variation?	Yes - KLEP 2011 Cl.4.3 Height of Building
SIC (S94EF)?	No
List all documents submitted with this report for the Panel's consideration	ATTACHMENT 1 - Schedule of Conditions ATTACHMENT 2 - Architectural Plans
Recommendation	Approve
Report prepared by	Anthony Randall - Development Assessment Coordinator
Report endorsed by	Brendan Leo – Manager Development Assessment
Report date	19 November 2018

## EXECUTIVE SUMMARY

### Joint Regional Planning Panel

The development application has been referred to the Joint Regional Planning Panel (JRPP) pursuant to Clause 3 of Schedule 4A of the *Environmental Planning & Assessment Act 1979* as the proposed development has a capital investment value that exceeds \$20M. The CIV for the proposed development is \$33.35M.

### The Site

The development site forms part of the Kiama town centre.

### Proposal

The proposal has been amended from that which was originally lodged with the Council and reported to the Southern Joint Regional Planning Panel. The amended proposal is to demolish existing structures, and construct a mixed use seniors living development comprising fifty-five (55) independent living units, three (3) caretaker apartments, one (1) retail shop of 157m<sup>2</sup> and two (2) levels of basement car parking for seventy-eight (78) vehicles.

### Permissibility

The site is zoned B2 Local Centre under *Kiama Local Environmental Plan 2011* (KLEP 2011) and the *SEPP Seniors Living* overrides the KLEP 2001 and make the proposal permissible with consent in the zone.

### Public Exhibition

The amended application was publicly notified in accordance with statutory requirements. Four (4) submissions were received by Council.

### Agency Consultation

External agency referrals have been initiated to:

- The Department of Primary Industries – Water under Section 91 of the Water Management Act 2000 (nominated integrated pursuant) for aquifer interference.

### Recommendation

That the Panel approve Development Application No. 10.2016.286.1 Seniors Living Development proposing demolition of existing structures, construction of a mixed use seniors living development comprising fifty-five (55) independent living units, three (3) caretaker apartments, one (1) retail shop of 157m<sup>2</sup> and two (2) levels of basement car parking for seventy-eight (78) vehicles at Lot 202 in DP 1054190 and Lot 1 in DP 473509, 23 Meares Place and 33 Collins Street, Kiama, subject to conditions, subject to conditions at Attachment 1 – Schedule of Conditions.

### Attachments

ATTACHMENT 1 - Schedule of Conditions

ATTACHMENT 2 - Architectural Plans

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## 2<sup>nd</sup> ASSESSMENT REPORT AND RECOMMENDATION

### 1. PURPOSE OF REPORT

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

The Panel is the approval body 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) and therefore Council cannot 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-five (55) independent living units, three (3) caretaker apartments, one (1) retail shop of 157m<sup>2</sup> and two (2) levels of basement car parking for seventy-eight (78) 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. BACKGROUND

#### 3.1. Approval Body

State Environmental Planning Policy (State and Regional Development) 2011, prescribes at clause 20 that the Panel is the determining authority for applications with a capital investment values that exceeds \$20M under the provisions of Clause 3 of Schedule 4A.

Schedule 4A identifies development for which Regional Panels may be authorised to exercise consent authority functions of Councils under the Environmental Planning and Assessment Act 1979 (the Act), and confers that the Panel is the determining authority for this development application as the development has a capital investment value of \$33.35M.

#### 3.2. Strategic Context

Illawarra-Shoalhaven Regional Plan 2015 (IRP) identifies Kiama and includes the following commentary:

*The make-up of the population will change over the next 20 years. Growth will be moderate in most age groups, except in the 65-and-over group, particularly in Kiama and Shoalhaven.*

*Kiama and its hinterland sit between the more urbanised parts of Shellharbour and Wollongong and the more rural Shoalhaven.*

*Kiama should be able to accommodate 2,850 new homes up to 2036, to meet expectations for greater housing choice. However, analysis indicates that there is not enough land or 'market ready' infill development in the planning pipeline to meet this demand, and this may constrain the mix of housing available to first-home buyers, young families and retirees, and to people who want to age in their homes.*

The Illawarra-Shoalhaven Urban Development Program 2016 (IUDP) and includes the following commentary:

*Kiama Council has identified a number of potential greenfield areas contained in its Urban Strategy that can assist in meeting demand, provided that they can be appropriately considered through the rezoning process.*

*It is important to note that Kiama Council's Urban Strategy and recent comprehensive LEP (2011) have identified a much greater role for urban infill to meet housing demand. The*

*Local Environmental Plan introduced minor changes in development controls to encourage greater infill development.*

*Council's approach reflects a desire to move from greenfield to infill development noting that its Strategy has also identified a number of greenfield sites that could proceed through the rezoning process.*

The proposal is located within the Kiama town centre which is an identified centre.

The proposal is consistent with the strategic context identified in both the Illawarra-Shoalhaven Urban Development Program 2015 (IUDP) and the Illawarra Regional Plan 2016 (IRP) by supplying infill dwelling units within the town centre catering specifically to the ageing population demographic.

### 3.3. Development Application Chronology

The application history is as follows:

Date	Action
16 November 2016	The application was lodged comprising fifty (59) independent living units, three (3) caretaker apartments, one (1) business/retail shop of 169m <sup>2</sup> and two (2) levels of basement car parking for eighty-three (83) vehicles
22 November 2016	Application referred to NSW Department of Primary Industries – Water under Section 91 of the Water Management Act 2000 (nominated integrated pursuant) for General Terms of approval for an activity approval for aquifer interference
23 November 2016	Application public exhibition commences
19 December 2016	Notification period closed – 13 submissions received objecting to proposal.
24 February 2017	Office of Water issue General Terms of Approval.
3 July 2017	JRPP brief and site inspection.
16 November 2017	JRPP public determination hearing. JRPP defers determination.
22 November 2017	JRPP issue record of deferral.
16 December 2017	Land and Environmental Court Class 1 Appeal No. 17/352423 filed against the Joint Regional Planning Panel's deemed refusal of development application
6 February 2018	Statement of Facts and Contentions filed by the respondent in Land and Environmental Court Class 1 Appeal No. 17/352423
28 June 2018	Land and Environmental Court Class 1 Appeal No. 17/352423 - Section 34 Conciliation Conference
5 September 2018	Revised application documents submitted proposing fifty-five (55) independent living units, three (3) caretaker apartments, one (1) retail shop of 157m <sup>2</sup> and two (2) levels of basement car parking for seventy-eight (78) vehicles.
13 October 2018	Revised application public exhibition commences
1 November 2018	Application amended under Clause 55 of the Environmental Planning and Assessment Regulation 2000.
1 November 2018	Amended application re-referred to NSW Department of Primary Industries – Water (Water NSW) under Section 91 of the Water Management Act 2000 (nominated integrated pursuant) for General Terms of approval for an activity approval for aquifer interference.

Date	Action
12 November 2018	Amended application notification period closed – 4 submissions received objecting to proposal.
12 November 2018	Department of Primary Industries – Water (Water NSW) provide General Terms of Approval for aquifer interference activity approval under the Water Management Act 2000.
29 November 2018	JRPP public determination hearing
30 January 2019	Hearing date for Land and Environmental Court Class 1 Appeal No. 17/352423

### 3.4. JRPP Deferral

On the 16<sup>th</sup> of November 2017 at the public determination hearing, the panel resolved to defer the determination of the matter for additional information that addresses the following:

1. a. *SEPP 55 requirements and conclusions, which may require future sampling.*
1. b. *Review and amend the design of the proposed development to:*
  - i. *Address better compliance with the Apartment Design Guidelines (ADG) in relation to the provision of solar access to the living rooms and private open spaces of the apartments.*
  - ii. *Improves privacy impacts to adjoining development through potential re-orientation of units.*
  - iii. *Provides some breakup of the mass of the building along the residential side boundaries.*
  - iv. *Further mitigates view impacts through consideration of a reduction in the height of the building, the introduction of gaps and breakup of the building mass.*
  - iv. *Provides additional cross section and details of the relationship of the building to the boundaries.*
  - v. *Measures (i) to (vi) may require a reduction in the numbers of units proposed.*
1. c. *Provide additional root mapping of the trees along the common boundary and provide better detail regarding mitigation and protect measures required to maintain the trees on neighbouring properties.*
1. d. *Provide landscape plans and architectural plans that are consistent with one another.*
2. *Council refer the current plans for review to an independent architect/urban designer and provide these comments to the applicant.*
3. *That a further report be prepared that addresses the above amendments and Clause 29 of SEPP (Housing for Seniors and People with a Disability) 2004.*
4. *On receipt of the report the Panel will hold a public determination meeting.*

The reasons for the decision:

- *The proposed development adversely impacts upon adjoining properties in respect to view, bulk and massing, and tree protection and retention.*
- *The internal amenity of the development is not satisfactory.*
- *SEPP 55 and SEPP (Housing for Seniors or People with a Disability) 2004 has not been adequately addressed.*

### Applicants Response to JRPP Deferral

The applicant provided the following responses to the JRPP reasons for deferral in lodging the amended proposal:

JRPP Deferral Matter	Applicant's Amendments
<p>1. a. SEPP 55 requirements and conclusions, which may require future sampling.</p>	<p>The preliminary site investigation undertaken in respect of the site concluded that the site can be made suitable for the proposed development, refer Appendix P* of the addendum SEE.</p> <p>A detailed site investigation was separately furnished to Council on 3 October 2018. This included an intrusive investigation of the site that concluded no contaminated land issues have been identified that require further investigation or management.</p>
<p>1. b. Review and amend the design of the proposed development to:</p> <p>i. Address better compliance with the Apartment Design Guidelines (ADG) in relation to the provision of solar access to the living rooms and private open spaces of the apartments.</p>	<p>The amended proposal achieves ADG compliant solar access to living rooms and private open space areas, refer Architectural Plans at Appendix B* of the addendum SEE.</p> <p>The amended layout of the proposal includes north-south breaks in the building mass which have improved the amenity within and solar access to apartments as well as the central courtyard.</p> <p>In the original proposal, 65% of dwellings would receive three hours of sunlight access between 9am and 3pm. Under the amended proposal 71 % of apartments will receive three hours of sunlight access between 9am and 3pm, mid-winter.</p> <p>As permitted under SEPP 65 and the ADG 10 % of apartments will receive no solar access between 9am and 3pm, mid-winter and the remaining apartments will receive some solar access on June 21. This is an improved position from the scheme considered by the Planning Panel</p> <p>Apartments in the development will also be able to access several communal open space areas which receive good solar access throughout the day. Different parts of the central courtyard will receive two hours of solar access on June 21.</p> <p>The area receiving solar access constitutes over 50% of the principal useable open space. The proposal also includes four rooftop terraces which will receive solar access between 9am and 3pm.</p>
<p>1. b. Review and amend the design of the proposed development to:</p> <p>ii. Improves privacy impacts to adjoining development through potential re-orientation of units.</p>	<p>The amended proposal is separated from the residences adjoining the north eastern boundary of the site by between 12-20m, providing visual privacy for both the neighbours and future occupants of the development.</p> <p>These design measures contribute to preserving the visual privacy of neighbouring residences.</p> <p>The development is benched into the site and consequently there is a significant level change between the lower levels of the amended proposal and the neighbouring properties on both the north western and north eastern sides.</p>

JRPP Deferral Matter	Applicant's Amendments
	<p>The living areas and balconies of the independent living units (ILUs) within the development are oriented away from existing neighbouring dwellings and landscape screening is proposed in the setbacks.</p> <p>The majority of balconies are recessed into the building facades and have balustrades and privacy screening to provide privacy for the occupants and neighbours.</p>
<p>1. b. Review and amend the design of the proposed development to:</p> <p>iii. Provides some breakup of the mass of the building along the residential side boundaries</p>	<p>The amended design includes two breaks in the building massing on the north-south axis and a stepped form along the south-eastern boundary.</p> <p>Under the amended proposal, the building mass has been broken up, with gaps in the building form. This diversity of building massing provides increased visual permeability across the site.</p> <p>The amended proposal has side and rear boundary setbacks that are compliant with <i>State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 (SEPP Seniors)</i> and <i>Kiama Development Control Plan 2012</i>.</p>
<p>1. b. Review and amend the design of the proposed development to:</p> <p>iv. Further mitigates view impacts through consideration of a reduction in the height of the building, the introduction of gaps and breakup of the building mass.</p>	<p>Under the amended proposal, the RL of the building closest to Meares Place has been reduced by almost three metres from the original proposal.</p> <p>The building mass has been shifted to the south western side of the site, away from the residential interface to the north-eastern boundary.</p> <p>The amended design includes two breaks in the building massing on the north-south axis. This enables increased view retention from the neighbouring residential properties in Meares Place.</p> <p>The amended view impact assessment prepared by Richard Lamb has found that view impacts from all adjoining properties are reasonable- refer Appendix G* to the Addendum SEE.</p>
<p>1. b. Review and amend the design of the proposed development to:</p> <p>v. Provides additional cross section and details of the relationship of the building to the boundaries.</p>	<p>Additional sections have been provided at the architectural plans in Appendix B* to the addendum SEE.</p>
<p>1. b. Review and amend the design of the proposed development to:</p> <p>vi. Measures (i) to (vi) may require a reduction in the numbers of units proposed.</p>	<p>The amendments to the building design have resulted in a reduction in the number of ILUs from 59 to 55.</p>

JRPP Deferral Matter	Applicant's Amendments
1. c. Provide additional root mapping of the trees along the common boundary and provide better detail regarding mitigation and protect measures required to maintain the trees on neighbouring properties.	An updated Aborigicultural Impact Assessment addressing this requirement was undertaken by Sydney Landscape Consultants in respect of the amended proposal – refer Appendix J* to the addendum SEE.
1. d. Provide landscape plans and architectural plans that are consistent with one another.	Architectural plans at Appendix B* and Landscape plans at Appendix R* to the addendum SEE are consistent.
2. Council refer the current plans for review to an independent architect/urban designer and provide these comments to the applicant.	This is not a matter for the applicant to action. It is noted that the amended plans appended to the addendum SEE are consistent with the plans considered at the section 34 Conference and that Council and the Planning Panel had urban design and architectural experts in attendance who had reviewed and provided advice on those plans.
3. That a further report be prepared that addresses the above amendments and Clause 29 of <i>SEPP (Housing for Seniors and People with a Disability) 2004</i> .	The amended application is currently on notification until 12 November 2018 and it is understood that the amended application will be reported to the Panel meeting of 29 November 2018.

**N.B.** \* - Refers to Appendixes provided in the applicants amended application and are not attachments to this report

### 3.5. Land and Environment Court - Class 1 Appeal

The applicant filed a Land and Environment Court Class 1 Appeal (deemed refusal) on 16 December 2017, and a Section 34 Mediation Conference was held between the parties on 28 June 2018 between the Joint Regional Planning Panel members, the Council's Development Assessment Manager, and experts engaged by both the Council, and by the Southern Joint Regional Planning Panel. The hearing date set-down for the Land and Environmental Court Class 1 Appeal No. 17/352423 is 30 January 2019.

The application was subsequently amended by the proponent and submitted to Council on 5 September 2018 having regard to the negotiations held during the Section 34 Mediation Conference.

The amended application was referred to the Council's expert consultant architect, and the Southern Joint Regional Planning Panel's expert consultant planner.

As a result of the assessment undertaken by the Council's expert consultant architect, and the Southern Joint Regional Planning Panel's expert consultant planner, further amendments to the scheme were made including:

- Removal of the lift overrun in Building D. The amendments reduce the height of the roof by c.300mm and bring it into compliance with the 11m Height Development Standard with a commensurate reduction in the impact on the views of adjoining properties, particularly 21 Meares Street.
- Revisions to the privacy screens on the northern side of the development. Living room windows facing Minnamurra Street are shown with screens, however, these are indicated as fully openable. As the rooms in question all have a second opening which does not face the

Minnamurra properties, the screen has been amended to be a fixed louvre style screen to minimise the privacy impact. This affects the north east facing living room window to units 20, 36, 47, 48, 53, 54 and 55.

- Revisions to the façade treatment of the Collins Street frontage of the development.
- Revisions to ensure the pathways and retaining structures are clear of the tree protection zones for vegetation adjacent the northern boundary.

The Council's expert consultant architect, and the Southern Joint Regional Planning Panel expert consultant planner are satisfied with the proposal as a result of the amendments, and in conjunction with imposition of conditions of consent.

#### 4. 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).

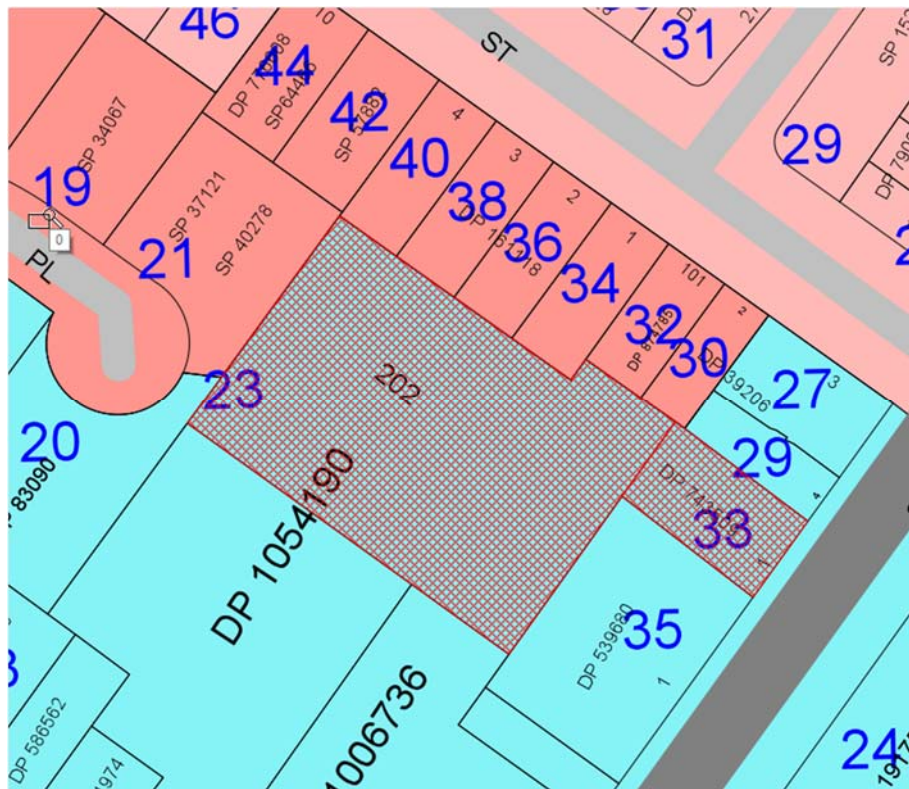


Figure 1 – Zoning map of the subject site (Light Blue = B2, Red = R3, Pink=R2)

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.



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.

## 5. THE PROPOSAL

The original application (which has since been amended) sought approval for the demolition of the existing commercial building at 33 Collins Street and the construction on site of a three to five storey mixed use seniors living development comprised of:

- 59 independent living units;
- Three apartments for a facility manager and caretakers;
- A 169m<sup>2</sup> retail/business tenancy;
- Two levels of basement car parking for eighty-three (83) vehicles;
- Turn table for Waste Trucks;
- Recreational, amenity and administration facilities; and
- Site landscaping.

The application is amended by the proponent to be comprised of:

- Fifty-five (55) independent living units,

- Three (3) caretaker apartments,
- One (1) retail shop of 157m<sup>2</sup> and t
- Two (2) levels of basement car parking for seventy-eight (78) vehicles.

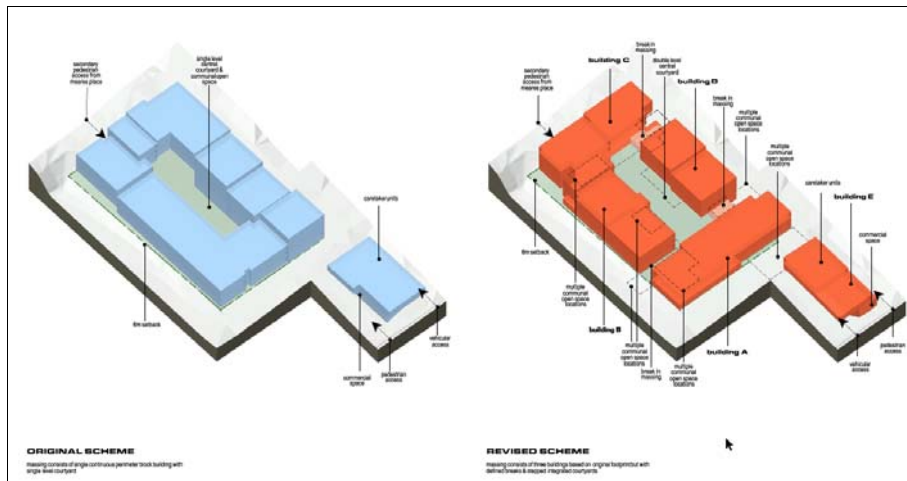


Figure 4 – Original Scheme and Amended Scheme

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.



Figure 5 – Original Scheme and Amended Scheme

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 157m<sup>2</sup> 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**

<b>Element</b>	<b>Required/Permitted</b>	<b>Proposed</b>
Site area	Min. 1,000m <sup>2</sup>	5,579.5m <sup>2</sup>
Seniors independent living units dwelling mix	N/A	1-bedroom – 7 (13%) 2-bedroom – 39 (71%) 3-bedroom – 9 (16%) Total Units – 55
Caretakers dwelling mix	N/A	2-bedroom – 2 (67%) 3-bedroom – 1 (33%) Total Units – 3
Commercial tenancy area	N/A	157m <sup>2</sup>
Car parking	78 spaces total (KDCP 2012)	Residents – 55 spaces (15 accessible) Visitors – 15 spaces (2 accessible) Caretakers – 3 spaces Commercial – 5 spaces (1 accessible) Total – 78 spaces
Wash Bays	N/A	2 visitor spaces have been fitted out as wash bays
Motorcycle parking	N/A	5 spaces
Bicycle parking	N/A	21 spaces
Maximum height above existing natural ground level	11 metres (KLEP 2011)	12.7 metres
Gross floor area	8,369m <sup>2</sup>	6,779 m <sup>2</sup>
Floor space ratio	1.5:1 (KLEP 2011)	1.2:1
Landscaped area	1,395m <sup>2</sup>	1,454 m <sup>2</sup>
Deep soil zones	391m <sup>2</sup>	490 m <sup>2</sup>

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 157m<sup>2</sup> 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.

### 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 78 car parking spaces. The car parking provision exceeds the provisions of the KDCP 2012 and greatly exceeds the provisions Seniors SEPP, and includes:

- 55 residential spaces, (15 accessible) 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;
- 21 bicycle parking spaces are provided for residents and visitors; and
- 5 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 2.

## 6. NOTIFICATION

The application was twice publicly notified.

The application was first 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.

The amended application was publicly notified for a period of thirty (30) days from 12 November 2018.

During the first exhibition period thirteen (13) submissions were received, and during the second exhibition period four (4) submissions were received, all objecting to the proposal. The issues raised in these objections are discussed further below under heading “s.4.15 (1)(e) Any Submissions”.

## 7. 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 (SEPP) (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.

## 8. ASSESSMENT

This application has been assessed in accordance with Section 4.15 of the Act.

The following comments are made with respect to the proposal:

### 8.1. s.4.15(1)(a)(i) Any Environmental Planning Instrument

#### 8.1.1. SEPP (Housing for Seniors or People with a Disability) 2004

The SEPP (Housing for Seniors or People with a Disability) 2004 (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. SEPP Seniors Living is permissible on the land, within which hospitals are permitted by dint of Clause 4(1)(a)(iii). Hospitals are a permissible land use in the B2 zone with development consent therefore the proposal is permissible.

#### 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.

However, the Southern Joint Regional Planning Panel expert consultant planner is not satisfied that average gradients meet the requirements of the control and provided the Council with the following advice:

#### Access to Services

The revised Access report remains inadequate in my view.

Cl.26 of the SEPP provides:

- (1) A consent authority must not consent to a development application made pursuant to this Chapter unless the consent authority is satisfied, by written evidence, that residents of the proposed development will have access that complies with subclause (2) to [the nominated shops and services].

Sub-clause (2) provides two alternative means of satisfaction:

- the nominated shops and services can be within 400 metres from the site and the overall average gradient for the pathway to those shops and services is no more than 1:14 (with allowed exceptions); and/or
- For sites outside of the GSSD the site can be within 400 metres of a transport service that will take residents to the shops and services and this service is accessible by means of a suitable access pathway and the transport service will take residents to within 400 metres of the applicable shops and services. The gradient to the transport

service and from the transport service to the shops and services must comply with sub-clause (3) i.e. generally 1:14 with some steeper sections.

The Moris Goding report:

- Does not seem to rely on cl.26(2)(a) (ie reliance on local shops and services via an accessible path);
- Says the shops and services are all available locally but does not address cl.26(2)(a) in terms of the gradients along the access pathway other than a brief statement 'from the information available' Collins and Terralong Streets ...'have suitable gradients' but without referencing the specific gradient requirements in the SEPP.
- Says if other services are required then Kiama Station is within 400m and has a path of travel via Collins Street, Terralong Street and Railway Parade but again without confirming that the accessible path complies with cl.26(3).

In each case you would expect to see reference to a survey of the levels of the relevant footpaths to support any conclusion that an accessible path within the terms of the SEPP is achieved. A simple, unsupported statement that 'the requirements of the clause appear to be achievable' and 'from the information gathered..' (without specifying what that information is) is not acceptable when the SEPP stipulates very specific gradients that have to be achieved.

The report therefore needs to confirm in specific terms that a survey of the relevant footpaths has been undertaken and that the grades comply with clause 26(2) and (3) of the SEPP as appropriate.

In a practical sense, if the gradients along the applicable shopping streets are not compliant with the SEPP then that does raise something of a predicament in that this would mean that the SEPP could not apply through the CBD.

The practical solution to this may be that there has to be a resident minibus that one of the three on site managers uses to take residents once a day Monday to Friday (complying with cl.26(c)) on a loop encompassing all of the required shops and services. This obviously has a financial implication.

The solution in any event is a matter for the applicant, but on the information thus far provided the consent authority could not be satisfied that the residents will have access compliant with cl.26 to the applicable shops and services.

The applicant has agreed to the imposition of a condition requiring the provision of a mini-bus service.

#### 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.

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

These privacy screens and solid balustrades 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 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 fixed privacy screens between neighbours to the north.

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.

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

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.

Under the amended proposal 71% of dwellings will receive a minimum of 3 hours' direct sunlight between 9am and 3pm in mid-winter and complies..

#### 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 1,000m<sup>2</sup> 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 recommended requiring the proponents to ensure compliance is demonstrated prior to issue of the Construction Certificate.

#### Clause 50 Standards that cannot be used to refuse self-contained dwellings

#### Table 2 – Clause 50 Summary

<u>Standard</u>	<u>Control</u>	<u>Comment</u>
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 <sup>2</sup> 30% of site area = 1,673m <sup>2</sup> Actual landscape area is 1,755 m <sup>2</sup>
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	Complies.
private open space for in-fill self-care housing	<ul style="list-style-type: none"> <li>- Ground floor units = 15sqm with minimum dimensions 3m x 3m.</li> <li>- Any other dwellings = Balcony min 10sqm minimum dimension 2m length or width from living area.</li> </ul>	Complies - All apartments will have private balconies with a minimum area of 18m <sup>2</sup> that are accessible and meet the minimum dimension of 2m.
parking for residents and visitors	- 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.

### 8.1.2. SEPP (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.

### 8.1.3. SEPP No. 55 - Remediation of Land

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 may be granted for the proposal. The applicant provided the following comments:

*The preliminary site investigation previously concluded 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). Accordingly, the proposal satisfies clause 7 of SEPP 55 and consent can be granted to the proposal.*

*Notwithstanding this, as a result of discussions held at the section 34 conference, the proponent committed to undertaking further intrusive contamination investigations on the site. Douglas Partners are currently undertaking this additional contaminated land investigation and it is anticipated that this work will be completed shortly.*

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.

#### **8.1.4. SEPP No. 65 - Design Quality of Residential Apartment Development**

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 Apartment Design Guide (ADG), 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 Apartment Design Guide (ADG).

The review of the application in conjunction with the 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.

#### **8.1.5. SEPP No. 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.

#### **8.1.6. 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.

#### **Clause 2.3**

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

A maximum building height development standard of 11 metres applies to the site. The amended proposal has a maximum height of 12.7m when measured from the existing natural ground level.

The building design uses the slope of the site to step the building from Meares Place to Collins Street and through excavation sets the development into the site as shown in the section at Figure 15.

Additional section plans are provided at Attachment 2.

The non-compliance with the height of buildings control is related to the lift over runs, and the top storey of the development on the south western and south eastern boundaries. Figure 6 shows the building height plane over the site and the points where the building exceeds the height of building standard.



Figure 6 – 11m Building Height Plane



Figure 7 – Breaches to 11m Building Height

A comprehensive clause 4.6 variation request has been prepared in support of the height non-compliance.

The variation request includes the following pertinent comments:

#### ***Variations to Maximum Height of Buildings***

*The design of the amended proposal has been influenced by the significant level change across the site, with an 18.5m fall from Meares Place to Collins Street. The amended proposal benches the building form into this slope, stepping the buildings down the site.*

*In addition to this slope, there is varying and undulating topography which has contributed to minor elements of the proposal being non-compliant with the height of buildings development standard at specific points across the site.*

*The amended proposal minimises the overall built form impacts by locating the multi-storey buildings towards the south western side of the site, away from the residential interface to the north- eastern boundary.*

*Building mass has been shifted to this location to enable increased view retention from the neighbouring residential properties in Meares Place. The amended proposal provides a maximum two-storey built form adjacent to the Collins Street commercial boundary consistent with the scale and character of the streetscape.*

*The elements of the proposal; that exceed the height of building control are generally between 230mm and 940mm in height at the eaves of the buildings. The more significant non-compliances range between 1690mm in the south-western corner and 1540mm in the south-eastern corners of the proposal. The extent of the variations in numeric and percentage terms are minor. It is important to note that the majority of the proposed built form sits below the maximum height of buildings development standard, as shown within the Height Plane Diagram in Figure 2 and the elevations and section in Figures 3, 4 and 5. The proposed variations apply only to a limited part or point of the building.*

### ***Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?***

*There are sufficient environmental planning grounds to justify the proposed variations to the development standard, including:*

- *The proposed variations to the height of the buildings development standard are located away from the interface shared with adjacent residential development in Meares Place and Minnamurra Street and as such reduces the potential for external impacts of the proposal;*
- *The proposed development will facilitate greater housing choice within the Kiama LGA. The proposal will provide high quality seniors housing in the form of independent living units within an attractive landscaped setting and proximate to public transport and services that responds to the surrounding character of the area;*
- *The amended proposal is consistent with the design objectives of SEPP 65 and KDCP 2012;*
- *The proposed variation will not result in any unacceptable environmental impacts on the site or the adjoining residential properties:*
  - *The amended proposal will result in reduced visual impacts when compared to the original DA and those parts of the built form that exceed the height of building development standard will not result in the loss of view to or overshadowing of adjoining residential premises.*
  - *No additional shadow impacts will occur on the adjoining and surrounding residential properties between the hours of 12:00pm to 3:00pm June 21st.*
  - *The two-storey building height proposed to Collins Street is consistent with the streetscape and maintains compatibility with the surrounding area.*
- *The elements of the amended proposal that exceed the height of building control are limited to elements of the parapet and lift overrun. The elements are minor in scale and are localised non-compliances that are the result of the sloping and undulating topography of the site and will not result in any increased perception of building bulk;*
- *Exceedances to the building height control are numerically minor and minor in area.*

*Overall, it is considered that strict compliance with the development standard in this instance is unreasonable and unnecessary, as an alternate scheme which complied with*

*the height of buildings development standard would result in an inferior outcome for the site and/or result in the loss of high amenity seniors' housing within the locality.*

*Based on the above, it is considered appropriate to relax the strict application of the development standard in this instance.*

***Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?***

*The proposed non-compliance with the maximum height of buildings development standard will not raise any matter of significance for State or regional environmental planning. It has been demonstrated that the proposed variations are appropriate based on the specific circumstances of the case and would be unlikely to result in an unacceptable precedent for the assessment of other development proposals.*

***Is There a Public Benefit of Maintaining the Planning Control Standard?***

*The proposed development achieves the objectives of the height of buildings development standard and the land use zoning objectives despite the minor numerical non-compliance.*

*It has been demonstrated that the proposed variation will not result in an adverse environmental impact on the neighbourhood amenity and streetscape. The height of the individual buildings is largely compliant, with the minor localised non-compliances the direct result of changing ground levels which are the product of the varying and undulating topography of the site.*

*The elements of the buildings that exceed the height of buildings development standard will not have an adverse impact on the adjoining and surrounding properties, with the proposal maintaining the scale and character development to Collins Street, and respecting the residential character of Meares Avenue.*

This submission has demonstrated that strict compliance with the numerical standard in relation to the current proposal is both unreasonable and unnecessary for the following reasons:

- The proposed development achieves the objectives of the height of buildings development standard and the land use zoning objectives despite the minor numerical non-compliance in some localised areas of the buildings as a direct result of the varying and undulating topography of the site.
- Where, as a result of the Building D lift overrun breaching the height limit, the amended development had an adverse impact on the iconic views from adjoining residents, and the plans have been further amended, removing Building D the lift overrun.
- The majority of the built form proposed is compliant with the height of buildings development standard;
- The amended proposed development has been designed to be compatible with the scale and character of the locality
- The amended proposal complies with the KLEP 2011 FSR control for the site.
- The proposed variations will not add to the perceived scale of the development;
- There will be no unreasonable environmental impact on the adjoining and surrounding properties;
- The height of the individual buildings is largely compliant, with the elements of the amended proposal that exceed the height of building control limited to elements of the parapet and lift overrun.
- The minor non-compliances are as a result of the undulating topography of the site; and do not impact in any way increase the perceived bulk of the development;
- The amended proposal will provide high quality units within an attractive landscaped setting and proximity to public transport and services that responds to the surrounding character of the area; and

- The proposed variation is relatively minor both numerically and in the quantum of the proposed building that will exceed the height control.

Overall, it is considered that strict compliance with the development standard is unreasonable in this instance. An alternate scheme that was fully compliant with the height of buildings development standard would result in an inferior outcome for the site and/or result in the loss of high amenity seniors' housing within the locality.

#### Clause 4.4

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 1.2:1 and therefore complies with the Floor Space Ratio Map.

#### Clause 5.9

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

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, and a heritage conservation area has been established at Pheasant Point in the vicinity of the site.

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.

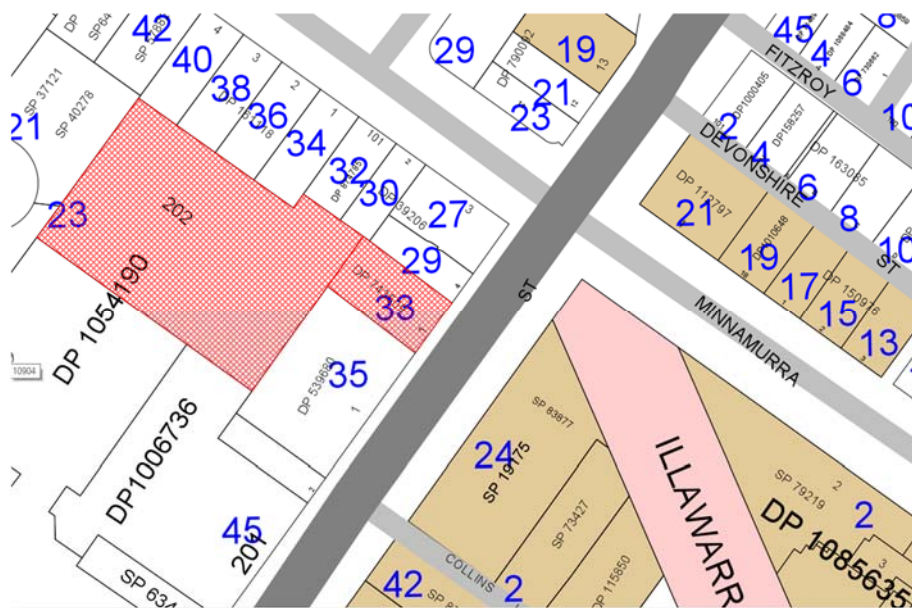


Figure 8 - Heritage properties in the locality shaded fawn.

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

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 not 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

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.

The proponent have estimated that a maximum 25,000 cubic metres of material may be required to be excavated from the site to accommodate the proposal. The Geotechnical Report identifies the variable nature of the materials on site, each of which will have a different bulking factor when excavated.

The geotechnical report identifies methods to stabilise the site and protect the adjoining properties during the excavation process.

A construction traffic management plan will be prepared by the contractor engaged to build the project. This will address the excavation and construction phases of the project and will include haulage routes and management of traffic within the local road network.

A dilapidation report can be prepared for the local road network in the immediate vicinity of the site prior to and following completion of the works to identify potential impacts on the road network with any impact created as a result of the proposal rectified prior to occupation.

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

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.

## **8.2. s.4.15 (1)(a)(ii) Any draft Environmental Planning Instrument**

### **8.2.1. Draft Coastal Management State Environmental Planning Policy**

The Draft Coastal Management State Environmental Planning Policy (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.

## **8.3. s.4.15 (1)(a)(iii) Any Development Control Plan**

### **8.3.1. 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 amended proposal will have a minimal impact upon views from neighbouring properties to the north east fronting Minnamurra Street and limited view loss for the units at 21 Meares Place.

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 amended development will not greatly affect the primary view from the first floor units of 21 Meares Place towards the Harbour and the Kiama Lighthouse

The proposal has been designed to generally comply with the building envelope controls being height limit, setbacks and floor space ratio. The minor loss of views to 21 Meares Place is a 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 amended proposal, the view sharing principles handed down in the Land and Environment Court were 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 units and reconfiguring the site planning of the building layouts, and a further View Assessment Addendum Report provided in August 2018.

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 the units at 21 Meares Place, however iconic views are now maintained.

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.

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

**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 <sup>st</sup> floor balcony/living area	Minor	Minor
Unit 2/21 Meares Place	1 <sup>st</sup> floor balcony/living area	Severe	Moderate
Unit 2/21 Meares Place	2 <sup>nd</sup> floor balcony/bedroom	Moderate	Minor-moderate
Unit 3/21 Meares Place	1 <sup>st</sup> floor balcony/living area	Severe	Minor-moderate
Unit 3/21 Meares Place	2 <sup>nd</sup> floor balcony/bedroom	Moderate	Moderate
Unit 4/21 Meares Place	1 <sup>st</sup> floor balcony/living area	Severe/Devastating	Moderate
Unit 4/21 Meares Place	2 <sup>nd</sup> floor balcony/bedroom	Moderate	Minor
Unit 5/21 Meares Place	1 <sup>st</sup> floor balcony/living area	Minor	Minor
Unit 5/21 Meares Place	2 <sup>nd</sup> floor balcony/bedroom	Minor/Moderate	Minor
Unit 6/21 Meares Place	1 <sup>st</sup> floor balcony/living area	Devastating	Moderate - Severe

\* Rating provided by Dr Lamb based on original proposal.

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



Figure 10 – Photomontage of View from first floor balcony 6/21 Meares Place based on amended design.



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



Figure 12 – Photomontage of View from first floor balcony 4/21 Meares Place based on amended design.

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



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



Figure 12 – 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.

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

*Summary of Visual Effects and Impacts, shows the application of the planning principle in Tenacity to the views from dwellings that have been analysed.*

*The results show that aside from two locations, no residential view loss is rated as being higher than moderate on the qualitative scale for the extent of impact on view sharing that is recommended in Step 3 of Tenacity.*

*Of the 16 private domain locations analysed, 7 views are rated as having minor or no view loss, 2 are rated as minor-moderate view loss, 6 locations are rated as moderate view loss and the most affected view, from Unit 6/21 Meares Place is rated as moderate-severe view loss.*

*The height and bulk of the proposed development is contemplated by the controls and in this context, it would be an unrealistic expectation for single and two-storey dwellings along Minnamurra Street and for the lowest living level at 21 Meares Place to expect to retain all their existing views across this site, which have fortuitously been available for some time. In this regard, some view loss is inevitable in relation to development across a previously undeveloped site.*

*View loss for the lower living level at 21 Meares Place increases in severity from south to north, from minor to moderate-severe.*

*Units 1 and 6/21 Meares Place, which have a single living level, will experience minor and moderate-severe view loss, respectively.*

*The four central units 2-5 have second floors which would generally experience minor to moderate view loss. The second floor levels are occupied by bedrooms, views from which would be given less weight in Step 3 of Tenacity. of View loss considered for the whole building, as recommended by O'Neill C in Arnott, would in our assessment, be moderate.*

*Assessment of view loss from all units in 21 Meares Place assisted in providing a detailed understanding of the effects on view sharing of the amended plans now before Council. We have considered both the reasonableness question for every view place analysed. We consider the proposal to be reasonable as regards view sharing.*

In the intervening period since the View Loss Analysis was undertaken, yet further amendments to the scheme have been undertaken including removal of the lift overrun in Building D.

The amendments reduce the height of the roof by c.300mm and bring it into compliance with the 11m Height Development Standard with a commensurate reduction in the impact on the views of adjoining properties, particularly 21 Meares Street, which is not removed from the photomontages above.

The view loss whilst moderate-severe to some of the unit holders of 21 Meares Place, as a result of the amended design 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.

On this basis, that view loss arising from the amended proposal for the development at 21 Meares Place considered together would be minor, and that while there will be moderate-severe view loss for some first-floor units at 21 Meares Place, more skilful design has been employed by the proponent specifically to ensure reasonable outcomes are achieved with regards to the principles of view sharing.

Notwithstanding the original conclusions by Dr Lamb that design response is considered to be appropriate and reasonable in the circumstances and not devoid of skill, since deferral of the project by the Southern Joint Regional Planning Panel, and negotiations held at the Section 34 Medication Conference, the proponents have further reduced the maximum height of the

development to increase the opportunity for view sharing for adjoining residents by deleting five (5) units.

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 where 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 amended and further amended scheme affords all surrounding properties a reasonable degree of view sharing, and this assessment concludes that the amended proposal to be a significant improvement in mitigating view loss, and therefore acceptable in the circumstance having regard to the guiding planning principles set down by "*Tenacity Consulting v Waringah [2004] NSWLEC 140.*"

#### **8.4. s.4.15 (1)(a)(iia) Any Planning Agreement**

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

#### **8.5. s.4.15 (1)(a)(iv) 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*.

#### **8.6. s.4.15 (1)(b) Likely impacts**

The likely impacts of this development include:

##### **8.6.1. 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.

##### **8.6.2. Traffic, and Public Transport**

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.

### 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.

### Conclusion

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.

### **8.6.3. 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 proposed vehicular access, parking and manoeuvring are summarised below:

#### 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 amended development includes the provision of 55 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 amended 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.

### Conclusion

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.

#### **8.6.4. 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.

#### **8.6.5. 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.

#### **8.6.6. 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.

#### **8.6.7. Views**

The amended proposal will cause some minor 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 amended development is not considered unreasonable and not unexpected given that the primary lot is currently undeveloped.

The original application had ten (10) objections received in relation to view loss, whereas the amended application has received two (2) objections in relation to view loss; neither of which are considered to be well founded due the amendments affording all neighbours a fair degree of view sharing, and a significant improvement on the level visual impact proposed in the original development.

The proposed development generally 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, although it should be noted that the majority of the iconic views, and ridgeline views are maintained for all neighbour that currently obtain a view across the site.

The issue has been discussed above under Chapter 2 of KDCP and is discussed further below in the public submissions section.

#### **8.6.8. 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.

#### **8.6.9. 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.

#### **8.6.10. 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.

## **8.7. s.4.15 (1)(c) Site Suitability**

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

### **8.7.1. Site Contamination**

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 maybe grant 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.

### **8.7.2. 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.

#### **8.7.1. 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.

#### **8.7.1. 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.

#### **8.7.1. Essential Services**

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 EFWF 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.

## **8.8. s.4.15 (1)(d) Any submissions**

The application was exhibited twice.

Notification letters were sent to neighbouring and nearby property owners who were provided with twenty-seven (27) days from 23 November to 19 December 2016 within which to comment on the proposal.

At the conclusion of the first notification period, thirteen (13) submissions were received raising the issues of concern, with the assessment officers comments in response, listed in the table below:

No.	Issue	Comment
Item 1	Loss of visual and acoustic privacy	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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</p>
Item 2	Unacceptable view loss	This aspect of the proposal has been discussed at length under KDCP and found to be acceptable.

No.	Issue	Comment
Item 3	<ul style="list-style-type: none"> <li>▪ Excessive bulk and scale</li> <li>▪ Out of character</li> <li>▪ Poor design outcome</li> <li>▪ Undesirable present</li> </ul>	<p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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.</p> <p>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 present in the locality.</p>
Item 4	Kiama needs 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.
Item 5	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.
Item 6	Development will not respect lot boundaries	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.
Item 7	Excessive traffic generation	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.
Item 8	Inadequate access	The vehicular access and egress from Collins street is considered to be adequate for the development and doesn't pose an unacceptable safety risk.

No.	Issue	Comment
Item 9	Inadequate car parking	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.
Item 10	Excessive accessible car parking spaces	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.
Item 11	Depth of excavation  Disrupt ground water and overland flows	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.
Item 12	Excavation and vibration  Damage adjoining structures and vegetation	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.
Item 13	Excessive noise - operational	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.
Item 14	Excessive noise and vibration - 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.
Item 15	Unacceptable dust impact - construction	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.

No.	Issue	Comment
Item 16	Unsightly Clothes drying on balconies	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.
Item 17	Undergrounding of existing power lines in Collins Street	This is not a valid reason for objection it is a suggestion.
Item 18	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.
Item 19	Devalue property values	No empirical evidence has been presented that supports this contention and it is not a town planning matter that needs to be explored further.

Following the JRPP's deferral of the application on 16 November 2017, the applicant elected to amend the application.

Notification letters for the amended application were sent to those persons that originally made submissions, and neighbouring and nearby property owners who were provided with thirty (30) days from 11 October to 12 November 2018 within which to comment on the proposal. An exhibition notice was placed in the newspaper and on the land.

At the conclusion of the second notification period, four (4) submissions were received raising the issues of concern, with the assessment officers comments in response, listed in the table below:

No.	Issue	Comment
Item 1	Visual impact of lift over-runs on 21 Meares Place	<p>The loss of views associated with the amended development is not considered unreasonable and not unexpected given that the primary lot is currently undeveloped.</p> <p>Removal of the lift overrun in Building D has been proposed in further amendments to reduce the height of the roof by c.300mm and bring it into compliance with the 11m Height Development Standard with a commensurate reduction in the impact on the views of adjoining properties, particularly 21 Meares Street.</p> <p>The original application had ten (10) objections received in relation to view loss, whereas the amended application has received two (2) objections in relation to view loss; neither of which are considered to be well founded due the amendments affording all neighbours a fair degree of view sharing, and a significant improvement on the level visual impact proposed in the original development.</p> <p>The proposed development generally 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.</p> <p>The expectation that the views currently enjoyed by neighbouring properties will be maintained post development is considered unrealistic, although it should be noted the that majority of the iconic views, and ridgeline views are maintained for all neighbour that current obtain a view across the site.</p>
Item 2	Insufficient Visual Analysis for property in Minnamurra Street	<p>The proneness have prepared a computer-generated view from property in Minnamurra Street at drawing 55A which demonstrates the view across the site.</p>
Item 3	Negative impact on heritage terraces and streetscape	<p>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.</p>
Item 4	Excessive construction noise	<p>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.</p>

## 8.9. s.4.15 (1)(e) Public Interest

### 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 Water NSW.

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

### 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.

### Section 7.11 Contributions

Section 94A (Indirect) Contributions applies to all development in the local government area because of the nexus on demand for the provision of public infrastructure and services, and therefore a Section 94A contribution of \$335,000.00 applies to the development, based on 0.5% of the value of development between \$100,000 and \$200,000 or 1% of the value of development over \$200,000, and has been levied by inclusion of a recommended conditions of consent based on Council's Section 94A Plan.

### Conclusion

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.

## 9. 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.

### 9.1. External Referrals

The application was referred to the following State Government Departments.

### 9.1.1. Water NSW

The Department of Primary Industry issued their General Terms of Approval which have been included in the recommendation.

## 9.2. 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.

### 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.

## 10. CONCLUSION

The proposed amended development has been assessed having regard to all relevant matters for consideration prescribed by Section 4.15 of the Environmental Planning and Assessment Act, 1979.

The amended 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 amended 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 amended 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 recommended 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 proposing demolition of existing structures, construction of a mixed use seniors living development comprising fifty-five (55) independent living units, three (3) caretaker apartments, one (1) retail shop of 157m<sup>2</sup> and two (2) levels of basement car parking for seventy-eight (78) vehicles at Lot 202 in DP 1054190 and Lot 1 in DP 473509, 23 Meares Place and 33 Collins Street, Kiama, subject to conditions, subject to conditions at Attachment 1 – Schedule of Conditions.

## ATTACHMENT 1 - Schedule of Conditions

### General terms of other approvals integrated as part of the consent:

- **General Terms of Approval (*Water Management Act, 2000*)**

#### **General**

1. An authorisation shall be obtained for the take of groundwater as part of the activity. Groundwater shall not be pumped or extracted for any purpose other than temporary construction dewatering at the site identified in the development application. The authorisation shall be subject to a currency period of 12 months from the date of issue and will be limited to the volume of groundwater take identified.
2. The design and construction of the building must prevent any take of groundwater after the authorisation has lapsed by making any below-ground levels that may be impacted by any water table fully watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for unforeseen high water table elevations to prevent potential future inundation.
3. Sufficient permanent drainage shall be provided beneath and around the outside of the watertight structure to ensure that natural groundwater flow is not impeded and:
  - (a) any groundwater mounding at the edge of the structure shall be at a level not greater than 10 % above the level to which the water table might naturally rise in the location immediately prior to the construction of the structure; and
  - (b) any elevated water table is more than 1.0 m below the natural ground surface existent at the location immediately prior to the construction of the structure; and
  - (c) where the habitable part of the structure (not being footings or foundations) is founded in bedrock or impermeable natural soil then the requirement to maintain groundwater flows beneath the structure is not applicable.
4. Construction methods and material used in and for construction shall be designed to account for the likely range of salinity and pollutants which may be dissolved in groundwater, and shall not themselves cause pollution of the groundwater.
5. Documentation (referred to as a 'report') comprising measurements, maps, bore logs, calculations, results, discussion and justification for various matters related to the dewatering process must be provided. Information will be required at several stages: prior to construction commencing (initial report - which will accompany the application for the authorisation), at any time when an authorisation renewal is required or a significant change in activities occurs (intermediate report); and at the completion of dewatering and related operations (completion report). Reports need to be submitted in a format consistent with electronic retrieval without editing restrictions; raw data should be presented in Excel spreadsheets without editing restrictions.

#### **Prior to excavation**

6. The following shall be included in the initial report:
  - (a) measurements of groundwater levels beneath the site from a minimum of three relevant monitoring bores, together with details of the bores used in the assessment including bore logs and three-dimensional identification information.
  - (b) a map of the site and its immediate environs depicting the water table (baseline conditions) shown relative to the topography and approved construction footprint from the surface level and below. An assessment of the potential variation in the water table the life of the proposed building together with a discussion of the methodology and information on which this assessment is based.

- (c) details of the present and potential groundwater flow paths and hydraulic gradients in and around the site; the latter in response to the final volumetric emplacement of the construction.
  - (d) a schedule for the ongoing water level monitoring and description of the methodology to be used, from the date of consent until at least two months after the cessation of pumping. [Note that groundwater level measurements should be undertaken on a continuous basis using automatic loggers in monitoring bores.]
7. The Applicant shall assess the likely impacts of the dewatering activities on other groundwater users or structures or public infrastructure; this assessment will include an appropriate bore, spring or groundwater seep census and considerations relevant to potential subsidence or excessive settlement induced in nearby buildings and property, and be documented together with all calculations and information to support the basis of these in the initial report.
  8. Groundwater quality testing of samples taken from outside the footprint of the proposed construction, with the intent of ensuring that as far as possible the natural and contaminant hydrochemistry of the potential dewatered groundwater is understood, shall be conducted on a suitable number of samples and tested by a NATA-certified laboratory. Details of the sampling locations and the protocol used, together with the test results accompanied by laboratory test certificates shall be included in the initial report. An assessment of results must be done by suitably qualified persons with the intent of identifying the presence of any contaminants and comparison of the data against accepted water quality objectives or criteria for the intended dewatering purpose. In the event of adverse quality findings, the Applicant must develop a plan to mitigate the impacts of the hydrochemistry on the dewatered groundwater and present the details of all assessments and plans in the initial report.
  9. Groundwater quality testing generally in accordance with Clause 8, shall be undertaken on any anniversary or other renewal or alteration of any dewatering authorisation.
  10. A reasonable estimate of the total volume of groundwater to be extracted shall be calculated and included in the initial report; together with details and calculation methods for the parameters and supporting information to confirm their development or measurement (e.g. permeability determined by slug-testing, pump-testing or other means).
  11. A copy of a valid consent for the development shall be provided in the initial report.
  12. The method of disposal of pumped water shall be nominated (i.e. reinjection, drainage to the stormwater system or discharge to sewer) and a copy of the written permission from the relevant controlling authority shall be provided in the initial report. The disposal of any contaminated pumped groundwater (sometimes called "tailwater") must comply with the provisions of the *Protection of the Environment Operations Act 1997* and any requirements of the relevant controlling authority.
  13. Contaminated groundwater (i.e. above appropriate NEPM 2013 thresholds) shall not be reinjected into any aquifer. The reinjection system design and treatment methods to remove contaminants shall be nominated and included in the initial report and any subsequent intermediate report as necessary. The quality of any pumped water that is to be reinjected must be demonstrated to be compatible with, or improve, the intrinsic or ambient groundwater in the vicinity of the reinjection site.

#### **During excavation**

14. Engineering measures designed to transfer groundwater around and beneath the basement shall be incorporated into the basement construction to prevent the completed infrastructure from restricting pre-existing groundwater flows.
15. Piping, piling or other structures used in the management of pumped groundwater shall not create a flooding hazard or induce mounding of groundwater. Control of pumped groundwater is to be maintained at all times during dewatering to prevent unregulated off-site discharge.

16. Measurement and monitoring arrangements to the satisfaction of the approval body are to be implemented. Weekly records of the volumes of all groundwater pumped and the quality of any water discharged are to be kept and a completion report provided after dewatering has ceased. Records of groundwater levels are to be kept and a summary showing daily or weekly levels in all monitoring bores provided in the completion report.
17. Pumped groundwater shall not be allowed to discharge off-site (e.g. adjoining roads, stormwater system, sewerage system, etc.) without the controlling authority's approval and/or owner's consent/s. The pH of discharge water shall be managed to be between 6.5 and 8.5. The requirements of any other approval for the discharge of pumped groundwater shall be complied with.
18. Dewatering shall be undertaken in accordance with groundwater-related management plans applicable to the excavation site. The requirements of any management plan (such as acid sulfate soils management plan or remediation action plan) shall not be compromised by the dewatering activity.
19. The location and construction of groundwater extraction works that are decommissioned are to be recorded in the completion report. The method of decommissioning is to be identified in the documentation.
20. Access to groundwater management works used in the activity is to be provided to permit inspection when required by the approval body under appropriate safety procedures.

#### **Following excavation**

21. Following cessation of the dewatering operations, the applicant shall submit the completion report which shall include:
  - (a) detail of the volume of water taken, the precise periods and location of water taken, the details of water level monitoring in all of the relevant bores; and
  - (b) a water table map depicting the aquifer's settled groundwater condition and a comparison to the baseline conditions; and
  - (c) a detailed interpreted hydrogeological report identifying all actual resource and third party impacts, including an assessment of altered groundwater flows and an assessment of any subsidence or excessive settlement induced in nearby buildings and property and infrastructure.
22. The completion report is to be assessed by the approval body prior to any certifying agency's approval for occupation or use of the completed construction.

### **END OF GENERAL TERMS OF APPROVAL**

#### **Conditions of Development Consent:** (including Section 7.11 conditions)

##### **General**

- (1) The development shall be implemented generally in accordance with the details set out on the plan/drawing and supporting documents endorsed by Council as 10.2016.286.1 dated 15/11/2017 except as amended by the following conditions. (g005.doc)
- (2) The proposed future use of the commercial premises shall be the subject of a separate development application unless the use is retail/business. Food and Drink Premises are subject to separate development consent being sought and obtained prior their occupation of the commercial premises. (g010.doc)
- (3) The development shall be completed in accordance with the approved colour schedule shown on the approved Elevations Plans. (g014.doc)

- (5) The development shall not be occupied until such time as all conditions of this Development Consent are met or unless other satisfactory arrangements are made with the Principal Certifying Authority. (g040.doc)
- (6) This approval is in respect of the plans submitted with the development application and as modified by the terms of this consent. If for any reason, including the making of alterations necessary to meet the requirements of another Authority, changes to the approved building design layout are proposed, then the approval of Council shall be obtained prior to commencement of any works on site. (g065.doc)
- (7) Road Occupancy approval, pursuant to Section 138 of the Roads Act 1993 shall be obtained from Council prior to any proposed interruption to pedestrian and/or vehicular traffic within the road reserve caused by the construction of the development.

This shall include, but is not limited to the following activities:

- a erect a structure or carry out work in, on or over a public road;
- b dig up or disturb the surface of a public road;
- c remove or interfere with a structure, work or tree on a public road;
- d pump water into a public road from any land adjoining the road; or
- e connect a road (whether public or private) to a classified road

The following items shall be submitted to Council with the Road Occupancy Application, a minimum of five days before approval is required:

- i. A completed application form;
  - ii. Fees in accordance with Council's adopted fees and charges;
  - iii. A traffic control plan endorsed by a person with Roads & Maritime Services accreditation. The traffic control plan shall satisfy the requirements of the latest versions of Australian Standard AS1742 – Traffic Control Devices for Works on Roads and the RTMS Traffic Control at Worksites Manual. This plan is required to maintain public safety, minimise disruption to pedestrian and vehicular traffic within this locality and to protect services, during demolition, excavation and construction phases of the development;
  - iv. Public liability insurance for an amount of no less than \$20M;
  - v. Where excavation will take place, a security bond in accordance with Council's adopted fees and charges; and
  - vi. Where road and footpath levels will be varied or the surface is altered, plans and specifications to Council's requirements (which will include, but not be limited to, compliance with relevant Australian Standards and the Building Code of Australia).
- (8) A suitably qualified person shall prepare a Construction Environmental Management Plan (CEMP) and shall be provided to the Principal Certifying Authority for their written approval prior to any works commencing on site.

The CEMP shall include, but not be limited to, the following items:

- i. what actions are proposed to ensure safe access to and from the site and what protection will be provided to the road and footpath area from building activities, crossings by heavy equipment, plant and materials delivery and static load from cranes, concrete pumps and the like,

- ii. the location of the storage of building materials, stockpiles, hording, equipment, machinery, site office etc, within the development site area,
- iii. the method and location points of loading and unloading excavation machines, building materials and formwork within the development site area,
- iv. the proposed areas within the site to be used for the storage of excavated material, construction materials and waste containers during the construction period, and
- v. the proposed method of support to any excavation adjacent to adjoining buildings or the road reserve. The proposed method of support is to be certified by an accredited certifier in Civil Engineering;
- vi. timing and duration of works;
- vii. location of work sites offices, compounds, stockpiles and refuelling areas;
- viii. location of environmentally sensitive areas;
- ix. description of the impacts associated with the construction activities and control measures;
- x. legislative requirements;
- xi. on-site staff structure and responsibility;
- xii. staff training, awareness and competency requirements;
- xiii. emergency planning and response;
- xiv. auditing and monitoring; and
- xv. the following supplementary plans:
  - a) Soil and Water Management Plan;
  - b) Contaminated Land Management Plan;
  - c) Acid Sulfate Soil Management Plan;
  - d) Noise and Vibration Management Plan;
  - e) Air Quality (Dust Control) Management Plan;
  - f) Waste Management Plan; and
  - g) Traffic Management Plan

The developer shall ensure that all construction work associated with the development is carried out in accordance with the approved Construction Environmental Management Plan (CEMP) and any variations are approved by the Principal Certifying Authority. A copy of the approved CEMP (and any variations) shall be forwarded to Council and a copy shall be kept on site at all times.

- (9) Lot 202 in Deposited Plan 1054190 and 1 in Deposited Plan 743509 shall be consolidated into one lot prior to the issue of any Construction Certificate.
- (10) The development shall be undertaken in strict accordance with the recommendations of the following reports:
  - a) Traffic Impact Assessment Report prepared by BITZIOS Consulting, dated 2 August 2018, Project No: P2544, Version No: 005
  - b) Arborist Impact Report prepared by Sydney Landscape Consultants, dated 20/7/18
  - c) Geotechnical Reports prepared by Douglas Partners, dated August 2018, Project 38145.04
  - d) CPTED Report prepared by Kennedy Associates Architects, dated July 2018
  - e) BCA Compliance Statement prepared by CERTIS Pty Ltd, dated 16 August 2018,
  - f) Access Review Report prepared by Morris Goding Access , dated 13 August 2018

- g) Operational Waste Management Plan prepared by WasteAudit and Consultancy Services, dated July 2018
  - h) Noise Impact Assessment Report prepared by TTM Consulting Pty Ltd, dated 08/08/2018, Ref: 165YA0026 R01\_4 Acoustic Report
- (11) A validation report incorporating a certificate of completion must be produced in accordance with the requirements of clause 17 & 18 of State Environmental Planning Policy No. 55. The certificate/report confirming that all decontamination and remediation works have been carried out in accordance with the remediation plan must be submitted to the Principal Certifying Authority within 30 days following completion of the works.
- (12) For the ongoing life of the development, the building must only be occupied and provide accommodation for:
- a) seniors or people who have a disability
  - b) people who live within the same household with seniors or people who have a disability
  - c) staff employed to assist in the administration of and provision of services to housing provided under *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.
- The definition of seniors and people who have a disability must be in accordance with clause 3 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.
- (13) The units and caretaker's accommodation are not to be used for short term holiday letting without separate development consent.
- (14) In accordance with the environmental maintenance objectives of 'Crime Prevention Through Environmental Design', the owner/lessee of the building shall be responsible for the removal of any graffiti which appears on the buildings, fences, signs and other surfaces of the property within 48 hours of its application.
- (15) The applicant shall prepare and permanently affix a way finding map at the building's two entry points for use by visitors and emergency services personnel.
- (16) A Demolition & Construction Waste Management Plan is required to be prepared and submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.
- (17) This consent does not include any subdivision of the proposal.
- (18) No work (including demolition) is to take place until a Construction Certificate has been issued for the development and the relevant conditions of development consent are satisfied and complied with.
- (19) The development shall not be occupied until such time as all conditions of this Development Consent are met.
- (20) The developer at their own cost shall carry out any necessary amplification or upgrading of the downstream drainage system, including the negotiation and dedication of appropriate easements, to ensure that the treatment standards of this development consent are complied with.
- (21) The cost of relocation or adjusting of levels of any public utilities shall be borne by the developer.
- (22) Any substation installed to service the proposal shall not be located within the road reserve and shall be screened from the public domain.
- (21) All electricity, telecommunications and natural gas services shall be located underground. Common or shared trenching and the document "*A Model Agreement for Local Councils*

*and Utility/Service Providers”* prepared by the NSW Streets Opening Conference are policies adopted for the Kiama Municipal Council Local Government Area.

- (22) Car wash bays shall be connected to the Sydney Water Corporation's sewer and be subject to a licensed trade waste agreement with the Corporation.
- (23) Furniture and white good pickups and deliveries for the residential apartments shall be undertaken from the commercial delivery area located within the site and not from any public road. Tenants shall be informed of this requirement in their leasing agreements.

### **Amendments to Approved Plans and Documents**

- (1) Prior to the issue of any Construction Certificate for this consent by any Principal Certifying Authority the approved plans are to be amended to ensure that:
  - i. The lift overrun for Building D is not to be constructed, contrary to the details shown on the:
    - Approved plan No. 1821 - DA25C Section A
    - Approved plan No. 1821 - DA27C Section H
    - Approved plan No. 1821 - DA27C Section G
  - ii. The landscaping, retaining walls, ramps and pathways shown on No. 20 and 21 Meares Place have no owners consent and are not approved to be constructed, contrary to the details shown on the:
    - Approved plans No. 1821 - DA08C, DA10C, DA12C, DA13D, DA18D, DA19D, DA20D, DA21D.
  - iii. The façade treatment details of Building E at the Collins Street frontage are approved be constructed in accordance with the details as shown on the:
    - Approved plan No. 1821 – DA03E.

The façade treatment details of Building E at the Collins Street frontage shown on Approved plan No. 1821 – DA51C are not be constructed.
  - iv. Sheet metal fencing along the side and rear boundaries of the site does not extend forward of the front building line.
  - v. Gates returning into the buildings from a side or rear boundary that are visible from Meares Place or Collins must not be constructed of sheet metal.
  - vi. Any fencing or gates forward of the building line or facing the street front must be not more than 1.2 metres high, constructed of powder coated aluminium battens, or, or timber pickets, or palisade style.
  - vii. The privacy screen that affects the north east facing living room window to units 20, 36, 47,48, 53, 54 and 55 shall be a fixed louvre style screen to minimise the privacy impact.

Plans satisfying the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate for this consent, and are to be installed/constructed and must have a compliance certificate issued for completion of the works required by this condition prior to the issue of any Occupation Certificate.

- (2) A mini-bus service is to be provided, and operated by the site managers to take residents once a day Monday to Friday on a loop encompassing all of the required shops and services for the life of the development to satisfy the access to service requirements of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 Clause 26(1) to ensure residents of the development have access to:

- (a) shops, bank service providers and other retail and commercial services that residents may reasonably require, and
  - (b) community services and recreation facilities, and
  - (c) the practice of a general medical practitioner.
- (3) Close Circuit Television is to be installed, and relayed to each of the care takers residences and each unit in the development, designed to monitor the:
- Entry to Building C from Meares Place
  - Entry to Building E from Colling Street
  - Entry to Building D
- (4) Lighting – appropriate lighting, to the applicable Australian Standard, shall be designed and installed throughout the proposed development, including communal areas, external pathways through the development and the car park.
- (5) Access Control - All pedestrian entries including the entry to Building E from Collins Street, Building C from Meares Place, and Building D, must have require key / swipe card access, and have an intercom relay to each apartment in the development to control access to the development by visitors.
- (6) Boom gates are to be installed within the carpark to control access between service areas, commercial car park areas and residential car park areas.
- (7) A security intercom system must be installed in each apartment.

### Bonds and Contributions

- (1) A contribution pursuant to Section 94A of the Environmental Planning and Assessment Act 1979 (as amended) and Kiama Council's Section 94A (Indirect Contributions) Plan shall be paid to Council prior to the issuing of any Occupation Certificate. The total contribution required for the development is **\$335,000.00**.

The amount of the contribution shown on the development consent will be indexed to the time of payment in the following manner:

$$\text{Contribution (at time of payment)} = \frac{C \times \text{CPI}_P}{\text{CPI}_C}$$

Where:

C= The original contribution amount as shown in the development consent.

CPI<sub>P</sub> = The *Consumer Price Index: All Groups Index for Sydney* as published by the Australian Bureau of Statistics and which applied at the time of payment.

CPI<sub>C</sub> = The *Consumer Price Index: All Groups Index for Sydney* as published by the Australian Bureau of Statistics and which applied at the time of issue of the development consent. (bo007.doc)

### Prior to Commencement of Works

- (1) Building work must not commence until the Principal Certifying Authority for the development to which the work relates has been informed of:
- i The licensee's name and contractor licence number;
  - ii That the licensee has complied with Part 6 of the Home Building Act 1989.

In the case of work to be done by any other person, the Principal Certifying Authority:

- a Has been informed in writing of the person's name and owner builder permit number;
- or
- b Has been given a declaration, signed by the owner/s of the land, that states that the reasonable market cost of the labour and materials involved in the work is less than the amount prescribed for the purposes of the definition of owner-builder work in Section 29 of the Home Building Act 1989. (pt005.doc)

- (2) The developer shall lodge with Council a bond of **\$100,000.00**, in the form of an unconditional bank guarantee or cash, prior to the commencement of any work, as a security for new and remedial work associated with the development proposal and covering all work within the public roads administered by Council under the Roads Act 1993 and compliance with the submitted Waste Management Plan during the course of construction.

The developer shall submit a dilapidation survey prior to commencement of any work within the road reserve.

The bond shall be refunded in full subject to the following:-

- a. There being no damage to the infrastructure within the road reserve.
  - b. There being no damage to the works undertaken in the road reserve, as a result of poor workmanship and/or inferior materials being used, and if so, rectification works are undertaken in accordance with the requirements of Council;
  - c. Twelve (12) months has elapsed from the date of issue of the occupation certificate and/or subdivision certificate.
  - d. The submission and approval by Council of a waste compliance certificate, inclusive of supporting documentation (dockets/receipts) verifying compliance with the Waste Management Plan as provided to Council. (pt013.doc)
- (3) The applicant must provide, to Council, the appropriate fee for the inspections required for the construction of the footpath crossing/access driveway in accordance with Council's adopted fees and charges. This inspection fee must be paid prior to the commencement of works within the road reserve area.

Work undertaken within the road reserve may only be undertaken by a Council approved contractor. A list of approved contractors may be obtained from Council's Engineering and Works Department. (pt016.doc)

- (4) Under the provisions of the Act, work may not commence on the development until the following is carried out:
- a Detailed plans and specifications of the building must be endorsed with a Construction Certificate by Council or an Accredited Certifier; and
  - b You **must** appoint a Principal Certifying Authority (can be either Council or an Accredited Certifier); and
  - c You **must** notify the Council of the appointment; and
  - d You **must** give at least two (2) days notice to Council of your intention to commence work.

You will find attached an application form for a Construction Certificate. Should you require Council to issue this Certificate you should complete this application and forward it, together with plans and specifications, to Council for approval.

You will find attached a form for the “*Notice of Commencement of Building Work and Appointment of Principal Certifying Authority*”, which you are required to submit to Council at the appropriate time and at least two (2) days prior to the commencement of work.

Should you appoint Council as the Principal Certifying Authority, relevant inspection fees will be required to be paid at the time of lodgement of this form. (pt020.doc)

- (5) The BASIX commitments shall be indicated on the plans to the satisfaction of Council or an Accredited Certifier prior to the release of the Construction Certificate. (pt034.doc)
- (6) The developer shall submit to the Principal Certifying Authority written consent from affected property owners prior to any work being undertaken on adjoining land. (pt050.doc)
- (7) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a Showing the name, address and telephone number of the Principal Certifying Authority for the work;
  - b Showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours; and
  - c Stating that unauthorised entry to the work site is prohibited.

**Note:** Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed. The sign will be provided by the nominated Principal Certifying Authority for the relevant fee. (pt060.doc)

- (8) No building work is to commence until details prepared by a practising structural engineer have been submitted to and accepted by the Principal Certifying Authority for any reinforced concrete slabs, footings or structural steel. (pt062.doc)
- (9) The applicant shall submit engineer’s details of the foundation based on geotechnical advice prepared by a suitably qualified geotechnical engineer. Such detail/advice is to be provided prior to the issue of a Construction Certificate. (pt070.doc)
- (10) A detailed dilapidation report prepared by a suitably qualified structural engineer for all structures located on adjoining lands of the proposed development site supported with suitable photographic records shall be submitted to the accredited certifying authority prior to the commencement of work.
- (11) Prior to the issue of a Construction Certificate the following is to be submitted to Council.
  - i. Written certification, from the architect for the development that the final construction plans for the basement car parking area that contains the garbage storage room, onsite collection areas has been designed to have:
    - sufficient height clearance (including clearance from service pipes or conduits) from the floor slab above to enable the waste collection vehicle to enter and leave the sites and service the bins.
    - sufficient size and space located to the left of the proposed truck turn table to allow the placement of garbage, recycling and organics bins to be collected without being obstructed by vehicles, pedestrians and other obstructions.
  - ii. Structural Engineering details and certification, that: the internal access ramp and floor slabs have been structurally designed as a minimum to take the loads associated with a fully loaded 22 cubic metre garbage collection vehicle and any other larger waste collection or delivery vehicles that may use this area.

- the truck turntable is to be structurally designed and of a sufficient size to take the loads associated with a fully loaded 22 cubic metre garbage collection or larger waste collection vehicle.
- iii. Design plans, specifications and certification that the garbage, recycling bin storage rooms (for the resident and commercial components of the development) and the on-site collection bin collection points have been designed to comply with development standards as specified in Chapter 11 – Kiama Development Control Plan 2012 – Waste Requirements *Section 5 Garbage, Recycling Bin Storage Rooms Point (Design Controls C1, and C8)* and *Section 8 On-site Bin Collection Point (Design Controls C7, and C8)* and *Section 15 Development with Two or More Land Uses (Design Control C30)*.
  - iv. Written certification from Kiama Waste and Recycling Services Contractor certifying that the final design plans and development site has been inspected and that a Waste Services Deed of Agreement will be entered into for onsite access for provision and collection of garbage, recycling, garden waste and or food waste bins that meet Council's specifications.
  - v. Design plans, specifications and certification and certification that sufficient space has been provided and nominated within the kitchen (or an alternate location) in each unit for the interim storage of bins or containers as supplied for source separated garbage, recyclables and food organics as specified in *Chapter 11 – Kiama Development Control Plan 2012 – Waste Requirements Section 6 Internal Bins/Containers (Source Separation) (Design Controls C2, and C3)*.
  - vi. A geotechnical assessment report including soil sampling, testing and analysis results undertaken in accordance with the NSW EPA Waste Classification Guidelines 2014 for all excavated material that will be transported from the development site. The report shall include soil waste classification certificates for the different types of soils or wastes identified on site. Details all lawful disposal sites for each classification of soil shall also be provided. Reference should be made to NSW EPA Waste Classification Guidelines (chemical assessment and testing requirement) Protection of Environment Operations Act 1997 <http://www.epa.nsw.gov.au/your-environment/waste/classifying-waste>.
- (13) Prior to the issue of a Construction Certificate, a lighting strategy is to be developed and submitted to the Principal Certifying Authority. The strategy must be developed to enhance a safe environment and encourage passive surveillance. In this regard, the following objectives must be addressed within the strategy:
- a. lighting of all entrances/exits of buildings, car parks, access routes and pathways to encourage safety and passive surveillance
  - b. lighting type and distribution to be provided throughout the site to eliminate any dark shadows and concealment areas particularly in the car park and stairwells, and
  - c. access control to and from the buildings as well as individual self contained dwellings.

All external and internal lighting for internal roads, parking and service areas shall be provided in accordance with the Australian Standard 1158. At no time shall the lighting exceed the limits of the Australian Standard 4282-1997 Control of the Obtrusive effects of outdoor lighting.

- (14) The development must satisfy the development standards for residential care facilities in accordance with Part 4 Division 2 of State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004.

In this regards, an Access Report prepared by suitably qualified and experienced person in the application of the Premises Standards must be submitted to and approved by the Principal Certifying Authority prior to the release of the Construction Certificate. The report must include recommendations how the entire development is to comply with Part D3 of the Building Code of Australia and AS 1428. Compliance with such works must be incorporated within the Construction Certificate plans.

- (15) An Energy Efficiency Report prepared by a suitably qualified and experienced person/architect in Energy Efficiency must be submitted to the Principal Certifying Authority prior to issue of a Construction Certificate. The Energy Efficiency Report must verify that the building has been designed in accordance with Section J (Energy Efficiency) of the Building Code of Australia.

Prior to the issue of the Construction Certificate, details must be provided to the Certifying Authority demonstrating how this will be complied with.

- (16) The wall separating each sole-occupancy unit must be constructed of material that achieves a weighted sound reduction index in accordance with Part F5 of the Building Code of Australia.

The floor separating each sole-occupancy unit must be constructed of material that achieves a weighted sound reduction index in accordance with Part F5 of the Building Code of Australia.

Prior to the issue of the Construction Certificate, details must be provided to the Certifying Authority demonstrating how this will be complied with.

- (17) Prior to Council or an accredited certifier issuing a construction certificate, the applicant shall obtain a letter from both the relevant electricity authority and the relevant telecommunications authority stating that satisfactory arrangements have been made to service the proposed development.

Note: The applicant should also contact the relevant water servicing authority to determine whether the development will affect the authorities water or sewer infrastructure.

- (18) Prior to Council or an accredited certifier issuing a construction certificate, the applicant shall prepare and obtain approval from an accredited person, a Traffic Control Plan (TCP) in accordance with the State Roads Authority manual "Traffic Control at Work Sites" and Australian Standard AS 1742.3 (as amended). A copy of the approved TCP shall be kept on site for the duration of the works in accordance with Work Cover Authority requirements. A copy shall be submitted to Council for its records.

- (19) A construction certificate shall not be issued for the subject building until the qualified designer who prepared the 'Design Verification Statement' submitted with the development application, prepares a separate written 'Architectural Finishes Validation Statement'.

The 'Architectural Finishes Validation Statement' shall confirm that the plans relied upon for issue of the construction certificate are not inconsistent with the approved plans described in Conditions 1 and 2 with specific regard to the architectural design elements, colours, finishes and treatments that are provided to the building's exterior.

Where circumstances require, another qualified designer may prepare the written confirmation, subject to receipt of written approval for such a change from Council's Director Planning and Environment.

- (20) Prior to Council or an accredited certifier issuing a construction certificate, the applicant shall submit a copy of the plan which consolidates the allotments that are the subject of the development application prior to registration at the Department of Land and Property Information (NSW).

- (21) Prior to Council or an accredited certifier issuing a construction certificate, the applicant shall demonstrate compliance with Clause 41 standards for self-contained dwellings contained in Schedule 3 of *State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004*.
- (22) Prior to the commencement of earthworks, the applicant shall undertake an intrusive site investigation and a remediation action plan (if required) to the satisfaction of the accredited certifying authority prior to the commencement of earth works on the site.
- (23) Prior to Council or an accredited certifier issuing a Construction Certificate, the applicant shall provide details of additional measures to increase privacy between unit 313 and the adjoining property unit 6, 21 Meares Place. These additional privacy measures should include landscaped treatments and privacy screens to the balcony area of unit 313. Alternatively change the layout of unit 313 by moving the balcony from the north western side to the north eastern of the unit and provide privacy screens to the north western side.
- (24) Lot 202 in Deposited Plan 1054190 and 1 in Deposited Plan 743509 shall be consolidated into one lot prior to the issue of any Construction Certificate.
- (25) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall obtain confirmation from a qualified civil engineer that the following requirements have been met:
- a. Car parking spaces, parking aisles, blind aisles, access driveways, circulation roadways and ramps comply with the requirements of the following Australian Standards :
    - i. AS 2890.1 - 2004 Off-street car parking;
    - ii. AS 2890.2 - 2002 Off-street commercial vehicle facilities;
    - iii. AS2890.3 - 2015 Bicycle Parking; and
    - iv. AS 2890.6 - 2009 Off-street parking for people with disabilities.
  - b. The car parking area shall be line marked and signposted in compliance with the requirements of the Australian Standards AS 1742.2, AS 1743, AS 1744, AS1906.1, AS 1906.2, AS 1906.3 and AS 4049.1.
  - c. Access and manoeuvring into the proposed delivery areas for all commercial vehicles shall comply with Australian Standard AS 2890.2 - 2002 Off-street commercial vehicle facilities.
- (26) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall ensure that the approved plans include a detailed stormwater drainage network designed in accordance with the requirements of "Section D5 Stormwater Drainage" of Kiama Development Code as appended to Kiama Development Control Plan 2012.
- (27) Prior to the issue of any Construction Certificate, the Certifying Authority shall ensure that the approved stormwater plans provide for an on-site detention storage for stormwater runoff in conjunction with the proposed development drainage network. The on-site detention system shall be designed to ensure that post development flow rates from the site are no greater than pre-developed site runoff at each discharge point for all rainfall events up to 1% Annual Exceedance Probability. The applicant shall provide full hydrological and hydraulic computer modelling of the stormwater drainage system to the Certifying Authority for approval prior to the issue of any Construction Certificate.
- (28) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall ensure that the approved stormwater plans comply with the design requirements of the "Kiama Municipal Council Water Sensitive Urban Design Policy".

- (29) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall ensure that the approved stormwater plans provide for overflow paths to allow for flows of water in excess of the capacity of the pipe drainage system draining the land, as well as from any detention storage on the land. Blocked pipe situations with 1 in 100 year ARI events must be incorporated in the design. Overflow paths must also be provided in low points and depressions.
- (30) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall ensure that the design of the development causes no adverse effects to adjoining properties as a result of stormwater run-off.
- (31) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall ensure that allowance is made for surface run-off from adjoining properties. Any redirection or treatment of that run-off must not adversely affect any other adjoining properties.
- (32) Prior to the issue of any Construction Certificate, the accredited Certifying Authority shall ensure that the stormwater drainage design has been issued with written endorsement from a qualified civil engineer which confirms that the constructed stormwater drainage system and water quality system meets with all stormwater requirements conditioned within this consent.
- (33) Before the commencement of any stripping or demolition, all parts of the site shall be examined, by competent specialists, to determine as far as it is practicable, the presence of noxious, toxic or explosive materials or conditions, which would be hazardous to the health of the public if disturbed by stripping or demolition.
- (34) Prior to commencement of work the developer shall provide hoarding around the site where it adjoins a public road and man-proof fencing around the remainder of the site.

## **Demolition Works**

- (1) Throughout the demolition operations, adequate safety shall be maintained in public places adjoining the site. Safety of the public shall be maintained by providing street closures, hoardings, scaffolding and other types of overhead protection, either singularly or in combination, in accordance with the requirements of Council and AS 2601. (dw005.doc)
- (2) Security fencing shall be provided around the perimeter of the demolition site and any additional precautionary measures taken, as may be necessary to prevent unauthorised entry to the site at all times during the demolition period. (dw010.doc)
- (3) **Asbestos – Statement Required**

No later than seven days prior to the demolition of any building or structure, a written statement must be provided to Council indicating whether the building or structure contains asbestos or material containing asbestos and, if so, the following must also be provided:

- a A hazardous substances audit report prepared by a competent and appropriately qualified person in compliance with AS2601-1991; and
- b A hazardous substances management plan prepared by a competent and appropriately qualified person in compliance with AS2601-1991.

### Asbestos – Licensed Contractors

Demolition works involving the removal and disposal of asbestos cement must only be undertaken by contractors who hold a current WorkCover Demolition Licence or a current WorkCover Class 2 (Restricted) Asbestos Licence.

### Asbestos – Notification of Neighbours

Fourteen days prior to the commencement of any demolition works involving asbestos, all immediate neighbours should be notified in writing of the intention to carry out asbestos demolition works. Copies of these written notifications should be retained and provided to Council.

#### Asbestos – Tip receipts

Documentary evidence in the form of tip receipts from an approved Waste Management Facility shall be obtained demonstrating the appropriate disposal of the asbestos waste. Tip receipts shall be provided to Council prior to any further building works being undertaken on the site.

#### Asbestos – Clearance Certificate

Following the removal of all friable asbestos and prior to further works being carried out on the site, a clearance certificate from an independent competent person in accordance with the National Occupational Health and Safety Commission Code of Practice for the Safe Removal of Asbestos is to be obtained and submitted to Council.

#### Asbestos – Less than 10m<sup>2</sup> of Bonded Asbestos Sheeting

Demolition works involving the removal of less than 10m<sup>2</sup> of bonded asbestos sheeting may be carried out by a licensed builder who has completed an appropriate bonded asbestos removal course.

#### Completion of demolition works

Council will monitor and review the demolition of the structure to ensure all conditions of consent application to the removal of asbestos has been satisfied. (dw015.doc)

- (4) Safe access to and egress from adjoining buildings shall be maintained at all times for the duration of the demolition work. (dw020.doc)
- (5) The techniques adopted for stripping out and for demolition shall minimise the release of dust into the atmosphere. (dw030.doc)
- (6) Removal of dangerous or hazardous materials shall be carried out in accordance with the provisions of all applicable legislation and with any relevant recommendations published by the WorkCover Authority. (dw040.doc)
- (7) Removal of asbestos, or of materials containing asbestos fibres, shall be in accordance with the WorkCover Authority code of practice. Disposal of asbestos materials shall be at premises certified to receive asbestos. (dw045.doc)
- (8) Where the demolition site adjoins a public thoroughfare, the common boundary between them shall be fenced for its full length with a hoarding unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding shall be constructed of solid materials to a height of not less than 2.4 metres above the level of the thoroughfare at its junction with the hoarding.

Notices lettered in accordance with AS 1319 and displaying the words “DANGER! DEMOLITION IN PROGRESS”, or a similar message, shall be fixed to the fencing at appropriate places to warn the public. (dw050.doc)

## **Civil Engineering Design**

- (1) The developer shall submit details of all civil engineering works on engineering drawings to the Certifying Authority for approval prior to the issue of the construction certificate.

The drawings shall include, but shall not be limited to, the following detailed information:

- a The hydrologic modelling and hydraulic treatment detail including detailed calculations, drainage network layout, environmental controls (including the post-development first flush mechanism, water quality and sedimentation controls), all stormwater drainage structures and, where required, the proposed method of accessing the existing public stormwater drainage system. All drainage calculations are to be carried out in accordance with *Australian Rainfall and Runoff* published by Engineers Australia, and are to include a contoured catchment diagram and delineation of flow paths for storms of 1% Average Exceedance Probability (AEP);
- b Plan, longitudinal and cross sectional detail shall be provided for the proposed circulation roadway, circulation aisle, ramps, car parking aisles and car parking modules;
- c The proposed pavement treatment to the proposed circulation roadway, circulation aisle, ramps, car parking aisles and car parking modules. The minimum surface treatment shall be cement concrete;
- d The location and reduced level of all services under the control of public utilities or agencies;

All reduced levels shall relate to Australian Height Datum (AHD). (ced030.doc)

### Access Construction

- (1) The developer shall construct the footpath access driveway in compliance with the Standards Australia publication AS/NZS 2890.1 Parking Facilities Part 1: Off Street Car Parking and Council's *"Driveway and Footpath Works Procedure Manual"*. (ac001.doc)
- (2) The developer shall restore any redundant vehicle crossing to barrier kerb in compliance with Council's *"Driveway and Footpath Works Procedure Manual"*. (ac010.doc)

### Car Parking and Vehicular Access

- (1) Car parking shall be provided for seventy-eight (78) vehicles in conjunction with the proposed development as indicated on the approved plans shall be available for car parking at all times. Of this number fifty-five (55) car parking spaces shall be reserved at all times for the exclusive use of residents and fifteen (15) as resident visitor parking only, three (3) for manger/caretaker and five (5) for the commercial/retail tenancy. Vehicle car parking spaces provided for the development cannot be sold off to third parties that are not part of the development. (c015.doc)
- (2) The car parking and manoeuvring area shall be line marked and signposted in compliance with the requirements of the Australian Standards AS 1742.2, AS 1743, AS 1744, AS/NZS 1906.1, AS 1906.2, AS 1906.3 and AS 4049.1. (c025.doc)
- (3) Car parking and manoeuvring shall comply with the requirements of the Standards Australia publication AS/NZS 2890.1 Parking Facilities Part 1: Off Street Car Parking. (c035.doc)
- (4) All vehicles being loaded and/or unloaded shall stand within the curtilage of the development site. (c085.doc)
- (5) The visitor car parking spaces must be suitably signposted and always be available for visitor parking. These spaces must not at any time be allocated, sold or leased to an individual owner/occupier.

### Utility Servicing

- (1) A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The Section 73 Certificate shall be submitted to Principal Certifying Authority prior to issue of the Final Occupation Certificate. (us005.doc)

- (2) The wash bay shall be connected to the Sydney Water Corporation's sewer and be subject to a licensed trade waste agreement with the Corporation. (us020.doc)
- (3) All electricity, telecommunications and natural gas services shall be located underground. Common or shared trenching and the document "*A Model Agreement for Local Councils and Utility/Service Providers*" prepared by the NSW Streets Opening Conference are policies adopted for the Kiama Municipal Council Local Government Area. (us035.doc)
- (4) The developer shall bear the cost of relocation of any service utilities required in the provision of vehicular access. (us045.doc)

### Geotechnical Requirements

- (1) There shall be no loss of support or encroachment of fill onto adjoining properties as a result of excavation or filling within the site. (gr050.doc)
- (2) All earthworks associated with the development shall be completed in accordance with AS 3798-2007 Guidelines on Earthworks for Commercial and Residential Developments. (gr075.doc)

### Inspections

- (1) The building work shall be inspected at critical and other stages as required by the Principal Certifying Authority for the development.

**NOTE:** Should you choose Council to be your Principal Certifying Authority for this development you will be advised of the required building inspections and applicable fees at the time of that appointment. (bu015.doc)

### Building Construction

- (1) All building work must be carried out in accordance with the requirements of the Building Code of Australia. (bu010.doc)
- (2) The roadway, footpath or Council reserve shall not be used to store building material without the prior approval of Council. (bu086.doc)
- (3) All excavations and backfilling must be executed safely in accordance with appropriate professional standards. (bu090.doc)
- (4) All excavations must be properly guarded and protected to prevent them from being dangerous to life or property. (bu095.doc)
- (5) If an excavation extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made must:
  - a Preserve and protect the building from damage;
  - b Underpin and support the building in an approved manner, if necessary, and;
  - c At least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars to the owner of the proposed work. (bu100.doc)
- (6) The Reduced Levels (RL) of the proposed development must be in accordance with the approved plans. Certification of these levels by a registered surveyor must be submitted to an accredited certifier or Council prior to proceeding past that level. (bu120.doc)
- (7) A survey shall be undertaken and a copy be made available to Council or an accredited certifier, certifying that the building is correctly located in relation to the boundaries of the

site and in accordance with the approved plans. Such survey shall be submitted at peg out stage. (bu125.doc)

- (8) Construction and demolition work, delivery of materials and plant, etc shall only take place between the following hours;

Monday to Friday        - 7.00 am to 6.00 pm  
Saturdays                - 8.00 am to 1.00 pm

No construction work is to take place on Sundays or Public Holidays. (bu151.doc)

- (9) The Waste Management Plan shall be strictly adhered to at all stages during the demolition, construction and/or subdivision work. All waste nominated for disposal must be disposed of at a licensed landfill facility. All waste nominated for recycling must be reused or recycled. (bu153.doc)

- (10) All excavations and backfilling associated with the approved works must be executed safely and in accordance with appropriate professional standards. All excavations must be properly guarded and protected to prevent them from being dangerous to life or property.

If an excavation associated with the approved works extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- a. must preserve and protect the building from damage, and
- b. if necessary, must underpin and support the building in an approved manner, and
- c. must, at least seven days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.

The owner of the adjoining allotment of land is not liable for any part of the cost of work carried out, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

- (11) Prior to the positioning of wall panels/ bricks or block work, the applicant shall submit to the principal certifying authority a qualified practicing surveyor's certificate showing the boundaries of the allotment, distances of walls and footings from the boundaries, and the dimensions of the building.
- (12) Prior to the placement of any concrete of the basement/ground floor slab, the applicant shall submit to the principal certifying authority a qualified practicing surveyor's certificate showing that the formwork levels are in accordance with the approved plan.
- (13) Upon completion of the building, the applicant shall submit to the Principal Certifying Authority a qualified practicing surveyor's certificate showing the boundaries of the allotment, distances of walls and footings from boundaries.

### **Soil and Water Management**

- (1) All practical measures must be taken to ensure erosion and subsequent sediment movement off-site does not occur. In particular:
- a A silt fence or equivalent must be provided downhill from the cut and fill area (or any other disturbed area). Such fence must be regularly inspected and cleaned out and/or repaired as is necessary, and all collected silt must be disposed of in accordance with Council's Sedimentation Control Policy.
  - b Unnecessary disturbance of the site (eg; excessive vehicular access) must not occur.

- c All cuts and fills must be stabilised or revegetated as soon as possible after the completion of site earthworks.
- d All the above requirements must be in place for the duration of the construction works. (esc005.doc)

- (2) The developer shall submit to the Certifying Authority for approval prior to the issue of the construction certificate, a detailed Soil and Water Management Plan (SWMP) designed in accordance with the requirements of *Managing Urban Stormwater: Soils and Construction Volume 1* (Landcom 2004) and *Managing Urban Stormwater: Soils and Construction Volume 2* (Department of Environment and Climate Change 2007).

All works on the site must be in accordance with the approved SWMP for the full duration of construction works and must provide an overall site detail. For staged development a SWMP shall be provided for each stage of the development. (esc010.doc)

- (3) The developer shall ensure that sediment-laden runoff from the site is controlled at all times subsequent to commencement of construction works. Sediment control measures must be maintained at all times and checked for adequacy at the conclusion of each day's work. (esc020.doc)
- (4) The construction site supervisor shall ensure at all times that:
  - Any material deposited on public roads resulting from the works is removed immediately;
  - The emission of dust from the site is controlled with adequate watering equipment being kept on the site at all times for this purpose; and
  - A shaker pad and a wash down area are installed at the exit point of the site to prevent material leaving the site on the wheels of vehicles, other plant and equipment.
  - The items in the approved soil and water management plan are installed and maintained.

### Landscaping Works

- (1) A detailed landscape plan shall be approved by Council prior to release of the Construction Certificate. The plan shall be prepared in accordance with Chapter 8 of Kiama Development Control Plan 2012 and shall be consistent with the landscape concept plan. (lw010.doc)
- (2) All landscape areas shown on the approved landscape plans or otherwise required under the conditions of this consent, shall be landscaped and maintained in accordance with the approved plans and conditions. (lw015.doc)
- (3) The landscaping shall be maintained actively and regularly for a period of 26 weeks commencing from the date of issue of the Occupation Certificate. (lw020.doc)
- (4) At the end of the 26 week landscape maintenance period and after any defects that occurred during that period have been corrected, a final Compliance Certificate shall be provided from a suitably qualified landscape professional stating that all landscape works have been completed and maintained in accordance with the approved landscape plans and the conditions of this development consent. (lw035.doc)
- (5) The landscape works shall remain in situ for the perpetuity of the development. (lw040.doc)
- (6) Prior to release of the Occupation Certificate the developer shall provide a Compliance Certificate from a suitably qualified landscape professional or Council's Landscape Officer stating that all landscape works have been completed in accordance with the approved landscape plans and the conditions of the development consent. (lw170.doc)

- (7) Prior to release of the Construction Certificate all landscape works shall be completed in accordance with the Approved Landscape Plans and the Conditions of the Development Consent and approved by Council. (lw175.doc)

### **Vegetation Management and Tree Protection**

- (1) No tree(s) shall have backfill placed around its base or have the original ground level altered. (vm010.doc)

#### Prior to commencement of work

- (2) A Project Arborist shall be appointed prior to any works on site. The Project Arborist is responsible for;
- a) The placement of protective fencing for the existing trees to be retained
  - b) The supervision of any tree branch pruning
  - c) The supervision of any tree root severing greater than 50mm diameter
  - d) Recommend appropriate treatments as required when construction conflicts with tree protection
  - e) Report attendance and actions by certification to the Principle Certifying Authority prior to issue of the Final Occupation Certificate.

The Project Arborist is to be adequately experienced and qualified with minimum Level 5 (AQF): Diploma in Horticulture (Arboriculture).

#### During construction

- (3) No machinery, builder's material and/ or waste shall be located within the Tree Protection Zone of any tree retained adjoining the site or under the Norfolk Island Pines or Casuarinas in the road reserve of Meares Place.
- (3) Trees numbered 1 – 9 shall have protective fencing erected to denote the Tree Protection Zones encroaching within the development site. See Arboricultural Impact Assessment prepared by Craig Kenworthy of Sydney Landscape Consultants dated 20 July 2018 for details of Tree Protection Zones as shown in Section 5 Tree Location Plan.
- (4) Tree No.2 The neighbour's *Eucalyptus elata* shall have the pathway installed so as not to alter the existing ground level, and any conflict with roots, or other treatments for the path, shall be dealt with as directed by the Project Arborist. The two lower branches overhanging the site shall be pruned for access. All pruning practices shall be in accordance with AS 4737 – 2007, *Pruning of amenity trees*. The owner's permission is needed, in writing, from the Strata Committee of 21 Meares Place prior to the commencement of any pruning work. All work shall be supervised by the Project Arborist.
- (5) Tree 10 (12 *Allocasuarina littoralis*) shall be removed for the development. See Arboricultural Impact Assessment prepared by Craig Kenworthy of Sydney Landscape Consultants dated 20 July 2018 for details of these trees to be removed.
- (6) During construction any branches of the trees on the adjoining properties that need pruning for clearance of scaffolding or building that overhang the boundary shall be removed with the approval and supervision of the Project Arborist after consultation with the tree's owners.
- (7) During construction any tree roots greater than 50mm diameter that need pruning or severing shall be referred to the Project Arborist for advice on actions or treatments. Any roots encountered from Tree 9 trees (*Leylandii*) shall be guided by Arboricultural Impact Assessment prepared by Craig Kenworthy of Sydney Landscape Consultants dated 20 July 2018. See Section 8 for details.

- (8) Gutter guards appropriate to the foliage and fruit of the existing trees on adjoining properties should be installed in areas likely to be in the fruit/foliage fall area of the existing trees.
- (9) During construction any other matter arising that may harm the existing trees on adjoining properties shall be referred to the Project Arborist.
- (10) Prior to the release of the Occupation Certificate a Compliance Certificate from the Project Arborist shall be issued to the Principle Certifying Authority detailing the attendance on site and actions performed in accordance with the conditions of the development consent.

### Site Facilities

- (1) If the erection or demolition of a building will cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the building and the public place.
  - i. If necessary, a sufficient awning is to be erected to prevent any substance from, or in connection with, the work falling onto the public place.
  - ii. The site of the building is to be kept lit between sunset and sunrise if it is likely to be a source of danger to persons using the public place.
  - iii. Any such hoarding, fence or awning is to be removed when no longer required.
  - iv. Any proposed hoarding/awning or fence shall be the subject of an application to Council. (sf005.doc)
- (2) An appropriate temporary toilet facility shall be provided on site, located inside the property boundaries, prior to commencement of works. The temporary toilet shall be maintained in a clean/sanitary condition at all times. (sf010.doc)
- (3) During construction the applicant shall provide, inside the property boundaries a suitable waste container for the disposal of all papers, plastics and other light weight materials. (sf015.doc)
- (4) A sign must be erected in a prominent position on the premises on which the erection or demolition of a building is being carried out:
  - a Stating that unauthorised entry to the premises is prohibited; and
  - b Showing the name of the builder or other person in control of the worksite and a telephone number at which the builder or other person may be contacted outside working hours.

Any such sign is to be removed when the erection or demolition of the building has been completed. (sf020.doc)

### On Site Management of Waste

- (1) Upon occupation of the development an onsite caretaker or nominated representative must be provided and delegated the responsibility for the tasks involved in ongoing site waste management, including:
  - moving bins to and from the bin storage room to the nominated collection point on collection day as specified by Kiama Municipal Council;
  - washing bins and maintaining all bin storage areas;
  - arranging for the prompt removal of dumped rubbish;
  - displaying and maintaining consistent signs on all bins and in all communal storage areas;
  - managing communal composting areas (if applicable);
  - ensuring all residents are informed of the garbage, recycling, organics and bulky waste arrangements.

- (2) As it is a shared bin arrangement, prior to issue of any Occupation Certificate, it will be the responsibility of the developer/operator to establish the waste and recycling service for the residential units with Council's Waste Services (4237 7621). This will include the purchase of:

- 18 x 240L red lid garbage bins,
- 32 x 240L yellow lid recycling bins, &
- 6 x 240L green lid organics bins.

Each property owner will be charged the 140L Domestic Waste Management Charge.

- (3) A Waste Deed of Agreement shall be entered into with Council prior to the release of any Occupation Certificate. Please contact Council's Waste Services for more information on 4237 7621.

### **Prior to Occupation**

- (1) The completed Waste Management Compliance Sheet (Appendix 1C) shall be submitted to and approved by Council prior to release of the Final Occupation Certificate.

Supporting documentation (dockets/receipts) verifying recycling and disposal shall be attached to the Compliance Sheet. (po002.doc)

- (2) The BASIX schedule of commitments shall be complied with prior to the issue of a Final Occupation Certificate for the development and if required a certificate shall be provided to the Principal Certifying Authority from a properly qualified person to certify that the BASIX schedule of commitments have been provided and/or installed. (po003.doc)

- (3) The developer shall complete all civil engineering works required in this consent in the adjoining road reserve prior to the issue of any Occupation Certificate. Written advice from Council confirming such shall be submitted to the Principal Certifying Authority prior to the issue of any Occupation Certificate. (po010.doc)

- (4) A Works-As-Executed (WAE) drawing for all associated stormwater drainage work shall be submitted to the Principal Certifying Authority prior to the release of any Occupation Certificate. The WAE drawing shall be prepared and signed by a Registered Surveyor and show in contrasting coloured ink all changes to the approved construction certificate drawings and all constructed levels. The WAE drawing shall be certified by a suitably qualified Civil Engineer (registered on the Engineers Australia - National Engineering Register) that "all work as completed, including variations, meets the original intent of the approved Construction Certificate drawings and will have not have an adverse impact on adjacent properties".

- (5) Prior to the issue of any Occupation Certificate, certification from a suitably qualified civil and/or structural engineer (registered on the Engineers Australia - National Engineering Register) shall be submitted to the Principal Certifying Authority confirming that the on-site detention tank has been constructed in accordance with the approved plans and specifications.

- (6) Prior to occupation, the following documents shall be submitted to the Certifying Authority;

a Witten certification that:

- i the waste bin storage rooms have been constructed in accordance with the approved design plans and specification and comply with development standards as specified in Chapter 11 – Kiama Development Control Plan 2012 – Waste Requirements Section 5 Garbage, Recycling Bin Storage Rooms Point (Design Controls C1, and C8).

- ii space has been provided and nominated within the kitchen (or an alternate location) in each unit for the interim storage of bins or containers as supplied for source separated garbage, recyclables and food organics as specified in Chapter 11 – Kiama Development Control Plan 2012 – Waste Requirements Section 6 Internal Bins/Containers (Source Separation) (Design Controls C2, and C3).
  - iii a copy the Waste Services Deed of Agreement signed and executed by the developer, Strata Body Corporate and Kiama Municipal Council the provision of onsite servicing and collection of waste.
  - iv A structural engineers certificate and manufacturers certification confirming that the truck turntable has been constructed in accordance with the approved structural engineering details and specifications and manufacturers specifications. An operational compliance test shall be conducted using fully loaded waste collection vehicle that will be used to provide the waste service. Results of the compliance test shall be provided.
- (7) Prior to the Principal Certifying Authority issuing an Occupation Certificate, all external works, repairs and renovations detailed in the schedule of treatment/finishes, landscaping, driveways, fencing and retaining walls shall be completed to the satisfaction of the Principal Certifying Authority.
- (8) The applicant to the development application indemnifies Council and its contractors and agents against any claims, proceedings, actions or demands arising from or in relation to any damage howsoever caused to the road surface, paving or drainage within the Development by the operation by Council or its contractors or agents in the collection of domestic waste except to the extent that such damage results from any misconduct or negligent act or omission of Council or its contractors or agents.
- (9) Prior to the issue of an Occupation Certificate, the applicant shall provide Council with a copy of its public liability insurance policy valid for 12 months to satisfy Council that in the event that such a claim arises, a public liability insurance policy is in place to respond to any claim arising. Each year the body corporate must furnish Council with a copy of its renewed public liability insurance policy valid for the next 12 months to satisfy Council that in the event that such a claim arises, a public liability insurance policy is in place to respond to any claim arising.
- (10) An Occupation Certificate shall not be issued for the subject building until the qualified designer who prepared the 'Design Verification Statement' submitted with the development application, prepares a separate written 'End Architectural Finishes Validation Statement'.

The 'End Architectural Finishes Validation Statement' shall confirm that the building's exterior has been constructed and completed in a manner that is not inconsistent with the approved plans and the plans relied upon for issue of the Construction Certificate, with specific regard to the architectural design elements, colours, finishes and treatments.

Where circumstances require, another qualified designer may prepare the written 'End Architectural Finishes Validation Statement', subject to receipt of written approval for such a change from Council's Director Planning and Environment.

- (11) Prior to the Principal Certifying Authority issuing an Occupation Certificate the applicant shall ensure that all applicable Council fees and charges, associated with the development, have been paid in full.

### **During Construction**

- (1) The developer shall ensure that all construction work associated with the development is carried out in accordance with the approved Construction Environmental Management Plan

(CEMP) and any variations are approved by the Principal Certifying Authority. A copy of the approved CEMP shall be kept on site at all times.

- (2) Any material deposited on public roads resulting from the works must be removed within 3 hours.
- (3) The emission of dust from the site must be controlled and in this regard watering equipment shall be kept on the site at all times for this purpose.
- (4) A shaker pad is to be installed at the exit point of the site to prevent soil material leaving the site on the wheels of vehicles and other plant and equipment.

#### **Prior to the Issue of an Occupation Certificate**

- (1) Pursuant to the requirements of Section 149 of the Roads Act 1993, a lease shall be consented to by Council for any proposed structures overhanging the road reserve. Evidence of the lease shall be sighted by the Principal Certifying Authority prior to the issue of any Occupation Certificate.
- (2) A Works-As-Executed (WAE) drawing for all work undertaken shall be submitted to the Principal Certifying Authority prior to the release of any Occupation Certificate. The WAE drawing shall indicate in contrasting coloured ink all changes to the Construction Certificate approved plans and specifications. The WAE plans shall be signed by a Registered Surveyor and certified by a suitably qualified civil engineer stating that all the works as completed, including variations, meet the original intent of the Construction Certificate approved plans and specifications and will have no adverse impact on adjacent properties or on Council infrastructure.
- (3) Prior to the issue of any Occupation Certificate, the following items shall be provided in the adjoining road network to the satisfaction of Council
  - i. Footpaths adjoining the development site are to be formalised with pavers or concrete paths (or any other material as approved by Council) at a grade of no more than 2.5% from the site boundary to the kerb line. All work shall be designed and constructed in accordance with Council's *"Driveway and Footpath Works Procedure Manual"*;
  - ii. A maximum length of 150 metres of 1.2 metre wide concrete footpath in Meares Place, so as to provide safe all weather access to the shopping centre on Lot 211 in DP 875581 from the site.
  - iii. Any redundant vehicle crossing shall be restored to barrier kerb in compliance with Council's *"Driveway and Footpath Works Procedure Manual"*;
  - iv. All footpath access driveways in compliance with Council's *"Driveway and Footpath Works Procedure Manual"*;

The requirements listed above shall be shown on plans which demonstrate compliance with the requirements of the Roads Authority and/or Council. Approval shall be pursuant to the requirements of the Roads Act 1993. The approved construction work shall be completed to the satisfaction (in writing) of Council prior to the issue of any Occupation Certificate. The Principal Certifying Authority shall not issue any Occupation Certificate until this certification is provided to them.

- (4) Prior to the issue of any Occupation Certificate the developer shall create an instrument under Section 88B/88E of the Conveyancing Act 1919, for approval by Council, which incorporates the following easements and restrictions on the use of land:
  - 1) a positive covenant in favour of Council detailing protection measures and long term maintenance requirements for the on-site stormwater detention system. The document shall meet the standard terms applied by Council.

2) Restriction as to user which stipulates that:

*Residential accommodation on the land hereby burdened shall not be used for accommodation unless it is limited to:*

*a seniors or people who have a disability:*

- i) people aged 55 or more years*
- ii) people who have been assessed as being eligible to occupy housing for aged persons provided by a social housing provider*
- iii) people of any age who have, either permanently or for an extended period, one or more impairments, limitations or activity restrictions that substantial affect their capacity to participate in everyday life,*

*b people who live within the same household with seniors or people who have a disability,*

*c staff employed to assist in the administration of and provision of services to those specified in a) and b) above.*

*3) Positive covenant, with terms acceptable Council, which requires the turntable to be regularly maintained and in operation for the lifespan of the development,*

- (5) A Section 73 Compliance Certificate under the Sydney Water Act 1994 shall be obtained from Sydney Water. The Section 73 Certificate shall be submitted to Principal Certifying Authority prior to issue of any Occupation Certificate.
- (6) Prior to issue of any Occupation Certificate, each residential visitor spaces shall be clearly signposted with the wording that it is a visitor space.
- (7) Prior to issue of any Occupation Certificate, three of the visitor spaces shall be capable of being used as a car wash bay. Each car wash bay shall be provided with a bund and/or open drain with grating all around, connected into the Sydney Water sewerage system, supplied with a cold water tap and power point and clearly signposted with the wording that it is a car wash bay and visitor parking.
- (8) Prior to the issue of any Occupation Certificate, written endorsement from a qualified structural engineer shall be submitted to the Principal Certifying Authority confirming that the on-site detention tank has been constructed in accordance with the approved plans and specifications.
- (9) Prior to the issue of any Occupation Certificate, written endorsement from a qualified civil engineer confirming that the constructed stormwater drainage infrastructure meets with the approved design shall be provided to the Principal Certifying Authority.
- (10) Prior to the issue of any Occupation Certificate, a management plan for the turntable which includes, but is not limited to, safety measures shall be prepared by a suitably qualified person and submitted to the Principal Certifying Authority for their endorsement.

### **Reasons for the imposition of conditions**

- (1) Ensure the building/structure is completed in accordance with the requirements of the Building Code of Australia, applicable Australian Standards and the Environmental Planning and Assessment Act 1979 (as amended). (r001.doc)
- (2) To meet increased demand towards the provision, extension or augmentation of public amenities or services in accordance with Section 94 of the Environmental Planning and Assessment Act 1979 (as amended). (r032.doc)
- (3) Minimise any likely adverse environmental impact of the proposed developments. (r040.doc)

- (4) Ensure that the landscape works are completed established and maintained in accordance with the approved plans and conditions. (r060.doc)
- (5) Ensure the protection of the amenity and character of land adjoining and in the locality of the proposed development. (r100.doc)
- (6) Ensure the stormwater run off from the site is disposed of in an orderly and satisfactory manner. (r105.doc)
- (7) Provide for adequate on-site car parking commensurate with the traffic generation of the development. (r130.doc)
- (8) Ensure the structural stability of the proposed development. (r135.doc)

## Notes

- (1) To ascertain the date upon which this consent becomes effective refer to Section 83 of the Environmental Planning and Assessment Act 1979 (as amended). (nb010.doc)
- (2) In accordance with Sub-Section 95(2) of the Environmental Planning and Assessment Act 1979 (as amended) this consent will lapse on 15/11/2022 unless otherwise provided for elsewhere in Sections 95 or 95A of the Act. (nb015.doc)
- (3) Section 97 of the Environmental Planning and Assessment Act 1979 (as amended) confers on an applicant who is dissatisfied with the determination of a consent authority a right of appeal to the Land and Environment Court exercisable within six (6) months after receipt of this notice. (nb020.doc)
- (4) The applicant shall note that the development consent in no way authorises commencement of construction work. The latter can only be obtained through submission and approval of a satisfactory Construction Certificate Application. (nb025.doc)
- (5) For further information on contributions payable and attributable to this development your attention is directed to Council's *Section 94A (Indirect Contributions) Plan* which is available on Council's website – [www.kiama.nsw.gov.au](http://www.kiama.nsw.gov.au). (nb044.doc)
- (6) Sydney Water Approval Required.

For applications for approval of Council approved building plans to check if the proposed construction work affects Sydney Water services please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:

- Sydney Water Tap in <sup>TM</sup>
  - Guidelines for Building Over/Adjacent to Sydney Water Assets – see Building Developing → Building and Renovating. (nb075.doc)
- (7) Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at [www.1100.com.au](http://www.1100.com.au) or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before you dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request

the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

## **ATTACHMENT 2 – Architectural Plans**