

# ASSESSMENT REPORT

## **DEVELOPMENT APPLICATION (2016STH035 DA – DA10.2016.304.1)**

### **PROPOSED MIXED USE DEVELOPMENT – RETAIL & COMMERCIAL PREMISES AND SHOP-TOP HOUSING**

VARIOUS ALLOTMENTS  
TERRALONG, AKUNA AND SHOALHAVEN STREETS, KIAMA

Prepared for  
Kiama Municipal Council

November 2017

## Assessment Report

Project	Development Application (2016STH035 DA – DA10.2016.304.1) Proposed Mixed Use Development: Retail & Commercial Premises and Shop-Top Housing
Address	Various Allotments, Terralong, Akuna and Shoalhaven Streets Kiama
Our ref:	16/108
Prepared by	Stephen Richardson
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### Town Planning, Agricultural & Environmental Consultants

Stephen Richardson, M.App.Sc., BTP, Grad. Dip. Env. Mgt, CPP, MPIA  
Stuart Dixon, B. Urb. & Reg. Plan., CPP, MPIA

Associates: Peter Cowman, B.Sc.Agr., MAIAST  
Angela Jones, BA Hons, MSc  
Toni Wearne, BA (Hist.), Grad. Dip. Urb. & Reg. Plan.

The Holt Centre, 31 Kinghorne Street, Nowra  
Telephone (02) 4423 6198 (02) 4423 6199  
Fax (02) 4423 1569

PO Box 738, Nowra NSW 2541  
[www.cowmanstoddart.com.au](http://www.cowmanstoddart.com.au)  
info@cowmanstoddart.com.au



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## 1.0 SUMMARY

JRPP Number.	2016STH035 DA
DA Number	DA 2016.304.1
Local Government Area	Kiama Municipal Council
Proposed Development	Mixed use development comprising retail and commercial premises (including supermarket); ninety-seven (97) residential units; and multi-level basement car park containing a total of 405 spaces.
Street Address	Various Allotments, Terralong, Akuna and Shoalhaven Streets Kiama
Applicant / Owner	Applicant: ADM Architects Owner: Kiama Municipal Council
Number of Submissions	<ul style="list-style-type: none"> <li>Original public exhibition 14/12/2016 – 17/1/2017. Nine (9) public submissions. Five (5) objections and four (4) not objecting but raising issues.</li> <li>Second public exhibition 15/8/2017 – 29/8/2017. Six (6) submissions objecting to application.</li> </ul>
Regional Development Criteria (Schedule 4A of the Act)	<p>The proposal has a capital investment value &gt; \$20 million.</p> <p>Council related development with a value &gt; \$5 million.</p> <p>(Kiama Municipal Council is the owner of the land on which the development is proposed to be carried out.)</p>
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> <li>List of all relevant environmental planning instruments <ul style="list-style-type: none"> <li>State Environmental Planning Policy No. 55 – Remediation of Land;</li> <li>State Environmental Planning Policy No. 64 – Advertising Signage;</li> <li>State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development;</li> <li>State Environmental Planning Policy No. 71 – Coastal Protection;</li> <li>State Environmental Planning Policy (State &amp; Regional Development) 2011;</li> <li>State Environmental Planning Policy (Building &amp; Sustainability Index – BASIX) 2004;</li> <li>State Environmental Planning Policy (Infrastructure) 2007;</li> <li>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;</li> <li>Kiama Local Environmental Plan 2011.</li> </ul> </li> <li>List any proposed instrument that is or has been the subject of public consultation under the Act and that has been notified to the consent authority: <ul style="list-style-type: none"> <li>Draft State Environmental Planning Policy (Coastal Management) 2016.</li> </ul> </li> <li>List any relevant Development Control Plan: <ul style="list-style-type: none"> <li>Kiama Development Control Plan 2012.</li> </ul> </li> <li>List any relevant planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F: <ul style="list-style-type: none"> <li>Nil.</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>• List any coastal zone management plan:               <ul style="list-style-type: none"> <li>– Nil.</li> </ul> </li> <li>• List any relevant regulations:               <ul style="list-style-type: none"> <li>– Nil.</li> </ul> </li> </ul>
List of all documents submitted with this report for the panel's consideration.	<ul style="list-style-type: none"> <li>• Architectural Drawing Set prepared by ADM Architects</li> <li>• Urban Design and NSW Apartment Design Guide Assessment prepared by BHI Architects</li> <li>• Summary of NSW ADG Compliance Issues arising from BHI Assessment prepared by Cowman Stoddart Pty Ltd</li> <li>• Reviews of Traffic Impact Assessment prepared by Traffic Impact Services</li> </ul>
Recommendation	Refusal
Report by	Stephen Richardson Director and Town Planning Consultant Cowman Stoddart Pty Ltd
Report date	24 <sup>th</sup> November 2017

## 2.0 DEVELOPMENT SITE AND SURROUNDS

### 2.1 THE DEVELOPMENT SITE

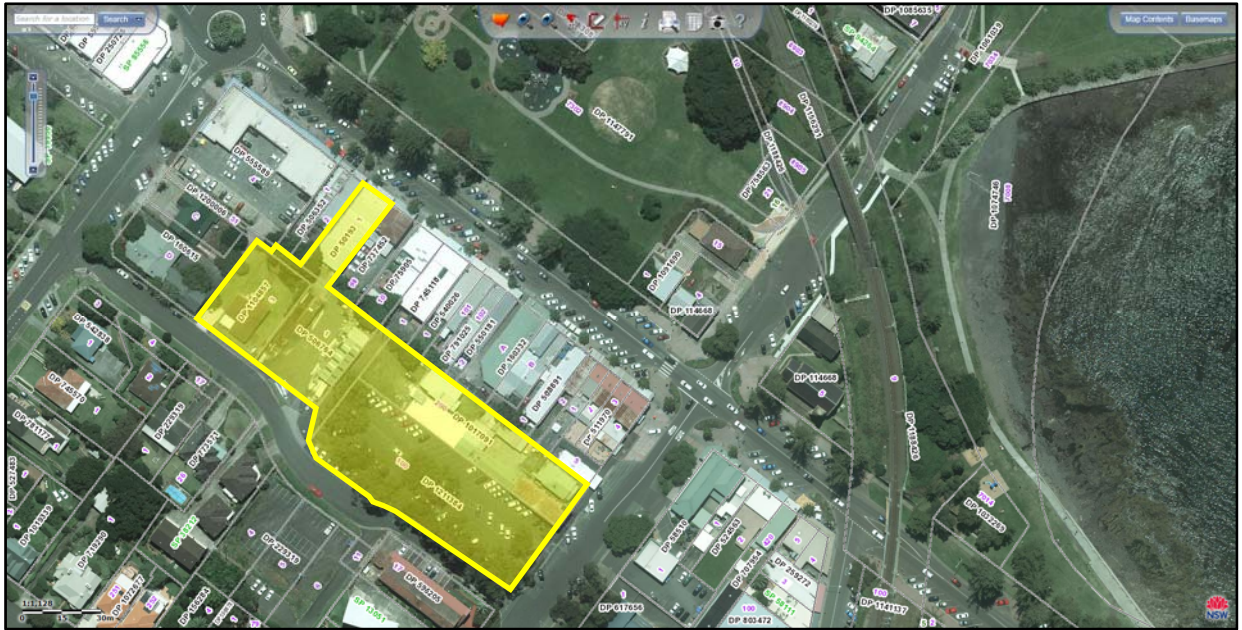
The Development Site comprises multiple parcels of land situated within the Kiama CBD and generally bound by Akuna Street to the south, Shoalhaven Street to the east and Terralong Street to the north. **Table 1** below details the parcels of land that comprise the Development Site.

**Table 1**  
**The Development Site**

<i><b>Lot and DP</b></i>	<i><b>Address</b></i>	<i><b>Existing Use</b></i>	<i><b>Area (m<sup>2</sup>)</b></i>
Lot 1 DP 50193	100 Terralong Street	2 storey retail and commercial building (currently occupied by "The Collective")	2739.6
Lot 1 DP 506764	Akuna Street	Shed/storage structures and hard stand parking area (formerly occupied by Mitre 10)	
Lot 3 DP 1104857	3 Akuna Street	Brick Cottage	
Lot 200 DP 1017091	55 Shoalhaven Street	1 – 3 commercial building; 2 single storey cottages (one fronting street), fibro and brick garages.	4961.0
Lot 100 DP 1211384	61 Shoalhaven Street	Public Car Park	
Lane "Road 6.095 W"	Off Akuna Street	Laneway	304
Total Area			<b>7700.6 (excluding laneway)</b>

**Figure 1** below depicts an aerial photograph of the Development Site.





**Figure 1: Aerial Photograph of Development Site and Locality**  
(Source: <http://maps.six.nsw.gov.au/>)

The Development Site is an irregular shaped parcel of land with an overall area of 7700.6 m<sup>2</sup> (excluding the unnamed laneway). A portion of the subterranean land of the Council-owned public unnamed laneway (comprising an area of 304 m<sup>2</sup>) will be utilised by the development for public amenities within the retail arcade and a linkage for the residential parking level.

That part of the Development Site located to the west of the laneway has a narrow frontage of 12.57 metres to Terralong Street (northern boundary); and widens beyond this property to a northern width of 64.19 m (adjoining the rear of the shops fronting Terralong Street); with a frontage of 55.875 metres to Akuna Street (southern boundary); and 39 metres to the lane (eastern boundary). This part of the Development Site has a depth of approximately 49 metres (north to south).

That part of the Development Site located to the east of the laneway has a northern boundary of 94.5 metres (adjoining the rear of the shops fronting Terralong Street); frontage to Shoalhaven Street (eastern boundary) of 49.915 metres; 51.535 metres to the laneway (western boundary); and frontage to Akuna Street (southern boundary) of approximately 93 metres (variable). This part of the Development Site has a depth of approximately 38 metres (north to south, excluding the narrow allotment of 100 Terralong Street).

The Development Site slopes to varying degrees generally from the southern (Akuna Street) frontage down to the north and north-east: the western part of the Development

Site (excluding the 100 Terralong Street property) by about five metres (approximately RL 25 m to RL 20 m), and the eastern part has a crossfall of about 8 metres (from RL 25 m at the south-western corner to RL 17 m at the north-eastern (Shoalhaven Street) corner). There are existing retaining walls that occur through the site and most notably partly along the northern boundary of the site.

## **2.2 THE SURROUNDS**

The site is located within the town centre of Kiama and is situated in an area containing a mixture of commercial, residential and open space uses as described below:

### ***North of the site:***

100 Terralong Street is the northern part of the site and it is within the traditional retail shopping street of Kiama located on the southern side of Terralong Street. Buildings generally along Terralong Street are one or two storey height and the rear property boundaries adjoin the main part of the subject site. To the north, on the opposite side of Terralong Street is Hindmarsh Park.

### ***South of the site:***

Akuna Street forms the southern boundary of the subject site and on the opposite side of the road is a commercial development (corner Shoalhaven Street), a public car park, a residential flat building (No. 10) and detached dwelling-houses with generous setbacks to Akuna Street (Nos. 4 - 10). Residential properties are located further to the south, upslope from Akuna Street.

### ***West of the site:***

Adjoining the site to the west are single storey commercial premises fronting Collins Street. Commercial premises (RMB Lawyers) at No. 66, having a rear car park adjoining the subject site; and a preschool is located at No. 64 with the play area/yard sited to the rear near the subject site. Further along Collins Street is a dental practice (No. 68) and residential properties. A residential flat building complex and Kiama Public School are located on the western side of Collins Street.

### ***East of the site:***

One and two storey commercial premises are located along the eastern side of Shoalhaven Street opposite the site, including the NSW Government Services office, a Veterinary Hospital, and the heritage-listed Kiama Inn Hotel and associated bottle shop.

### **3.0 BACKGROUND**

This development application was originally lodged on the 5<sup>th</sup> December 2016. The Applicant is ADM Architects. The original Development Proposal in summary comprised:

- 91 apartments comprising (6 x 1 bedroom + study; 55 x 2 bedroom; and 30 x 3 bedroom).
- 14 Retail/Commercial Premises (including supermarket) comprising 4029 m<sup>2</sup> GFA.
- Total of 205 car parking spaces.

Kiama Municipal Council engaged Cowman Stoddart Pty Ltd on the 10<sup>th</sup> December 2016 to undertake an “arms-length” independent assessment of the development application given Council was the land owner.

On the 31<sup>st</sup> January 2017 our firm completed a report titled “*Preliminary Review of Development Application*” (“Preliminary review report”). This report provided:

- a summary of the issues raised by public submissions received in relation to the development application;
- a summary of issues arising from internal Council referrals; and
- an outline of issues that arose from the preliminary assessment of the development application documentation.

The key issues raised in the Preliminary Review Report included:

1. Adequacy of plans: fully dimensioned plans required.
2. Building height: insufficient justification for significant encroachments of building height limits.
3. Floor space ratio: additional information required to clarify calculations.
4. Earthworks and geotechnical stability: geotechnical report to address impacts of excavation works.
5. Active street frontage not provided to Akuna Street as required by clause 6.8 of the Kiama LEP 2011.
6. Car parking: loss of spaces on existing car park and insufficient on-site parking provision.
7. Traffic issues: various issues in connection the traffic impact assessment;
8. Amenity of locality: impact on views, noise impacts and waste management.

Following the issue of this Preliminary Review report, a briefing meeting was held between members of the Joint Regional Planning Panel (Southern) (“the Panel”); Council staff (Mr Phil Costello); and Stephen Richardson of Cowman Stoddart on the 15<sup>th</sup> March 2017. Following that

meeting a further submission, dated 17<sup>th</sup> March 2017, was prepared by Cowman Stoddart providing a summary of issues that were raised by the Panel during the course of the site inspection and subsequent briefing meeting. This report was also supplied to the Applicant for their consideration.

In summary issues arising from the JRPP briefing meeting included:

1. "Shop-top housing": questioned whether the residential apartments satisfied the definition of shop-top housing.
2. The Panel did not support the loss of the existing trees located along the Akuna Street frontage of the site.
3. The Panel were not convinced that the current proposal provided sufficient justification for exceeding the 11 metre building limit.
4. The Panel raised concern that the development did not satisfy the "Active Street Frontage" requirements of the LEP given no commercial frontage was proposed to Akuna Street; and were also of the view that the lack of any commercial frontage further undermined any justification for the removal of the trees along this street frontage.
5. The Panel did not support the location of the Loading Dock in Akuna Street and in particular its proximity to residential apartments and adjacent properties in Akuna Street.
6. The Panel questioned the adequacy of the service lane which was proposed to be used by the development for service vehicles. The Panel were of the view that this service lane was too narrow and totally unsuitable for this purpose.
7. The Panel raised a number of design issues of the overall development proposal.
8. The Panel raised concerns that as the development exceeded the building height limit whether the loss of views enjoyed by residents along Akuna Street would be considered reasonable and justifiable.
9. The Panel also raised concerns relating to the geotechnical impacts associated with the development on local public infrastructure and adjoining buildings and properties.

In response to these two reports the Applicant submitted a Revised Development Proposed on the 31<sup>st</sup> July 2017 and Council again engaged Cowman Stoddart to review this revised development application. This revised development proposal comprised:

- 98 apartments comprising 41 x 1 bedroom; 52 x 2 bedroom; and 5 x 3 bedroom units.
- 19 retail / commercial premises including 10 retail; 3 small kiosks; 5 commercial tenancies; and 1 supermarket with an overall GFA of 4858.9 m<sup>2</sup>.
- A total of 251 car parking spaces.

This revised development proposal relocated the proposed service dock from the original location fronting Akuna Street, towards the northern boundary of the site and beneath the proposed residential apartments. The revised development proposal also reduced the height of the development, although still contained areas that exceeded the maximum 11 metres building height limit that applies to the site.

A further “Preliminary Review” report was prepared by our firm in relation to this revised development proposal dated 31<sup>st</sup> August 2017 and was supplied to the Applicant.

This report in summary raised the following issues:

1. Further clarification was sought as to how the project satisfied the definition of “shop-top housing”.
2. Adequacy of plans: fully dimensioned plans required.
3. Building height: despite reduction in building height concerns still raised that insufficient justification had been provided for significant encroachments of building height limit for the site.
4. Floor space ratio: additional information require to clarify calculations.
5. Car parking: continued insufficient on-site parking provision.
6. Amenity of the locality in terms of noise impacts, waste management and justification for removing trees along Akuna Street.
7. Earthworks and geotechnical stability: geotechnical report need to address provisions of clause 6.2 of the Kiama LEP 2011.

Council also engaged the services of:

- BHI Architects (“BHI”) to undertake an urban design assessment of this further revised Development Proposal, and including an assessment of the proposal having regard the NSW Apartment Design Guidelines; and
- Traffic Impact Services (“TIS”) to undertake a peer review of the traffic assessment that supported this Further Revised Development Proposal.

The BHI Assessment, received post the Preliminary Review Report, identified a number of urban design issues of concern with the proposal.

In response to the further Preliminary Review Report a further revised development application was submitted (partially) to Council on the 4<sup>th</sup> October 2017 with further revised traffic information being submitted following this date. This proposal was again further refined and supplementary submissions were made having regard to the issues raised by the BHI assessment with a further amended submission received by Council on the 19<sup>th</sup> October 2017.

It is this further revised development proposal that is the subject of this Assessment Report.

## **4.0 DESCRIPTION OF THE FURTHER REVISED DEVELOPMENT PROPOSAL (“THE PROPOSAL”)**

The further revised development proposal (“the Proposal”) is a mixed use development consisting of ten (10) retail premises including a supermarket; five (5) commercial tenancies; and ninety-seven (97) residential units (shop-top housing). The proposal will involve a maximum of four storeys (above ground level) with up to three basement levels, and will provide a total of 405 car parking spaces.

The retail and commercial component of the project will be formed over three separate levels. The ground floor retail level will include the demolition of the existing “Collective” store fronting Terralong Street and construction of a new three storey retail and commercial development, comprising ground floor retail and two floors of commercial tenancies above the ground floor retail level to the street frontage. Pedestrian access will also be provided adjacent to the Terralong Street retail tenancy to a retail arcade comprising nine (9) retail tenancies. This arcade will be anchored by a supermarket. Three additional and separate commercial tenancies will front the Akuna and Shoalhaven Street frontages of the site.

Off-street car parking will be contained over three separate levels, including: a basement level containing 178 commercial and visitor spaces; a commercial parking level above the basement level containing 82 parking spaces; and a residential parking level situated above this level containing 145 spaces. Vehicle ingress and egress to the parking levels will be from both Shoalhaven and Akuna Streets, with the latter access from the existing laneway off Akuna Street.

The proposal includes a separate one-way service vehicle delivery ingress driveway from Shoalhaven Street to the east of the site with egress to Collins Street in the west. This driveway will provide access for delivery and loading vehicles to two separate loading dock areas, with one loading dock specifically set aside for the supermarket, and the other to service the remaining commercial tenancies. This access driveway will also provide access for garbage contractor vehicles to service the separate residential and commercial waste areas located within this level.

The ninety-seven (97) residential apartments will be contained within four separate towers or buildings (Buildings A – E, with D and E comprising the one building, as shown on the architectural drawing set) that will sit above the retail and parking levels. These towers or buildings will include the following:

<b>Building</b>	<b>1 bed + study</b>	<b>2 bed</b>	<b>3 bed</b>	<b>Total</b>
A	7	8	1	16
B	11	12	1	24
C	10	12	1	23
D and E	12	20	2	34
<b>Total</b>	<b>40</b>	<b>52</b>	<b>5</b>	<b>97</b>

The proposal is configured as follows:

<b>Level (as referred to on the Architectural Drawing Set)</b>	<b>Proposed Use(s)</b>
Basement (Retail Parking Level)	<ul style="list-style-type: none"> <li>Commercial parking for 128 car parking spaces and 50 visitor spaces providing a total of 178 parking spaces.</li> <li>Plant Room.</li> </ul>
Ground Floor (Retail Level)	<ul style="list-style-type: none"> <li>10 retail tenancies and supermarket with retail arcade. Total floor area – 2475 m<sup>2</sup> (excluding arcade floor space – 1030 m<sup>2</sup>).</li> <li>“Back of house” for supermarket – 497 m<sup>2</sup>.</li> <li>Amenities and part arcade constructed under laneway.</li> <li>Commercial parking area for 82 parking spaces (including 4 disabled parking spaces)</li> </ul>
Residential Parking	<ul style="list-style-type: none"> <li>Second storey commercial tenancy off Terralong Street frontage with floor area of 245 m<sup>2</sup>.</li> <li>Loading docks for the supermarket, and a second separate loading dock area for the other retail and commercial tenancies.</li> <li>A total of 145 parking spaces, 24 disabled spaces, Residential and commercial waste storage areas.</li> </ul>
Akuna/Shoalhaven Commercial / Residential Level 1	<ul style="list-style-type: none"> <li>Third storey commercial tenancy fronting Terralong Street comprising a floor area 215 m<sup>2</sup>.</li> <li>Three (3) commercial tenancies fronting Shoalhaven and Akuna Streets comprising a total floor area of 662 m<sup>2</sup>.</li> <li>First residential level containing twenty-three (23) residential units, including foyers to each of the towers / buildings.</li> <li>Three separate communal open space areas located between Buildings A, B and C comprising a total area of 750 m<sup>2</sup> and communal open space area located on the west side of Buildings D and E comprising an area of 320 m<sup>2</sup>, providing a total communal open space of 1070 m<sup>2</sup>.</li> <li>Pedestrian forecourt area situated between Akuna Street and the commercial tenancies fronting this street, including stairways, ramps and elevator to enable pedestrian access from Akuna Street through the proposed development to Terralong Street.</li> </ul>
Residential Level 2	<ul style="list-style-type: none"> <li>Second residential level containing thirty-one (31) residential units.</li> </ul>
Residential Level 3	<ul style="list-style-type: none"> <li>Third residential level containing thirty-one (31) residential units.</li> </ul>
Residential Level 4	<ul style="list-style-type: none"> <li>Fourth residential level containing twelve (12) residential units.</li> </ul>

The exterior of the mixed use / shop-top housing component of the development is proposed to be finished in a combination of painted rendered walls (colour combination Dulux Milton Moon, Colorbond Ironstone with Dulux Lexicon), a feature base and feature walls with Bluestone cladding and clear glass balustrading. The Terralong Street commercial development is proposed to be finished in PGH Mowbray Blue face brick and Colorbond Ironstone and zinc cladding, and clear and black glazing.

**Annexure 1** to this report includes the most recent drawing set for the proposal.



## **5.0 SECTION 79C ASSESSMENT**

### **5.1 RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS**

#### **5.1.1 State Environmental Planning Policy No. 55 – Remediation of Land**

A Preliminary Contamination Assessment prepared by SMEC accompanies the development application. In summary SMEC's assessment concludes that any contaminants identified in samples undertaken were below relevant assessment criteria. SMEC identify potential contamination issues at the site and make recommendations for further investigation, testing, assessment and management of surface topsoil and fill material generated during the construction phase. This issue is further addressed in Section 5.6.6.2 of this report.

#### **5.1.2 State Environmental Planning Policy No. 64 – Advertising Signage**

SEPP 64 aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, and is of high quality design and finish.

The proposed development includes the provision of illuminated signs of the 'Aldi' supermarket logo, and/or car parking directional signage at the Terralong and Shoalhaven Street entrances to the development only. Aldi Supermarket propose to occupy the supermarket on the ground floor (retail level) of the development. An 'Aldi Signage Plan' prepared by Steiner Richards Architects was submitted with the original development application. This plan indicated eight (8) signs. Two of these signs (Sign E and Sign G) are no longer required, as the amended design removes the Akuna Street loading dock and commercial foyer/entry to which the Signs E and G related). Signs A, B, C, D, F and H are still proposed, with slightly reconfigured locations on the Shoalhaven Street frontage to reflect the amended facade. There is no change to the Terralong Street signage.

Proposed advertising comprises the following signs (of varied sizes):

- Pylon Sign A – Illuminated sign and car parking directional sign;
- Sign B – Double-sided under awning illuminated sign;
- Sign C – Wall mounted non-illuminated sign;
- Sign D – Wall mounted sign;
- Sign F – Double-sided under awning illuminated sign;
- Sign H – Double-sided illuminated blade sign.

It is considered the signage is of a consistent scale, design and colour scheme. Having regard to Clause 8 of this SEPP it is considered that the proposed advertising signage would be consistent with the objectives and the assessment criteria of this SEPP.

#### **5.1.3 State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development**

This policy aims to improve the design quality of residential flat development in NSW.

A Design Verification Statement signed by architect Angelo Di Martino (NSW Registration No. 7608) and principal of ADM Architects (being a suitably qualified person) has been lodged in support of the application in accordance with this SEPP.

There is a close and integrated relationship between SEPP 65 and the NSW Apartment Design Guide. SEPP 65 refers to some parts of the NSW Apartment Design Guide (ADG) that must be applied when assessing development applications. Objectives, design criteria and design guidance in Parts 3 and 4 of the ADG that are referred to in SEPP 65 prevails over any inconsistent DCP control. Parts 3 and 4 set out objectives, design criteria and design guidance for the siting, design and amenity of residential apartment development.

Certain design criteria referred to in the SEPP 65 cannot be used as a reason to refuse a development application if complied with.

SEPP 65 establishes nine design quality principles to be applied in the design and assessment of residential apartment development. The ADG provides greater detail on how development proposals can meet these principles through good design and planning practice.

Council engaged the services of BHI Architects to review the development application in terms of urban design and with specific reference to the ADG. A copy of BHI's assessment report is included in **Annexure 2** to this report.

**Annexure 3** to this report provides a summary of the main issues arising from the BHI assessment with respect to the ADG guidelines, including the applicant's responses and our firm's comments.

Urban design issues, including some of the main issues arising from the assessment of the proposal having regard to the ADG are also discussed in Section 5.6.1 of this report.

#### **5.1.4 State Environmental Planning Policy No. 71 – Coastal Protection**

The NSW Coastal Zone is defined by the Coastal Protection Act 1979 and generally includes land within one kilometre inland from the coast. The subject site is situated

approximately 150 metres from the coastline (Kiama Harbour) and therefore is located within the coastal zone. SEPP 71 therefore applies to the development application.

Consideration has been given to the objectives and clause 8 of this SEPP. Generally it is considered the proposal is not inconsistent with these objectives or provisions of clause 8 except as follows:

*8(d) the suitability of development given its type, location and design and its relationship with the surrounding area,*

As will be dealt with in Sections 5.1.9 and 5.6.1 of this report concerns are raised in relation to elements of the design of the proposed development in terms of building height and streetscape treatment to Akuna Street.

#### **5.1.5 State Environmental Planning Policy (State & Regional Development) 2011**

Schedules 1 and 2 of this SEPP lists those types of development regarded as state significant development. The proposed development is not captured by either of these two schedules and is therefore not state significant development.

The development application however does comprise “Regional Development” having regard to the provisions of Schedule 4A of the Environmental Planning & Assessment Act as the development has a capital investment value that exceeds \$20 million and the land upon which the application relates is owned by Kiama Municipal Council.

Under these circumstances the Joint Regional Planning Panel (Southern) are the consent authority for this application pursuant to Part 4A of this EP&A Act.

#### **5.1.6 State Environmental Planning Policy (Building & Sustainability Index – BASIX) 2004**

The application is supported with BASIX Certification demonstrating that dwellings have been designed in accordance with BASIX.

#### **5.1.7 State Environmental Planning Policy (Infrastructure) 2007**

This SEPP aims to facilitate the effective delivery of infrastructure across the state and that appropriate agencies are made aware of and are given an opportunity to make representations in respect of certain development, including traffic generating developments. Division 17 relates to Road and Traffic infrastructure while Schedule 3 of the SEPP outlines traffic generating development which requires referral to Roads and Maritime Services (RMS).

The proposal contains 97 residential units and does not have access to a classified road.

Therefore it is not captured by the referral requirements of the SEPP (due to the number of dwellings) as it contains less than:

- 300 dwellings with access to any road or 75 dwellings with access to a classified road or to a road that connects with a classified road.

However, the development contains parking for 405 cars. It is therefore captured by Schedule 3 of the SEPP, which specifies that referral is required for development which comprises:

- Any other purpose with parking for 200 or more vehicles and access to any road.

Accordingly the application was referred to the Roads and Maritime Services. The RMS did not raise any objections or concerns in relation to the proposal.

#### **5.1.8 State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017**

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 came into force on 25 August 2017, and aims to preserve amenity through the protection of the biodiversity of trees and other vegetation in non-rural areas of the state. The SEPP applies the municipal area of Kiama as well as the B2 Local Centre zone, in which the subject site is located.

The subject site has an area of 7700.6 m<sup>2</sup> (including 304 m<sup>2</sup> for the laneway), which is less than 1 hectare in area. Under the Biodiversity Conservation Regulations 2017 a maximum of 0.25 hectare (ie. 2500 m<sup>2</sup>) may be cleared without requiring authority under SEPP (Vegetation in Non Rural Areas) 2017.

According to information supplied by the Applicant an area of 1335m<sup>2</sup> will require to be cleared, which includes 629 m<sup>2</sup> of vegetation removal along the Akuna Street frontage with the balance comprising removal of vegetation elsewhere on the site. The level of clearance would be less than the threshold specified in clause 7(2) of the SEPP, and therefore the provisions of this SEPP would not apply to this proposal.

#### **5.1.9 Kiama Local Environmental Plan 2011**

##### **5.1.9.1 *Permissibility***

The Development Site is zoned B2 Local Centre pursuant to the Kiama Local Environmental Plan (LEP) 2011. A mixed use development comprising retail and commercial premises, and shop-top housing is permissible with development consent within the B2 zone.

“Shop-top housing” is defined for the purposes of the Kiama LEP 2011 as meaning:

*shop top housing means one or more dwellings located above ground floor retail premises or business premises.*

At the original briefing meeting the Panel questioned whether the proposal satisfied the definition of “shop-top housing”.

The proposal is supported by written legal advice supplied by Planning Law Solutions (PLW) dated 20th July 2017 and a further supplementary advice dated 27th September 2017. The advice from PLW indicates that the residential units that form part of the proposed development are properly characterised as shop-top housing.

According to PLW there are numerous Land and Environment Court decisions dealing with the definition of shop top housing. In *Hrsto v Canterbury City Council* (No2) [2014] NSWLEC 121, the Court held that the dwellings in a shop-top housing development:

- *“must be in the same building as the ground floor retail premises or business premises and on a floor of that building that is at a level higher than the top most part of the ground floor retail premises or business premises” at [32]- [33], [56]; and which*
- *“do not need to be directly or immediately above ground floor retail premises or business premises” at [34], [56].*

The PLW advice dated 20th July includes the following comments:

13. *However, the retail tenancies facing Terralong Street together with some of the retail tenancies facing the internal arcade, the internal arcade itself and part of the retail parking shown on drawing A-101, that are at or close to ground level, are ground floor retail premises for the purpose of the definition of shop top housing. The residential apartments on levels 1 to 4, although not entirely directly above those retail tenancies and supermarket, are nonetheless in the same building as the retail tenancies, car parking and supermarket. The residential apartments on levels 1 to 4 are also at a level higher level than the top most part of the retail tenancies and supermarket.*
14. *It is not fatal that the residential apartments are not directly or immediately above the ground floor retail uses. It is only necessary that the residential apartments are in the same building as the ground floor retail uses (Hrsto), which they are in the case of the building shown on the issue D plans.*
15. *The residential apartments shown on the issue D plans on levels 1 to 4 are all above the top most point of (and in the same building as) the ground floor retail premises comprising the retail tenancies facing Terralong Street, together with some of the retail tenancies facing the internal arcade, the internal arcade itself and part of the retail parking shown on drawing A-101. Applying the principles in Hrsto, Blackmore Design and Arco Iris Trading, those features of the proposed building shown on the issue D plans, in my view, mean that the residential apartments contained in the proposed building are properly characterised as shop top housing for the purposes of KLEP 2011.*

A further advice dated 27 September 2017 prepared by PLW responded to circumstances where there may be more than one ground floor level such as the case with this proposal:

6. *The question is whether, on a development site that has more than one ground level, a dwelling that satisfies the definition of shop top housing when assessed in relation to one ground level, is nonetheless **not** shop top housing because it does not satisfy the definition when assessed in relation to a different ground level.*
7. *It is possible for a building containing shop top housing to have two ground floor levels. That was the case in Arco Iris Trading Pty Limited v North Sydney Council [2015] NSWLEC 1113. The judgement in Arco Iris reveals that the building in question had a frontage to Military Road and a second frontage to Grosvenor Lane at the rear. At the Military Road level, the building contained shops fronting an internal arcade. One of those shops, which was furthest from the street, was proposed to be converted to a dwelling. The proposed dwelling was located 6 or 7 steps higher than the other shops fronting Military Road, but entirely above a basement carpark fronting the rear lane. Part of the basement carpark was used by the retail premises. The Court held that the proposed dwelling **was** properly characterised as shop top housing, as it was above the top most level of the car park fronting the rear lane.*
8. *Arco Iris is authority for the principle that a building containing shop top housing may have more than one ground floor retail or commercial premises, and it is not necessary for every dwelling in the building to be at a level higher than the top most ground floor retail or commercial premises.*

PLW conclude with respect to this matter as follows:

11. *In my view, the apartments on level 1 are properly characterised as shop top housing, despite the fact they are not at a level higher than the top most part of all commercial tenancies in the building. The apartments on level 1 continue to be at a level higher than the top most part of the commercial tenancies fronting Terralong Street and that part of the internal Arcade that is at ground level. Accordingly, the apartments on level 1 of the proposed building are properly characterised as shop top housing.*

#### **5.1.9.2 Specific Clauses**

##### **Principal Development Standards**

Clause 4.3 requires that the height of the building does not exceed the maximum height shown on the Height of Buildings Map (being 11 metres in this instance – measured vertically from the highest point of the building to the existing ground level below). The maximum overall height of the proposed building is 13.78 m (at the northern roofline of residential building or Tower C). The roofline of the top most floor of Buildings B, C, D and E all encroach the 11 metres building height ranging from 1.04 metres to 2.78 m. Portions of the lower floor level below the top most floor also encroaches the 11 metres

height limit from 0.19 m (Building D) to 0.835 m (Building A). The Applicant has sought an exception to the building height development standard pursuant to clause 4.6 (see Section 5.1.9.3 below).

Clause 4.4 requires that the floor space ratio of a building does not exceed the maximum floor space ratio shown on the Floor Space Ratio (FSR) map. In this instance two different floor space ratios apply to the site. The western part of the site has a maximum permissible FSR of 1.5:1 while the eastern part of the site has a maximum permissible FSR of 2:1.

The development proposes a FSR for the eastern part of the site of 1.59:1 which is less than the 2:1 FSR that applies to this part of the site. The development however proposes a FSR of 2:1 for the western part of the site where a maximum permissible FSR of 1.5: 1 applies. The Applicant has sought an exception to the FSR limit as it applies to the western part of the site pursuant to clause 4.6 (see Section 5.1.9.3 below).

### ***Miscellaneous Provisions***

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

Clause 5.5(2(b) however requires a consent authority to consider:

- (2) *Development consent must not be granted to development on land that is wholly or partly within the coastal zone unless the consent authority has considered:*
  - (b) *the suitability of the proposed development, its relationship with the surrounding area and its impact on the natural scenic quality, taking into account:*
    - (i) *the type of the proposed development and any associated land uses or activities (including compatibility of any land-based and water-based coastal activities), and*
    - (ii) *the location, and*
    - (iii) *the bulk, scale, size and overall built form design of any building or work involved, and*

As well be deal with in Sections 5.1.9 and 5.6.1 of this report concerns are raised in relation to elements of the design of the proposed development in terms of building height and streetscape treatment to Akuna Street.

Clause 5.10 lists requirements for heritage conservation for items listed in Schedule 5 of the LEP. No heritage items identified under the LEP are identified on the subject site. One identified heritage item (I156 – former Devonshire House) adjoins the Development Site while a number of other items are located within the vicinity of the subject land including; I138 Scots Presbyterian Church, land and trees; I154 former Tory's Hotel; I155 Old Fire Station; I157 Hindmarsh Park (including war memorial) and I163 street trees. This issue is further addressed in Section 5.6.2 of this report.

### ***Additional Local Provisions***

Clause 6.1, and the mapping that supports this clause, identifies lands that may be subject to Acid Sulphate Soils. The site is not identified as being potentially affected by Acid Sulphate Soils.

Clause 6.2 seeks to

*ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.*

The further revised development proposal will provide up to three separate basement levels requiring excavation of up to 14 metres depth.

The development application is supported by a geotechnical assessment prepared by SMEC as well as a separate supplementary submission, also prepared by SMEC which specifically addresses the provisions of this clause. Generally these reports conclude that as long as the development is designed and constructed in accordance with the recommendations of the geotechnical report then there should not be a significant impacts on soil stability or drainage patterns in the locality.

Clause 6.3 seeks to minimise the flood risk to life and property associated with the use of land and avoid significant adverse impacts on flood behaviour and the environment. According to the SEE that supports the development application a Section 149 Certificate indicates the site is not subject to flood related controls. Council's Development and Engineering Manager raises no concerns with respect to flooding for this site.

Clause 6.4 seeks to preserve and maintain terrestrial biodiversity. The mapping that supports the LEP in relation to this clause does not affect the Development Site. This clause has no implications for this proposal.

The land is also not subject to the provisions of clause 6.5 as there are no watercourses or riparian land applying to the Development Site.



Clause 6.8 (Active Street Frontages) seeks to promote uses that attract pedestrian traffic along certain ground floor street frontages in certain business zones. The clause requires proposals have an active street front within B1 and B2 zones. The clause applies to the Development Site. Clause 6.8(3) stipulates that:

- (3) *Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that:*
  - (a) *the building will have an active street frontage after its erection or change of use, and*
  - (b) *the ground floor of the building will not be used for the purposes of residential accommodation or a car park.*

Clause 6.8(5) furthermore indicates that

*a building has an active street frontage if all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises.*

The Proposal provides ground floor retail or business premises to the Terralong and Shoalhaven Street frontages of the Development Site and part way along Akuna Street. The revised design therefore meets the provisions of clause 6.8 except for that part of the proposal that fronts Akuna Street west from the unnamed laneway. This ground floor level for the area west of the unnamed laneway will be used for residential accommodation (contrary to clause 6.8(3)(b)).

In addition the development also includes car parking levels that will not strictly comply with the definition of “basement”.

The definition for basement under the LEP is:

*basement means the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing).*

Portions of the floor level of the residential parking level will be more than 1 metre above ground level, which would render this parking level above basement level. This would also be inconsistent with clause 6.8(3)(b) above.

The Applicant’s town planning consultant does not agree with this interpretation arguing that the aim of the clause is to provide an active street frontage to the street. Hence the intent and objective is achieved, and therefore clause 6.8(3)(a) is achieved. Notwithstanding this position a revised clause 4.6 written request addressing this issue has been subsequently submitted.

The Applicant has also obtained legal advice from Andrew Pickles SC (dated 27 February 2017) which identifies:

- (i) *that that there are a number of difficulties and complications with the application of Clause 6.8 generally as it applies to the site circumstances; and*
- (ii) *"clause 6.8 does contain development standards, being requirements fixed in respect of an aspect of the development. As development standards they are capable of variation under clause 4.6 of (KLEP 2011)."*

Under these circumstances the Proposal is supported by a written submission pursuant to clause 4.6 which seeks an exception to clause 6.8 Active Street Frontages standard (see Section 5.1.9.3 below).

#### **5.1.9.3 Clause 4.6 Exceptions to Development Standards**

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

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

As detailed in Section 5.1.9.2 above, the Proposal does not comply with the following development standards as detailed in the KLEP 2011:

- The building height limit set for the site under clause 4.3.
- The floor space ratio limit that applies to the western part of the site as set by clause 4.4.
- The need to provide an active street frontage to entire length of the Akuna Street frontage of the site as required by clause 6.8.

The Proposal is supported by three separate written requests prepared pursuant to clause 4.6 by TCG Planning. This section of the Assessment Report addresses these written requests.

### ***Building Height***

The Proposal seeks a maximum building height of 13.78 metres at the highest point of the development (the north-east corner of Building C) above existing ground level. The roofline of the top most floor of Buildings B, C, D and E all encroach the 11 metre building height ranging from 1.04 metres to 2.78 m. Portions of the lower floor level below the top most floor level also encroach the 11 metre height limit from 0.19 m (Building D) to 0.835 m (Building A). In each instance the height breaches taper due to the cross fall of the land until the building height falls within (and indeed below) the 11 metre building height limit at the Akuna Street frontage of the site (with the exceptions of the south-eastern corners of Buildings B and D which exceed the 11 metre limit by 0.23 m and 1.02 metres respectively).

The Applicant has prepared building height plane diagrams and matrixes (**Annexure 1**) which illustrate the extent of the 11 m height limit breaches. In terms of roof areas the proposed height breach is most prevalent over Blocks B, C and D & E; and in terms of vertical measurement the proposed height breach is most significant for Block C (between 2.58 m to 2.78 m breach) followed by Block D and E (between 2.25 m to 2.35 m breach).

#### **Applicants Clause 4.6 Written Request**

The Applicants Clause 4.6 Written Request in summary justifies the building height limit breaches associated with the Proposal on the following grounds:

- The topography of the site slopes downward from the south (Akuna Street) to the northern boundary of the site, which abuts the many rear property boundaries of the Terralong Street shops. The portion of the site west of the laneway has a crossfall of about 8 metres [from RL 25 m at the south-western corner at Akuna Street to RL 17 m at the north-eastern (Shoalhaven Street) corner]. The design of the development has responded to the challenging topography through the provision of a main retail level at the lower ground level (Terralong Street level) and also commercial frontage to the Shoalhaven Street and Akuna Street frontages at the eastern and south-eastern boundary of the subject site.
- The non-compliant roof height is minimised by setting back some top floor apartments from the northern boundary and is generally located within the central part of the site that are less visible from public spaces and residences.
- The non-compliant portions will not cause any adverse or additional overshadowing to adjacent properties.
- The majority of the development is compliant with the 11 m height limit,

- Compliance with the applicable height standard is considered to be unreasonable and unnecessary in the circumstances of the case having regard to site and streetscape context, the limited extent of the non-compliance, and the minimal additional visual impact compared to if the height limit was met.
- The topographical challenges, multiple street levels (requiring commercial activation to the primary frontages of Shoalhaven, Terralong and Akuna Streets), separation of service delivery from Akuna Street residences, and the need to provide pedestrian linkages through the site are major drivers for the design levels proposed. The cost constraints for the development of this challenging site are also recognised in the Kiama Retail Study 2007 (Hill PDA, p49).
- Development in the vicinity is generally two storey, with three storey residential flat buildings located in Akuna and Collins Streets and an isolated four storey residential flat building located at 71 - 73 Shoalhaven Street. While the proposed development provides an overall increased bulk and scale to that of existing development, it provides varied height through the site reflecting and utilising the topography. In addition, the significant consolidation of lands results in the building form being of a greater scale than its surrounds; however the building articulation and manipulation of elements attempt to reduce its apparent scale when viewed from the public domain.
- The increased height will have minimal impact, in terms of visual impact, disruption of views, loss of privacy or any other impacts than if the maximum allowable height was met.
- Despite the exceedance of the allowable height, the proposed development will be in the public interest as it meets the objectives of the height development standard as:
  - most of the built form is under the 11 m height limit across the site, is broken up into smaller-scaled 'buildings/towers' that accords with the height of some existing buildings in the immediate locality.
  - The development is also consistent in design and character with some newer developments within the wider town centre area (eg. 3 storey mixed use development 'Rosebank Apartments', 124 Terralong Street). The proposed development provides streetscape articulation, a range of materials, active street frontages and landscaped setbacks that are appropriate for its town centre setting.

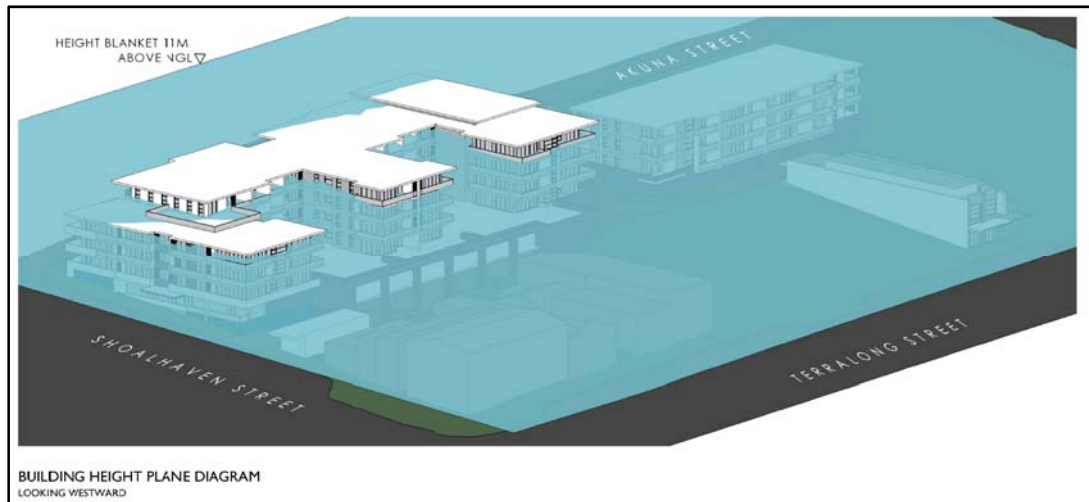
- The development will not result in an unreasonable loss of sunlight to the adjoining commercial uses, and will not result in any overshadowing impacts on any residential properties.
- The proposed height of the development will also not hinder the level of achievement of the development with the B2 Local Centre zone objectives as it will provide retail uses to visitors and tourists alike, and associated employment opportunities in an accessible location within close proximity to public transport and walkable facilities within the Kiama Town Centre.
- If the maximum allowable height were met, the building design would result in the removal of the 12 top floor (Level 4) apartments and some Level 3 apartments either being reduced or removed (up to 8 apartments). This would render the entire development economically unfeasible (noting the significant development costs resulting from the topographical challenges and need for through-site linkages and ground floor of retail uses). While this is not a planning consideration, it is an important one having regard to the prominence of the site's location as a central retail attractor within the Kiama Township noting the site has been underutilised for many years and identified as a key retail site in the Kiama Retail Study (2007). In addition, the development provides a suitable urban form and land use outcome which warrant support.

The Clause 4.6 Written Request concludes:

*“This Statement has addressed the provisions of Clause 4.6 of Kiama LEP 2011 and demonstrates that the variation sought to the development standards of the LEP (Building Height) is justifiable and should be given concurrence to, on the basis of the unique site context (large central site with multiple street frontages and challenging topography), the lack of adverse impacts resulting from the non compliance and the suitability of the design. It is emphasised that the removal of the non-compliant units would deem the development economically unfeasible, and would not result in any greatly improved outcome with respect to visual impact or overshadowing. We therefore request that Council implement a reasonable approach to the proposed height for the site which has no additional unreasonable impacts on adjacent properties and the public domain.”*

#### Response

The original development proposal provided a maximum building height of 14.3 metres – or an encroachment of up to 3.3 metres above the site's 11 m building height limit. **Figure 2** below is a building height plane diagram that depicts a building height plane “blanket” demonstrating a height of 11 metres above natural ground level and those part of the original proposal that encroached above this height limit.



**Figure 2: Building Height Plane for Original Proposal (ADM Architects).**

As evident from **Figure 2** whilst Building D & E sat below the 11 metre building height limit, almost the entire upper floor of the remainder of the development encroached above the 11 metres height limit. The Applicant was advised that this encroachment was not supported.

In response the Applicant amended the development proposal by reducing the maximum height of the development to 13.78 m (**Figure 3**).



**Figure 3: Building Height Plane for the Proposal.**

As is evident from **Figure 3** above, each of the buildings encroach the building height limit to some degree, in some instances only to a minor degree, but in other cases to a more significant degree.

The revised proposal generally complies with the 11 m building height limit along the Akuna Street frontage of the site (except from a minor encroachment at the south-eastern

corner of Building B of 230 mm); however the upper floor level of the development still encroaches for each of the blocks as follows:

- Block A – 835 mm (north-eastern corner);
- Block B – 1850 mm (north-eastern corner);
- Block C – 2780 mm (north-eastern corner);
- Block D – between 2250 mm and 2350 mm (along northern edge of roof).

When considering whether to grant consent subject to a written request pursuant to clause 4.6 the consent authority must be satisfied that the Applicant's written request justifying the contravention of the development standard demonstrates:

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

Furthermore the consent authority is also required to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.

The Applicant contends that the standard is unreasonable and unnecessary due to: the topographical challenges of the site; multiple street levels requiring commercial activation; the need to separate servicing from residential properties; provide pedestrian linkages across the site; all major drivers that conspire to lift the development above the building height limit.

The Applicant contends that there are sufficient environmental planning grounds to justify the contravening of the development standard as the proposal development is satisfactory having regard to the other provisions of the KLEP 2011, relevant chapters of the Kiama DCP and generally Section 79C of the Act. Furthermore the increased height will have minimal impacts in terms of visual impacts, loss of views and privacy or overshadowing.

Whilst I acknowledge that there has been a reduction in the height of the proposed development from that which was originally submitted to the current proposal (0.52 m maximum building height reduction); the proposal still encroaches significantly above the 11 metre building height limit that applies to the site. I also acknowledge that the external impacts that arise from the additional building height will not, of itself, result in significant external impacts in terms of overshadowing, loss of privacy or visual impact. This alone

however is insufficient in my view to argue that the 11 metre building height itself is unreasonable or unnecessary.

I am not convinced that the reasons given for demonstrating that the 11 metre building height is unreasonable and unnecessary in the circumstances of this case justify the extent to which the development encroaches the height limit. I am also unsatisfied that there are sufficient environmental planning grounds to justify the contravening of this development standard.

- The extent to which the development exceeds the 11 m height limit is excessive in that the degree of encroachment above the 11 metres height limit for three of the blocks (Block B, C and D) all exceed over 1.5 metres, and for Blocks C and D by well over 2 metres the 11 m height limit. In addition as is evident for the building height plane blanket (**Figure 3**), the lateral extent to which the development will exceed the 11 metre height limit will encompass well over half of the area of the rooftops of Blocks B, C & D, and in the case of Blocks B and C almost the entire roof top will sit above the 11 metre height limit.
- Whilst the site does experience topographical challenges, these challenges apply across the site. In this regard Building A is able to largely comply with the height limit (except for a minor encroachment to the north-eastern corner of its roof). Building 2 in the original proposal was also able to comply with the 11 m height limit.
- The provision of pedestrian linkage through the site does not of itself push the development above the height limit given it is reliant largely on a lift and stairwell to elevate pedestrians to Akuna Street.
- The commercial activation of Terralong, Shoalhaven and Akuna Street frontages is not in my view raising the development above the height limit. Rather it is the fourth residential apartment level, and its extension in a northerly direction, that is pushing the development significantly above the height limit. Indeed the commercial activation to Akuna Street occurs at a level below the street level of Akuna Street.
- Whilst the development does provide commercial activation to Terralong, Shoalhaven and part of Akuna Street this is a requirement of the LEP and does not of itself justify an increase in building height on the site.
- The development also does not provide adequate sunlight to the requisite number of apartments throughout the development as required by the ADG. The inability to satisfy this requirements and thereby provide a suitable level of amenity to future



residences of the development is in part of function of the shadow cast by the fourth residential level.

For these reasons I do not support the extent to which the proposed development encroaches the 11 m building height as it applies to the subject site.

In my view it is the fourth residential level that is driving the development above the height limit.

Based upon the current plans, even with the removal of the fourth level, the proposal would still have encroachments above the 11 metres height limit along the northern edge of the roof of the third level of the development. The extent to which this lower level encroaches the 11 metres height limit (from 480 mm to 790 mm) is considerably less than that associated with the fourth residential level.

### ***Floor Space Ratio***

Clause 4.4 requires that the floor space ratio of development does not exceed the maximum floor space ratio shown on the Floor Space Ratio (FSR) map. Two different floor space ratios apply to the overall site. The western part of the site has a maximum permissible FSR of 1.5:1 while the eastern part of the site has a maximum permissible FSR of 2:1. The development proposes a FSR for the eastern part of the site of 1.59:1 which is less than the 2:1 FSR that applies to this part of the site. The development however proposes a FSR of 2:1 for the western part of the site where a maximum permissible FSR of 1.5: 1 applies.

### ***Applicants Clause 4.6 Written Request***

The Applicants Clause 4.6 Written Request refers to the development comprising two “Sites” as “A” which is that part of the development site to the west of the unnamed lane, and Site B to the east of this lane. That part of the development located in Site A does not comply with the FSR requirement for this site; while Site B does. In summary the Applicants Clause 4.6 Written Request justifies the FSR breaches associated with the Proposal on the following grounds:

- The density, built form and outcomes of the development in Site A are suitable as the development is integrated with the adjoining land to the immediate east (Site B) by way of connected car parking, servicing arrangements and varied points of access.
- The significant consolidation of lands results in the building form being of an increased FSR for the western part of the site; however the building articulation and manipulation

of elements attempt to reduce its apparent scale when viewed from the public domain and impacts from the increased GFA at that part of the site.

- The exceedance in FSR equates to 1456 m<sup>2</sup> additional GFA located on Site A. It is noted that approximately 1500 m<sup>2</sup> of retail GFA (approx. 27%) is located on the ground floor retail level of Site A that is actually accommodated below ground. This area does not have any physical/built form impacts on the streetscape and adjoining land than if the FSR were complied with (above ground).
- As a result, the functioning of the site is not limited to the land west of the unnamed laneway (to which the 1.5:1 FSR control applies), and therefore this land is more capable of accommodating additional floor area.
- While some of the built form within Site A (ie. Building D - E) exceeds the 11 m height limit, it is generally limited to the northern roof area of the upper level (Level 4) and is not likely to have any adverse visual, privacy or amenity impacts to other properties or public areas.
- The originally-submitted design complied with the FSR for each part of the site (ie. Site A and Site B), however the practicalities of the site planning and the uniform maximum height controls across the site (11 metres) resulted in the eastern portion of the building exceeding the height controls (by up to 3.3 m).

Through discussions with Council staff it was thought that an averaging of gross floor area and resultant FSR across the site, was a more appropriate approach to better achieve height compliance while still meeting required floor area to make the development economically viable. The revised design now mostly conforms to the maximum height control at what is considered to be the most critical visually prominent part of the site (Building A), with height exceedance across the less visible central parts of the site (majority Level 4 of Buildings B – E) due to the lower topography at those points of the site. The result of this is that the FSR is exceeded within Site A (western portion of entire development site).

- The rationale for the existing environmental planning controls is unknown. According to TCG Planning, there is no sound environmental planning grounds as to why the difference FSR control applies across the development site.
- Despite the exceedance, according to TCG, the proposal will be in the public interest as it meets the objectives of the development standard as:
  - The density, built form and outcomes of the development in Site A are suitable as the development is integrated with the adjoining land to the immediate east

(Site B) by way of connected car parking, servicing arrangements and varied points of access.

- As a result, the functioning of the site is not limited to the land west of the unnamed laneway (to which the 1.5:1 FSR control applies), and therefore this land is more capable of/has the capacity to accommodate additional floor area.
- "Averaging" the FSR across the entire site results in the same total GFA if the FSR was complied with for each part of the site (but with less height impacts resulting on the eastern portion (Site B) as indicated by the originally submitted design);
- The non-compliant portions will not cause any adverse or additional impacts than if the development standard were met.
- The proposed FSR of the development will also not hinder the level of achievement of the development with the B2 Local Centre zone objectives as it will provide retail uses to visitors and tourists alike, and associated employment opportunities in an accessible location within close proximity to public transport and walkable facilities within the Kiama Town Centre.
- There is no public benefit by maintaining the development standard, as there are no identifiable adverse impacts to approval being granted to the submitted design with an FSR of 2:1 instead of 1.5:1. If the maximum allowable FSR were met, the building design would result in a significantly reduced gross floor area which would result in increased GFA on the eastern side of the development site (ie. Sites A and B), in a position where additional floor space would be most visually evident.
- There is a public benefit to "averaging" the FSR across the entire development site (with a higher FSR on the western portion of the land, Site A) to achieve a more functional site and lower height on the eastern part of the site in particular.
- If the Site A FSR was to be met, this would require a reduction of approximately 1500 m<sup>2</sup> from the site, and would render the development economically unfeasible (noting significant development costs resulting from the topographical challenges and need for through-site linkages and ground floor of retail uses).

The Clause 4.6 Written Request concludes:

*"This Statement has addressed the provisions of Clause 4.6 of Kiama LEP 2011 and demonstrates that the variation sought to the development standards of the LEP (FSR) for the western part of the development site (Site A) is justifiable and should be given concurrence to, on the basis of:*

- *The limited extent of the non compliance on this part of the site only (exceedance by approx. 1500m<sup>2</sup>);*
- *The GFA is accommodated below ground and does not have any physical/built form impacts on the streetscape and adjoining land than if the FSR were complied with (above ground);*
- *There is no apparent strategic or environmental planning justification for the separate FSR controls across the entire site.*
- *There are distinct benefits of "averaging" the FSR across the entire site which results in the same total GFA if the FSR was complied with for each part of the site (but with less height impacts resulting on the more visually prominent eastern portion (Site B) as indicated by the originally submitted design);*
- *The design is suitable as it integrates with the adjoining land to the immediate east (Site B) by way of connected car parking, servicing arrangements and varied points of access. This combined site area is more capable of accommodating additional floor area on Site A than if it was isolated.*
- *The majority of the development within Site A is compliant with the 11 m height limit, with very minor portions of the northern-most roof of the top level of the apartment building D-E exceeding the maximum 11 m height limit by a maximum of 790 mm;*
- *The proposed FSR of 1.89:1 will not cause any adverse or additional impacts than if the development standard were met;*

*We therefore request that Council implement a reasonable approach to the proposed "averaged" FSR for the site, which has no additional unreasonable impacts on adjacent properties and the public domain."*

### Response

I, too, have been unable to determine the planning rationale as to why part of the subject land was identified as having a FSR of 2:1 while the remainder was restricted to an FSR of 1.5:1; while an 11 metre height limit applies across the whole subject land.

During the assessment process discussions did take place with the Applicant about the potential to average the FSR across the development site, however this was undertaken on the basis that it would assist in reducing the building height in a manner that would comply with the 11 m building height limit.

Whilst the overall height of the development has been reduced from that originally proposed, the proposal still fails to comply with the building height limit, and to a significant degree. In addition the proposal also now fails to comply with the FSR for the western part of the site (although falls under the FSR for the eastern part of the site).

Taking a view of the broader surrounding locality it is largely evident that where an 11 metre height limit has been imposed under the LEP the corresponding FSR is 1.5:1; with the exception of the eastern part of the subject site and a site located at the corner of Manning and Bong Bong Streets.

As outlined above in relation to the separate Clause 4.6 submission relating to clause 4.3 building height limit, in my view there is insufficient justification provided for the extent of encroachment of the 11 m building height limit.

For similar reasons given in relation to non-compliance with clause 4.3, as to the significant extent of encroachment of the building height limit, I am also of the view that there are insufficient environmental planning grounds to justify the extent of encroachment of the FSR as it applies to the western part of the site.

### ***Active Street Frontage***

Clause 6.8 (Active Street Frontages) seeks to promote uses that attract pedestrian traffic along certain ground floor street frontages within B1 and B2 zones. For the purposes of this clause a building has an active street frontage if all premises on the ground floor of the building facing the street are used for the purposes of business or retail premises. This clause also seeks to ensure the ground floor will not be used for residential accommodation or a car park.

The Proposal provides an active street frontage to the Akuna Street frontage east of the unnamed laneway (ie. Building A, B and C), as three commercial tenancies face Akuna Street. Clause 6.8 for this portion of the site is addressed. The Proposal, however, west of the unnamed laneway does not meet Clause 6.8 as the ground floor of Building D - E does not provide business or retail premises facing Akuna Street, but rather provides residential accommodation.

In addition, the development also includes car parking that will not strictly comply with the definition of “basement” and therefore would be defined as ground floor, and therefore also contrary to clause 6.8(3)(b).

(It is acknowledged that the Applicant’s town planning consultant does not agree with the above interpretation with respect to the basement car park on the basis that the objective of this clause is to provide an active street frontage. The Applicant has however submitted a revised Clause 4.6 submission that also addresses this aspect as well).

### **Applicant’s Clause 4.6 Written Request**

The Applicant’s revised Clause 4.6 Written Request in summary gives the following reasons for justifying non-compliance with this clause.

- While Akuna Street is connected/linked to other parts of the township within the development, these linkages are physically quite separate and have a different context within the business zone than the other main shopping streets (Terralong Street and Collins Street). The topography of the immediate locality makes Akuna Street somewhat disconnected to the primary shopping areas.
- The existing 'Akuna Court' commercial building on the southern side of Akuna Street, and to a lesser extent the adjacent car park property should be the limit of commercial uses on Akuna Street (due to the proximity to Shoalhaven Street).
- The southern side of Akuna Street opposite proposed Buildings D and E are established residences. The likelihood of the development of these properties for retail or business premises is limited. If active street frontages were provided on the subject site in this location directly opposite these residences, there could arguably be some adverse impacts on these properties.
- Terralong Street is the main retail shopping strip, with Shoalhaven Street providing less densely-sited premises on both sides of the street (due to the steeper topography). The proposed development (appropriately) proposes all commercial vehicular access (including all parking and loading) from Shoalhaven Street on the northern side of the property, away from existing and proposed residents on Akuna Street.
- The configuration of the northern side of Akuna Street road reserve does not provide enough width for an adequate footpath for active commercial use the entire length of the subject site.
- In relation to the portion of the car park level that is at ground level: according to TCG compliance with this development standard is considered to be unnecessary and unreasonable as this part of the parking level does not present to the streets to which clause applies (Akuna and Shoalhaven Streets). While a footpath is provided for cross-site pedestrian access, neither of these parts of the site are suitable for the "promotion or encouragement of pedestrian traffic" presumably for retail activity, which this Clause seeks to achieve.

The NSW Department of Planning and Environment's model provision guidelines according to TCG, confirms that this clause is written in such a way that it should relate to a Map (hence the 'certain streets' reference in the objective of the clause). Council has not prepared such a map. TCG consider that if this process was followed, that it would be unlikely that Council would map Akuna Street as an 'Active Street'.

- In addition, there are strategic planning grounds to justify not providing active street frontage to Akuna Street in terms of adequate retail and commercial floor area. The Kiama Retail Study (Hill PDA, 2007) identified that by 2020 there is a need for an estimated 7100 m<sup>2</sup> of supermarket and grocery floor space; and additional 3100 m<sup>2</sup> of discount department floorspace and 5200 m<sup>2</sup> of specialty floorspace. In considering three sites within the township (including part of the subject site), it was indicated that this site would be suitable for a supermarket and specialty shops but was not of a sufficient size for a discount department store.
- Despite the western part of the Akuna Street frontage of the subject site not achieving the 'active street frontage' development standard, according to TCG, the proposed development will be in the public interest as it still meets the objectives of the development standard as it promotes pedestrian traffic along the primary street frontages of Terralong and Shoalhaven Streets. It also promotes access to the Akuna Street frontages east of the laneway, where it has good access to the existing commercial premises of Shoalhaven Street and across the southern side of Akuna Street ('Akuna Court' premises).

By providing additional retail and commercial premises along western part of the Akuna Street frontage (ie. if the development standards were met), the objectives of the development standard and the B2 zone according to TCG will be compromised as this part of Akuna Street is less accessible than the primary frontages of Terralong and Shoalhaven Streets and Shoalhaven/Akuna Street corner.

### Response

I generally agree with the thrust of the Applicant's clause 4.6 written request with respect to this clause.

- Akuna Street is not one of the main commercial streets within the CBD. Whilst there is a small commercial development located towards the Shoalhaven Street end of the street and public car park, the remainder of the street opposite the subject site contains residential development.
- Akuna Street, particularly given the topography of this area is also largely disconnected from the main commercial area of the CBD (except from some small arcades).
- The development will provide active street frontages to Terralong and Shoalhaven Streets, as well as part of Akuna Street.

- The development will provide a commercial frontage along part of the Akuna Street frontage that will match the commercial uses that already exist part way along Akuna Street and opposite the site
- The part of the development that does not provide an active street frontage will provide a residential form of development that will be more in keeping with the residential nature of development that is located opposite this part of Akuna Street.
- The presence of a ground floor car park centrally within the site will not be inconsistent with the objective of the clause, that is to say this aspect of the development would not detract from pedestrian traffic along the ground floor street frontages within the surrounding street network.

As will be discussed later in this report (Section 5.6.1), there are however urban design concerns in relation to the design of the proposed pedestrian forecourt to Akuna Street and its grade separation to the street level that will undermine the ability of this street frontage to promote an attractive and safe area for pedestrians contrary to the objective of this clause.

## **5.2 ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS**

### **5.2.1 Draft State Environmental Planning Policy (Coastal Management) 2016**

This draft SEPP was placed upon public exhibition by the NSW Government from the 11<sup>th</sup> November 2016 to 20<sup>th</sup> January 2017.

The aim of this Policy is promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016* by:

- (a) *managing development in the coastal zone and protecting the environmental assets of the coast, and*
- (b) *establishing a framework for land use planning to guide decision-making in the coastal zone, and*
- (c) *mapping the 4 coastal management areas which comprise the NSW coastal zone, in accordance with the definitions in the Coastal Management Act 2016.*

The draft SEPP will apply to the subject land.

The Development Site is situated within an area identified as “Coastal Use Area” under this draft SEPP. It is not anticipated that the Development Proposal would be inconsistent with the provisions of this draft SEPP as:



- The subject site is not located near a foreshore, beach, headland or rock platform and will not affect public access to or along such areas.
- The Proposal will not result in overshadowing, wind funnelling or loss of views from public places to foreshores.
- Will not adversely affect the scenic qualities of the coast.
- Will not adversely impact on Aboriginal cultural heritage or places;
- Will not impact on the surf zone.

## **5.3 DEVELOPMENT CONTROL PLANS**

### **5.3.1 Kiama Development Control Plan 2012**

#### **5.3.1.1 Chapter 5 – Medium Density development**

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

- Control C1 – meet the principal development standards under LEP 2011.

The proposed breaches of building height, FSR and active street frontage development standards is addressed above within Section 5.1.9.3 of this report. The Proposal does not comply with Clauses 4.3, 4.4 and 6.8 of the LEP 2011 with exceptions sought pursuant to Clause 4.6. These matters have been discussed in detail and the breaches with respect to building height and FSR are not considered acceptable.

- Control C10 – setbacks for development 3 or more storeys, 6 m to primary road frontage.

Refer Chapter 26 Kiama Town Centre.

- Control C12 – 75% of dwellings must have dual aspect. 60 of 97 apartments (62%) of dual aspect.

This clause of the DCP is inconsistent with the NSW ADG which requires 60%. Clause 6A of SEPP 65 confirms that with respect to the objectives, design criteria and design guidance set out in Parts 3 and 4 of the ADG, Development control plans cannot be inconsistent with this guide in respect of the following "(g) natural ventilation". Further, subclause 6A(2) clarifies that *"if a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect"*, whilst subclause

6A(3) clarifies that *"this clause applies regardless of when the development control plan was made"*.

- Control C31 – requires apartments to have balconies as follows (all to have 3 m minimum depth and be directly accessible from an indoor living area):
  - one-bedroom apartments – 16 m<sup>2</sup>;
  - two-bedroom apartments – 20 m<sup>2</sup>;
  - three plus bedroom apartments – 24 m<sup>2</sup>;
  - ground floor or podium apartments to have POS of min. 15 m<sup>2</sup>;
  - 70% to receive a minimum of 3 hours direct sunlight between 9:00 am and 3:00 pm during midwinter.

The proposed development provides the following minimum balcony areas:

- One bedroom apartments: 8 m<sup>2</sup> (min. depth 2.4 m);
- Two bedroom apartments: 12 m<sup>2</sup> to 57 m<sup>2</sup> (min. depth 2.0 m);
- Three bedroom apartments: 45 m<sup>2</sup> to 53 m<sup>2</sup> (min. depth 2.2 m).

The minimum balcony areas and minimum width of balconies comply with the ADG/SPP 65 requirements. DCP controls are contrary to Clause 6A of the SEPP. Sunlight access is discussed further in Section 5.6.1.

- Control C36 – This clause requires residential dwellings in mixed-use buildings to have a 3.3 m minimum finished floor level to finished ceiling level (for residential only buildings: 2.7 m for habitable rooms and 2.4 m for non-habitable rooms).

The proposed development provides a 3.5 m to 4.5 m floor to ceiling height for the retail spaces and a 2.7 m floor to ceiling height for the residential units. The application seeks a variation in this regard citing: provision of 3.3 m ceiling heights is unwarranted, given the extent of commercial uses at the ground floor of the multiple frontages, in addition to the challenges of the natural topography of the site. This issue is addressed with respect to the ADG in **Annexure 3**.

- Control C43 – Site design must optimise the provision of consolidated deep soil zones by ensuring buildings and basement/sub-basement/surface car parking do not to fully cover the site allowing for 25% deep soil landscaping.

The Applicant contends that the commercial zone/town centre location that permits minimal and zero setbacks and higher density should not warrant the provision of a deep soil zone (25% of site area) that would normally apply to medium density

developments in a suburban context. This issue is addressed with respect to the ADG in **Annexure 3**.

#### **5.3.1.2 Chapter 9 Car Parking Requirements**

The Proposal incorporates three basement car parking levels accommodating a total of 405 car parking spaces.

The proposal triggers separate parking requirements between the retail / commercial and residential components.

##### *Retail and Commercial Component*

- Terralong Street retail and commercial component
  - Total GLFA = 687 m<sup>2</sup> @ 1/35 m<sup>2</sup> = 19.6 car spaces.
- Akuna and Shoalhaven Streets commercial
  - Total GLFA 711 m<sup>2</sup> @ 1 space / 35 m<sup>2</sup> GLFA = 20.3 spaces.
- Shopping Arcade and Supermarket
  - Total GLFA 2736m<sup>2</sup> @ 6.1 spaces / 100 m<sup>2</sup> = 167 spaces.

Total retail and commercial parking allocation equates to 207 car spaces (ie. 206.9).

##### *Residential Component*

The residential component draws on the Section 2.2 of Chapter 9 of the Kiama DCP which recommends a minimum number of off street residential parking spaces as follows:

- 1 space per one or two bedroom dwellings:
  - 41 x 1 bedroom car spaces;
  - 52 x 2 bedroom car spaces.
- 2 spaces per 3 bedroom dwellings:
  - 10 x 3 bedroom car spaces.
- 1 space per 2 dwellings for visitor parking:
  - 97 units – 48.5 (49 spaces).

Total residential parking allocation equates to 152 spaces.

Consequently a total of 359 parking spaces are required to be provided. The development provides 405 spaces which complies.

Under Councils DCP a total of 50 bicycle parking spaces should be provided comprising:

- 30 residential bicycle parking spaces; and
- 20 commercial / retail bicycle spaces.

The proposal provides a total of 67 bicycle parking spaces comprising 42 resident and visitor spaces and 25 commercial/retail spaces.

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

#### **5.3.1.3 Chapter 26 – Kiama Town Centre**

The proposed development is generally consistent with the requirements of Chapter 26 of the DCP. The following matters however arise:

- Section 4 – Future Building design – A general building height of no more than three (3) storeys applies; and
- Section 6 – Buildings should extend to the property boundaries where appropriate to reinforce the street patterns and the continuity of existing street façades. Continuous building frontages are required along key activity routes and preferred on all other routes.
- Section 7(a) – Scale, building height and bulk – On major public corners and prominent entrance sites, a three (3) storey height limit should be imposed.

#### **BHI Review**

The Urban Design Review carried out by BHI makes a number of comments in relation to this chapter of the DCP and the proposed development including:

- *The Kiama DCP states that “A general building height of no more than three (3) storeys currently applies within the Kiama Town Centre. Council may consider the provision of one (1) additional storey but only where such a storey will cater only for basement level carparking and will not measure more than one (1) metre above natural ground level at any point.” This control is contravened by the proposal of up to four (4) levels above ground, including basement level commercial and residential units which are sunken below street level.*
- *The Kiama Town Centre DCP states that development must “Incorporate a building form which defines the frontages to streets and other public spaces”, “Provide landmark features at gateway or key corner sites” and “On major public corners and prominent entrance sites, a three (3) storey height limit should be imposed. This would reflect the vertical scale of the Town Centre”. Currently the building form does not reflect these controls, as:*
  - *The commercial tenancies on Akuna Street are significantly below the street level in places, with greater than 6m street setbacks to Akuna Street, resulting in a streetscape that is ill-defined and creates awkward public spaces which are difficult to access.*
  - *The massing of the building does not mark the corner of Akuna and Shoalhaven Streets as a prominent architectural element, and in fact is diminished in scale relative to the Northern edge of the building on*

*Shoalhaven Street, which does not step down with the site topography.*

- *The Kiama Town Centre DCP states that development must “Complement and contribute to the context of the site in which it is proposed in terms of its land use mix and built form”. The predominate land use in the area is shop top housing, with the built form comprising commercial premises at the street level and 1 level of residential above. The built form expression of the Town Centre consists of fine grain vertical delineation of shop top housing due to limited lot widths, articulation of building massing in vertical bays and stepping of buildings in response to topography. The Akuna Street and Shoalhaven Street frontages of the development do not respond to the context of the site in the following ways:*
  - *Commercial premises are proposed below street level or, to the west of the site, not at all.*
  - *The built form comprises 3 storeys of residential units above the ground floor.*
  - *The built form expression is predominantly horizontal, with limited vertical articulation.*
  - *The building proposes largely flat floor plates, with the building massing and streetscape interface not adequately responding to the topography of the site.*
- *The Kiama Town Centre DCP states that development must “Provide appropriate detail and architectural interest at all levels of the building, from roof lines ... to treatments of the ground floor and lower levels of the facade with finer scale articulation, richness of detail and complexity” and “A variety of building materials have been utilised throughout the Kiama Town Centre including basalt stone blocks, timber (weatherboard), masonry/brick (usually rendered), and sandstone ... Building materials should include ... architectural detail and trim in timber and moulded cement.” Through the limited information provided on the building elevations and materials & colours schedules, it is clear that architectural interest and articulation is not provided as evidenced by the following:*
  - *Finer scale articulation is not provided to the residential levels - the apartments are composed of wide expanses of glazing and balustrades, with no changes of materiality, form or scale of architectural elements to express a finer detail of articulation.*
  - *Richness of detailing in the massing and materiality of the building is not expressed in the largely cold and expansive monochromatic facade treatments.*

*A clear mixture of traditional materials is not evident in the design, with largely grey and white materials and detailing being shown and a lack of architectural detail and trim in warmer materials such as timber and sandstone.*

Comment:

The 3 storey height limit within Chapter 26 were effectively carried through from the previous DCP 13 – Kiama Town Centre, which was adopted by Council in 1997. The former DCP 13 in turn directly reflected the provisions of the then Kiama LEP 1996. Clause 50(2)(a) of LEP 1996 specified a maximum 3 storey height limit for development in the Kiama CBD.

The current LEP 2011 however stipulates a maximum building height limit of 11 metres at the site, leaving the number of storeys that may be accommodated within the height limit dependent upon the design requirements of the ADG and the BCA. As outlined in detail with respect to Clause 4.3 of the LEP 2011 the proposal seeks approval for breaches of the 11 metres height limit pursuant to Clause 4.6, which are not supported by this assessment.

Section 5.6.1 of this report addresses the streetscape and urban design issues associated with this proposal in further detail.

**5.3.1.4 Chapter 30 - Heritage**

- Section 2 – Aboriginal Cultural Heritage Management

Whilst the development site is situated within 200 metres of the sea, given the highly disturbed nature of the site having regard to Clause C4 of Chapter 30 of the DCP an Aboriginal Cultural Heritage Assessment is considered unnecessary for this proposal.

- Section 3.0 – Cultural Heritage Management

There are no identified heritage sites located within the development site. As detailed in Section 5.1.9 of this report, there are identified heritage items located within the vicinity of the subject site. The issue of heritage impacts is further discussed in Section 5.6.2 of this report.

**5.4 ANY MATTERS PRESCRIBED BY THE REGULATIONS**

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

The proposal does not compromise the strategic actions or principles (Appendix C – table 13) adopted within the NSW Coastal Policy 1997.

**5.5 ANY COASTAL ZONE MANAGEMENT PLAN**

Nil

## **5.6 THE LIKELY IMPACTS OF THE PROPOSED AMENDED DEVELOPMENT**

### **5.6.1 Urban Design, Streetscape and Character of Locality**

Council engaged the services of BHI Architects to review the development application in terms of urban design and with specific reference to the NSW ADG. A copy of BHI's assessment report is included in **Annexure 2** to this report.

The following is a summary of the main issues identified by BHI, with responses prepared by the Applicant and our own comments.

#### ***Pedestrian Access***

##### **BHI Comment**

- The site analysis (see drawing A-002) indicates a pedestrian link from Shoalhaven Street to Akuna Street and Terralong Street – the only connection evident is a stairway into the retail basement with no clear pedestrian pathway through it. This is a safety hazard and not suitable for a pedestrian thoroughfare.
- The retail arcade is described as strengthening “the pedestrian connection between Terralong and Shoalhaven Streets”. Evidence of this is not seen in the plans.
- The identified pedestrian access from Akuna Street to Terralong Street is a poorly delineated three storey lift significantly forward of the main building line, which delivers pedestrians to the retail basement with a 1.5 m wide pathway between a 41 m blank wall and car parking to reach the commercial tenancies (see drawing A-101). This is not suitable from a pedestrian amenity, safety or functionality point of view for what is meant to be a significant pedestrian thoroughfare.
- The access from Terralong Street comprises a poorly delineated (see drawing A502) 4.5 m wide pedestrian pathway which leads to a retail arcade completely enclosed by a delivery truck driveway above. This is a dark, unpleasant space without natural sunlight or ventilation, with the only anchor to entice visitors being the Aldi supermarket, which has no visible presence to the street and is directly adjacent to a basement car park. The commercial tenancies are deemed to be at risk for vacancy due to their location removed from the street frontage and a lack of amenity. The pedestrian thoroughfare, and the associated amenities, are likely to be unsafe and unpleasant (see drawing A-101).
- As per the Kiama Town Centre DCP, “Entry points to buildings should identify themselves and should be at the same level as the street where possible.” The access from Akuna Street to the significantly lowered commercial forecourt and

residential units is exceedingly complex and further separates the commercial frontages from the streetscape. As there are no levels provided on the drawings, accessible pedestrian paths are not easily identified.

**Applicant's Response**

- *Pedestrian linkage along the edge of the ground floor commercial car park:*

*The pedestrian link to Terralong Street via the lift from Akuna Street is not expected to be the main point of access to the site, with the majority of peoples expected to access the site either directly from Terralong Street or from the commercial level parking area. It is anticipated that the majority of people using the Aldi supermarket will drive to the site and will therefore access Aldi, the adjacent shops and the shops along Terralong Street directly from the ground floor commercial carpark. Those persons visiting the commercial tenancies along Akuna Street may walk to the main retail strip in Terralong Street, via Shoalhaven Street, however the lift will provide an alternate point of access should they also seek to visit Aldi. Hence, the frequency of use of this lift and pedestrian access is not anticipated to be high. The design and placement of this access is considered to be appropriate having regard to the significant slope constraints of the site (with a level change of approximately 20m) and its anticipated frequency of use. Furthermore, the Akuna Street lift location (and adjacent proposed pram ramp to Akuna Street) is also convenient for utilisation by patrons that park at the Council car park on the southern side of Akuna Street.*

*With respect to the design of this thoroughfare, it is noted that the lift will open onto an entrance area, which then leads to a 1.5m wide pedestrian pathway to the north-east of the Aldi tenancy. The pedestrian pathway is open to the commercial carpark on one side thus providing a high level of surveillance. Whilst it is acknowledged that this pedestrian access does not provide a pleasant outlook it is appropriate for its intended purpose and is acceptable from both a safety and security viewpoint.*

*Wheel stops in the adjacent parking spaces ensure that the pedestrian pathway is not impacted by vehicles in the adjacent car parking spaces. It is also noted that a second point of access into the Aldi tenancy from this pedestrian walkway is not feasible due to the ongoing security and controlled access requirements of Aldi.*

- *Pedestrian access from Terralong Street ("unsafe and unpleasant"):*

*The pedestrian access from Terralong Street provides a relatively level link through to the speciality tenancies and the Aldo supermarket, without the need for stair access. This is considered to be the preferred outcome to avoid 'visual' stair or lift barriers between the retail tenancies fronting Terralong Street and the tenancies to the rear. By necessity (due to the grade of the land), this results in the ground floor retail space being below ground level when removed from the Terralong Street frontage of the site.*

*However, where the access corridor is 4.5m in width it is flanked along one side by the glass shopfronts of a retail tenancy and is open at its north-eastern end to Terralong Street to provide natural light and to allow*



*for surveillance of this space. This pedestrian link then leads to an area with an increased width of approximately 9m in the central portion of the arcade. Ongoing surveillance of this central space will occur from retail kiosks located on both sides of the pedestrian walkway. Hence, whilst not achieving a high level of natural light, this pedestrian route is considered to be of sufficient width and of acceptable design to meet the expectations of users and will have an appropriate level of safety and security.*

*The Aldi supermarket which does not have street frontage, has been appropriately placed to meet the ongoing operational requirements of Aldi, being a retail tenant which generally does not require frontage to a highly trafficked street, as evidenced in the design of other stores in the Illawarra region.*

*The Aldi store is appropriately placed adjacent to the commercial carpark to facilitate ease of trolley access. Signage adjacent to the Terralong Street frontage of the site will direct customers to the store, encouraging a higher level of patronage of other tenancies in the arcade along the route. Relocation of the Aldi tenancy to the space adjacent to Terralong Street, to provide a direct street frontage, is not feasible due to the width of the site in this position.*

- *Pedestrian pathways along Akuna Street and the residential apartments (including passage from the western units to the eastern part of the site):*

*The previously submitted Landscape Plans (in particular the coloured version) clearly indicate the proposed pathway treatments along Akuna Street. The primary pedestrian path on the eastern side of the unnamed lane is along the commercial forecourt (which also provides access to apartments for Buildings A, B and C). Stairs provide primary west-ward pedestrian access from here to a pathway on the eastern side of the unnamed lane (although pedestrian access along here would not be encouraged) - Refer Landscape Plan LD02. Across the unnamed lane to the west (refer LD03), a concrete pathway links to the Block D and E apartment entry lobbies.*

#### Comment

The proposal does provide pedestrian connectivity between Terralong Street through a retail arcade; and then by a designated path along the edge of the commercial car park to a stairwell/lift which can be used to access the pedestrian forecourt along Akuna Street as well as directly to Akuna Street.

Whilst the pedestrian route will not be overly attractive, particularly that part adjacent the commercial car park, it will serve a purpose of providing pedestrian access between Akuna Street and Terralong Street. The provision of a lift will also enable universal access between these points.

The pedestrian access from Terralong Street will be via a 4.5 m access corridor flanked by a retail tenancy on one side, and which will be provided with some natural light from its

entrance to Terralong Street. This access will provide level access between Terralong Street and the retail arcade including supermarket as well as the commercial car park.

### ***Residential Amenity***

#### **BHI Comment**

- The western block of apartments does not provide communal open space adjacent to it. Residents must exit the building, cross a laneway and re-enter the building to access communal open space between the three other apartment blocks.
- The provided communal open space is largely paved, with minimal planting in raised planter boxes. The planting in these spaces does not contribute to the 7% of site area dedicated to deep soil planting required by the ADG, however given the urban nature of the site, this may be accommodated in planter boxes or by sinking planting depth into the basements below. 7% of the site would require 539 sqm of deep soil planting with minimum 6 m dimensions, however only a small fraction of this has been provided as on-structure planting.
- 647 m<sup>2</sup> of communal open space is provided for residents, which is less than 35% of that required by the ADG. Given the limited scale of the communal open space, it would be expected that the quality of this space would be high, however it also act as thoroughfares for residential access, so will unlikely be suitable as space for communal activities.
- The lowest floor of residential units facing Akuna Street are sunken below street level. The plans are unclear, but it appears that the bedrooms of at least 4 apartments face a blank wall underground, which is not adequate to achieve minimum levels of amenity. These units also claim cross ventilation, which is unlikely given their relationship to the streetscape level.
- The adaptable apartment layouts provide an onerous burden on those adapting them to amend layouts at high cost. In one case, an inaccessible ensuite is coupled with an accessible bedroom, potentially making it redundant. More suitable arrangements should be provided.
- All residential waste is concentrated in one room rather than being associated with each apartment block. There are no waste chutes, which means that residents must travel up to 80 m through the basement with no discernible pedestrian pathway, causing safety concerns, to convey waste and recycling to the communal residential waste area.

- The basement car parking level is a labyrinth of dead end aisles – this can simply be mitigated by removing some car parking spaces to promote clearer circulation paths in a looped arrangement rather than dead ends.

#### Applicant's Response

- *Communal Open Space:*

*Outdoor and indoor communal spaces have been provided along the north side of Block D and E. As suggested the outdoor space uses the roof area of the truck loading dock. The internal room facilitates easy access to the outdoor space and is orientated to the north. It has been achieved by the removal of a centrally located single 1 bed apartment.*

- *Akuna Street Floor Levels:*

*An additional cross section (drawing A-208) has now been prepared by ADM Architects which provides further clarification of the floor level of the units. This plan clearly demonstrate that the units are cross ventilating thereby addressing potential amenity concerns.*

- *Adaptable Apartments:*

*In relation to the last point, the correspondence prepared by Accessible Building Solutions responds to this matter and, in summary, indicates that that:*

*"The proposed changes to the units is consistent with the intent of the adaptable housing standard and is in fact quite minimal. It needs to be considered that some time has elapsed since the Standard was written and at the time it was not envisaged it would be called up in DCPs as it now is in NSW. The approach endorsed by the NSW branch of the Association of Consultants in Access Australia is to allow more change to the design provided it is planned and does not require structural changes or impact adjoining units. As a member of the Standards Committee responsible for writing the Standard I am satisfied that the proposed units meet the requirements of the Standard."*

#### Comment

- Communal Open Space

Following the provision of the BHI assessment the Applicant has put forward two different approaches for communal open space for Block D and E. One scheme did propose to take advantage of the roofed over truck loading area to provide a north facing communal open space connected to a common room. This approach also involved the removal of one of the one-bedroom apartments to make way for a common room that provided a link to the common open space.

The Applicant has subsequently further amended the proposal with the deletion of this northern communal open space and common room; and has now located the communal open space for Block D and E to the west of the site with access by a corridor at ground floor level. It is considered this option reduces the amenity to future residents of the apartment block compared to the earlier version.

Under Design Criteria 3D-1 of Section 3D of the NSW ADG communal open space should have an area equal to 25% of the site area. The subject site comprises an area of 7700.6 m<sup>2</sup>, therefore the development should provide 1925.15 m<sup>2</sup> of communal open space. The proposal provides a combined communal open space area of 1070 m<sup>2</sup>, a shortfall of 855.15 m<sup>2</sup> or just over 55% of what is required to be provided.

The development application acknowledges this shortfall in provision but cites that the ADG recognises the difficulty of sites within business zones complying with this requirement by indicating that where developments are unable to achieve this design criteria they should:

- *provide communal spaces elsewhere such as a landscaped roof top terrace or a common room*
- *provide larger balconies or increased private open space for apartments*
- *demonstrate good proximity to public open space and facilities and/or provide contributions to public open space*

The application contends that the development provides generous private open space balconies and the site is located within close proximity of Hindmarsh Park.

It is agreed that generally the proposed private open space areas provided for the residential apartments are generous in area when compared to the ADG area requirements. The site is also within close proximity of Hindmarsh Park which is located in Terralong Street. Hindmarsh Park also links with the Kiama Harbour foreshore.

Concern is however raised with the communal open space area for Buildings D and E. This communal open space has been located on the western boundary. Access to this communal open space from the residential apartments within this building will be along a narrow and rather uninviting corridor. Being located on the western side of the building ensures not all residents of this building will have equitable access to communal open space (unlike the residents of the other buildings which have communal open space areas between the buildings).

Furthermore access to this communal open space is along a narrow corridor which is neither inviting nor attractive; unlike with the other buildings or towers where access to the communal open space areas is via the main lobbies.

- Akuna Street Pedestrian Levels

This issue will be further addressed below, however serious concerns are raised about the physical grade separation between the pedestrian forecourt along the Akuna Street frontage and the street level.

- Adaptable Apartments

The main concern raised in relation to the adaptable apartments in my view relates to the “adaptable two bedroom” apartment. This adaptable dwelling provides for the bedroom B1 to become the adaptable bedroom however the ensuite attached to this bedroom will not be accessible. Instead the separate bathroom will be adaptable instead. The ensuite attached to bedroom B1 in this instance would become redundant in these circumstances. This is not considered suitable.

### ***Bulk and Scale and Architectural Character***

#### ***BHI Comment***

It is BHI's view that the building form does not: define the frontages to Akuna and Shoalhaven Streets; provide a landmark feature at a key corner sites; reflect the vertical scale of the Town Centre; as:

- The commercial tenancies on Akuna Street are significantly below the street level in places, with greater than 6 m street setbacks to Akuna Street, resulting in a streetscape that is ill-defined and creates awkward public spaces which are difficult to access.
- The massing of the building does not mark the corner of Akuna and Shoalhaven Streets as a prominent architectural element, and in fact is diminished in scale relative to the northern edge of the building on Shoalhaven Street, which does not step down with the site topography.

Furthermore BHI are of the view that the proposal does not complement or contribute to the context of the site in terms of its land use mix and built form. According to BHI the predominate land use in the area is shop-top housing, with the built form comprising commercial premises at the street level and 1 level of residential above. The built form expression of the Town Centre consists of fine grain vertical delineation of shop-top

housing due to limited lot widths, articulation of building massing in vertical bays and stepping of buildings in response to topography.

According to BHI the Akuna Street and Shoalhaven Street frontages of the development do not respond to the context of the site:

- Commercial premises are proposed below street level or, to the west of the site, not at all.
- The built form comprises 3 storeys of residential units above the ground floor.
- The built form expression is predominantly horizontal, with limited vertical articulation.
- The building proposes largely flat floor plates, with the building massing and streetscape interface not adequately responding to the topography of the site.

According to BHI architectural interest and articulation is not provided as:

- Finer scale articulation is not provided to the residential levels – the apartments are composed of wide expanses of glazing and balustrades, with no changes of materiality, form or scale of architectural elements to express a finer detail of articulation.
- Richness of detailing in the massing and materiality of the building is not expressed in the largely cold and expansive monochromatic facade treatments.
- A clear mixture of traditional materials is not evident in the design, with largely grey and white materials and detailing being shown and a lack of architectural detail and trim in warmer materials such as timber and sandstone.

#### Applicant's Response

In relation to these aspects the Applicant contends that:

- *With respect to Akuna Street, currently there is no footpath and the property boundary extends to the kerb, resulting in pedestrians having to walk within the street reserve. The proposal would increase safety by providing a dedicated pedestrian forecourt to all the shop fronts along Akuna Street.*

*Retaining walls are located between the forecourt and the street boundary to make up the level difference that exists between the forecourt and the road. The level difference is greatest at the laneway but reduces towards Shoalhaven Street.*

- *The Terralong Street built form (two storey street wall height with third storey set back) is consistent with the traditional shopping street of Terralong Street. The shop top housing buildings (fronting Shoalhaven and Akuna Streets) are 3-4 storeys, with the upper level having a significant setback to minimise the scale of the building in scale.*

- *The development complements the Terralong Street building form (providing a continuous frontage with the adjacent building along the shopping street and associated awnings). The building is also built to the Shoalhaven Street frontage, with the ground floor commercial tenancy setback to provide for an entry terrace, with the level above (built to the boundary), providing an awning to the terrace. Building A (the shop top housing) is built to the Akuna Street/Shoalhaven Street corner and provide a higher built form element at this location (3-4 storeys).*
- *The ground level facade will be fine grained and have visual interest, providing retail shops/arcade to the Terralong Street frontage, and commercial premises to the Shoalhaven and Akuna Street (east) Street frontages. Landscaping and foyer access will be available to the Akuna Street frontage (western end, Building D-E).*
- *Entrances to buildings will be at the same level (or similar accessible level) to the street and residential foyers will have separate entrances.*
- *Facade detail: As indicated in the elevations and materials schedule, the proposed development provides interest to the facade.*
- *The use of four defined buildings at the upper levels, separated by communal open space and/or the laneway ensures that the overall built form presents as smaller structures with viewing corridors between. This provides an upper scale of building which is reflective of the scale of commercial buildings in Terralong Street.*
- *The buildings contain articulation in form, material, and colours evidenced in:*
  - *The defined base, particularly when viewed from Terralong Street, established through the use of darker colours to emphasise the lower level commercial space.*
  - *The emphasis which is placed on vertical sections within the building achieved through the framing of select windows of widows and balconies, with a darker wall colour used in the framed vertical sections.*
  - *Varied balcony treatments at different levels though the buildings including both solid balustrade and glass handrails.*
  - *The use of face brickwork for that section of the building which fronts Terralong Street, which is set against a backdrop of zinc cladding.*
  - *The use of a relatively neutral colour scheme at the upper level of the building which provides opportunity for each element (such as roof overhangs and balconies) to maintain its individual prominence*

Comment

○ *Akuna Street Pedestrian Forecourt*

The relationship between ground floor level of the proposed Akuna Street forecourt and Akuna Street frontage is difficult. The Applicant's point that at present there is no provision for pedestrian connectivity along Akuna Street is correct. The proposal has sought to provide pedestrian connectivity along part of the Akuna Street frontage by way of a pedestrian forecourt.

Due to the difficult cross fall and the need to provide universal pedestrian access that links with Shoalhaven Street, the pedestrian forecourt has been sunken below the Akuna Street level, with access provided by a series of ramps, stairs and lift. It is noted however that the development does not provide complete at grade access between Shoalhaven Street and commercial units along this street frontage which will be raised above the street level.

The level difference between the Akuna Street pedestrian forecourt and the street level is quite stark where a difference of up to 3 m at the western end of the forecourt reducing to 1.6 metres towards Shoalhaven Street.

Concern is raised that the Akuna Street pedestrian forecourt will become a dark and unsafe pedestrian area with limited natural surveillance. These concerns are exacerbated as this area is located on the southern side of the development where natural sunlight will be limited.

Section 3C of the NSW ADG concerns the "Public Domain Interface". Objective 3C-1 requires that the transition between the private and public domain is achieved without comprising safety and security. Given the concerns raised above it is considered the proposal does not adequately achieve this objective.

○ *Built form*

For the reasons given in Section 5.1.9.3 concerns are raised in relation to the extent to which the development exceeds the 11 m building height. This is not to say that a development comprising 3 storeys cannot be considered for this site as such would be generally consistent with the 11 m building height that applies to the land.

The proposal does provide for building towers or blocks which do assist in breaking the overall built form and scale into a series of smaller components.

Section 4M of the NSW ADG concerns building "Facades". Objective 4M-1 requires building facades provide visual interest along the street while respecting the character



of the local area. In particular the relevant design guidelines seek that building facades should be *“well resolved with an appropriate scale and proportion to the streetscape and human scale”*.

Concern is raised as to the finer scale articulation, particularly in terms of the residential blocks. As highlighted by BHI, the Kiama townscape is one that is traditionally represented with vertical as opposed horizontal built form. The residential floors however with their floor plan and balustrading present a more horizontal as opposed to vertical articulation. Given the scale of the proposal, I am not convinced that the concerns raised by BHI with respect to the finer scale articulation of the development have been successfully addressed by the Applicant, and in my view the proposal will not achieve the objectives of Section 4M of the NSW ADG in this regard.

### **5.6.2 Heritage**

As outlined in Section 5.1.9.2 of this report no heritage items identified under the LEP are identified on the subject site. One identified heritage item (I156 – former Devonshire House) adjoins the Development Site while a number of other items are located within the vicinity of the subject land including: I138 Scots Presbyterian Church, land and trees; I154 former Tory’s Hotel; I155 Old Fire Station; I157 Hindmarsh Park (including war memorial) and I163 street trees.

Council’s Heritage Adviser has provided the following comments on the original proposal:

*“HERITAGE SIGNIFICANCE:-*

- 1) The subject site is located in the vicinity of heritage items listed in Schedule 5 of Kiama LEP 2012.*
- 1a) Two items have the potential to have their setting adversely impacted by the proposed development: Item No 154 former Tory’s Hotel 50 Terralong Street and Item No 156 former Devonshire House 58 – 64 Terralong Street.*
- 1b) Three properties in Bong Bong Street which form part of a group listing – Item No 87, 53-57 Bong Bong Street may potentially have views impacted by the proposed development.*
- 2) There are buildings proposed to be demolished as part of the DA submission including 100 Terralong Street - a Post War commercial building (Mitre 10 and rear sheds); 49 Shoalhaven Street – a Inter War bungalow and 57 Shoalhaven Street – a Post War commercial building (former Kiama Independent). None of the above properties are listed in Schedule 5 of Kiama LEP 2012.*

#### COMMENT

- 3) *Considering the potential impacts on heritage items noted in pt 1a above, the primary views towards these heritage items are short-range views from Terralong Street. Given the proposed development is located behind the heritage items as viewed from Terralong Street, the impacts on the setting of these places would be minimal.*
- 4) *Regarding potential adverse impacts with respect to 53, 55 and 57 Bong Bong Street noted in pt 1b above, views to the north from the rear of these properties towards Kiama Harbour could potentially be obscured by Building 2 of the proposed development. This group was listed for its significant contribution to the Bong Bong streetscape.*

#### RECOMMENDATION

*The proposed development would have minimal impact on the setting of heritage items in Terralong Street – former Tory's Hotel and former Devonshire House given the visual appreciation and primary views towards these places is from Terralong Street.*

*Dwellings in Bong Bong Street which form part of a group listing may have their views towards Kiama Harbour obscured by the proposed development although this has not been tested, and nevertheless the principle reason for listing these properties was for their contribution to the streetscape.*

*Given buildings proposed to be demolished have not been identified as heritage items, there is no objection to their removal.*

*Based on the above analysis the proposed development can be considered satisfactory from a heritage point of view.*

In response to the current proposal Council's Heritage Adviser provided the further additional comments:

#### HERITAGE SIGNIFICANCE:-

- 1) *The revised Statement of Environmental Effects makes note of a bluestone retaining wall located on the northern boundary of the development site. There is one heritage item which abuts the northern boundary of the development site, which is 58-64 Terralong Street (former Devonshire House). It is identified as Heritage Item No I156 in Schedule 5 of the LEP. The retaining wall noted above is not located within the site of Heritage Item No I156.*

#### COMMENT

- 2) *Having reviewed the amended DA, my previous advice has not changed i.e. the proposed development can be considered satisfactory from a heritage point of view.*

#### RECOMMENDATION:-

*As a condition of consent should this development be approved, the bluestone retaining wall noted in pt 1 above should be included in a dilapidated report for the site."*

Having regard to the views and findings of Council's Heritage Adviser, it is considered the proposal would not have an adverse impact on heritage items that either adjoin or that are located within the vicinity of the subject site.

### **5.6.3    Amenity**

#### **5.6.3.1    Noise**

Noise impacts arising from the proposal could be expected to include:

- Construction works;
- Noise from the proposed loading docks;
- Car park mechanical ventilation and plant;
- Air conditioning units for the proposed residential apartments;
- Noise emitted from the proposed commercial and retail premises;
- Noise from service vehicles using the service lane.

Construction works will generate noise, though conditions of consent could be imposed to ensure that works are undertaken only within specified hours to limit impacts on the surrounding locality.

The development application is supported by acoustic assessments and supplementary advice prepared by Acoustic Noise and Vibration Services. These reports conclude that the proposal will comply with relevant noise criteria and include recommendations including:

- Noise from the loading dock is managed by limiting the use of the service lane to a maximum of only one (1) service vehicle to the access service lane every half hour (ie. maximum 2 service trucks per hour. Furthermore the use of service lane and loading dock is restricted to daylight hours only (ie. 7:00 am and 6:00 pm).
- To ensure the operation of the proposed garage roller door complies with noise criteria the following procedures are implemented
  - Ensure maintenance and lubrication of motor bearings, door tracks and joints.
  - Ensure mechanical plant and equipment is installed as per future Mechanical Services Plans.
  - Further acoustic assessment of the mechanical ventilation and garage roller door is carried out when the proposed development has been approved and Mechanical Services plans have been prepared. Alternative attenuator/silencer or acoustic louvers can be considered provided that the insertion loss values are equal or greater than the values specified by this assessment.

- Further acoustic assessment of the air conditioning units should be carried out when Mechanical Services plans have been prepared and unit specifications have been identified. All air-conditioning units are placed on approved anti-vibration mounts.
- Further acoustic assessment is carried out once the nature of retail and commercial tenancies is known. This assessment however recommends that the glazing for both retail and commercial premises be of 6 mm laminated type with full perimeter Schlegel Q-Lon acoustic seals in order to minimise the risk of any noise propagation to the nearest receivers.

Council's Environmental Health Officer raises no objections in relation to the proposal.

Conditions of consent could be applied if the Panel were of a mind to support the proposal to address these issues.

Aside from noise impacts arising from the proposed development, the site is situated within proximity of the Kiama Inn Hotel located at the corner of Shoalhaven and Terralong Streets which is licensed to trade to 2:00 am and is a local music venue. As detailed in Section 5.10.1, the proprietors of this establishment are concerned that a residential development at the site should have regard to potential noise impacts arising from their existing hotel operations, so that conflicts between these uses are minimised.

The revised acoustic assessment addresses the proximity of the Kiama Inn Hotel to the proposed residential apartment. In order to ensure the amenity of residents within the proposed units remains within relevant noise criteria the revised acoustic report recommends that:

*“... that all eastern and northern windows of Building A (Figure 1 – Window Locations/Specifications) facing Kiama Inn are to be 10 mm laminated type windows with full perimeter acoustic seals installed.”*

If the Panel are of a mind to support the Proposal a condition should be included to ensure this recommendation is included in any development consent.

#### **5.6.3.2 Privacy and Overlooking**

The development extends to the front property boundary to reinforce the Terralong Street frontage (providing two storey continuous street wall frontage with the adjacent building along the shopping street and awnings, with the upper level setback reducing its visibility).

The development is also built to the Shoalhaven Street frontage (4 storey shop-top housing), with the ground floor commercial tenancy set back to provide for an entry terrace, with the level above (built to the boundary), providing an awning to the terrace.

Akuna Street provides for setbacks to southern facade of the active/commercial forecourt area (east of the laneway) of approximately 6 – 10 m due to the splayed frontage, with approximately 3 – 7 m setbacks to the balconies of the housing above (Buildings A-C). West of the laneway (Building D-E), the shop-top housing is set back at a minimum of 3.345 m from Akuna Street boundary.

The building also has a minor setback from the unnamed laneway, where a pathway and landscaping is provided on the eastern side in an attempt to provide connectivity for pedestrians through the site/block.

The building also provides separation distances to the side and northern boundary in excess of 6 metres, both of which are adjoining commercial developments.

Overall separation distances and setbacks are compliant with the ADG. Compliance with these separation distances will ensure that visual privacy is provided within the proposed apartments and adjacent properties to use private open spaces without being overlooked.

Furthermore existing residences along Akuna Street are separated from the proposed development by the width of Akuna Street in addition to generous setbacks to the road's frontage ranging from 7 to 19 metres. Furthermore in each case private open spaces are situated away from the proposed development site and shielded by buildings.

Given these circumstances no significant concerns are raised in relation to privacy loss and overlooking resulting from the proposed development.

#### **5.6.3.3 View Loss**

The issue of view loss was raised by one public submission following the original public exhibition; and another single submission following the second public exhibition. These submissions were from different residents of Akuna Street.

To assist with assessing the potential impact on view loss from neighbouring properties, planning principles have been enunciated by Roseth SC in the NSW Land & Environment Court judgement in *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* ("Tenacity Consulting"). The Applicants Revised Statement of Environmental Effects includes an assessment of the Proposal having regard to the four step assessment process identified under this planning principle. This assessment included an assessment of the potential loss of views from residential units No. 2 and 5 ("the subject units") within 10 Akuna Street. This property is situated on the southern side of Akuna Street almost opposite the unnamed service lane that bisects the subject site. These were the only objectors to the original proposal who provided access to their units to enable the Applicant's consultants to undertake their view loss assessment. The Architectural

Drawing set includes photographic montages of the views from the balconies of these two units across the site with the proposal superimposed (refer **Figures 4 and 5**).



**Figure 4: View from balcony of 5/10 Akuna Street (ADM Architects).**



**Figure 5: View from balcony of 2/10 Akuna Street (ADM Architects).**

Having regard to the Applicant's assessment, the following is an assessment of the proposal having regard to the four step assessment process identified under this planning principle.

*Assessment of views likely to be affected*

In *Tenacity Consulting*, Roseth SC identified that the first step in examining the impacts of development on the views enjoyed by neighbours is the assessment of the views to be affected. He indicated that:

*“Water views are valued more highly than land views. Iconic views (e.g. 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, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.”*

The views from the balconies of both units across the subject site comprises the existing car park and the row of trees located along Akuna Street, and within the subject site. It is evident that it is possible from both vantage points to view the sea through the canopies of the trees that are situated along the southern boundary of the subject site.

The view from Unit 5 is obscured by the canopy vegetation to a greater extent to that of Unit 2. The view from Unit 5 is more of a partial view as it does not appear to include the interface between land and water but does include a horizon view of the sea; whereas the partial view from No. 2 does appear to provide a glimpse of the interface between the sea and land with a view of a rock platform. However both views are obscured by the canopies of the trees. Neither view could be described as containing an “iconic view”.

*Assessment of what part of the property the views are obtained from*

In *Tenacity Consulting*, Roseth SC outlined the second step is to consider from what part of the property the views are obtained, stating:

*“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.”*

The view from No. 5 is across the side boundary with the adjoining council car park to the east. The view from No. 2 is across the front boundary of this property. In this instance the protection of the views enjoyed from No. 5 may be more difficult to justify than those enjoyed from No. 2. It is understood that the views shown in the **Figures 4 and 5** above were from a standing position.

Assessment as to the extent of the potential view loss impact

In *Tenacity Consulting*, Roseth SC outlined the third step is to assess the extent of the impact, indicating:

*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 views from both units in question are from private balconies attached to both units and which would form the primary outdoor private open space for both units.

In both cases, what view of the water is enjoyed will be lost as a result of the proposed development, although Unit 5 may still enjoy glimpses of horizon water views.

Assessment as to the reasonableness of the proposal causing the potential view loss impact

In *Tenacity Consulting*, Roseth SC the fourth and final step is to assess the reasonableness of the proposal causing the impact. In particular Roseth SC states:

*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.*

The proposed development does not comply with all planning controls. As outlined the development exceeds the 11 m building height limit that applies to the site under clause 4.3; as well as the FSR requirement under clause 4.4 of the Kiama LEP 2011.

It should be noted that the pink shading in **Figures 4** and **5** denote that part of the development that exceeds the 11 metre building height limit. It should also be noted that that part of the proposed development to the east of the unnamed laneway and across which the two units currently enjoy views complies with the FSR for that part of the site (and indeed falls under the FSR as applies to this part of the site).

The Applicant's submission in part states in regard to this step:

*"...the proposed development will impede existing views of the distant ocean (through the large vegetation) which the occupants of the properties to the southern side of Akuna Street have enjoyed due to the site being undeveloped*



*(ie. as a car park and 1-2 storey buildings.) and under-developed to its allowable potential. It is argued that this outcome is reasonable in the context of the site, and is unavoidable to enable the practical development of the site. While the proposed development exceeds the allowable building height at Building 1 (being the eastern portion of the subject site), a compliant development height would still impact on the existing views of these residences.*

The Applicant's submission also argues that it is implicit the B2 zone carries with it a higher development potential than most other zones. In particular in this instance an 11 metre height limit applies to both sides of Akuna Street, with a permissible FSR to the east of the unnamed laneway of 2:1. Clearly given the location of the subject site and its orientation (ie. east-west and to the north of neighbouring residential properties) any development designed in compliance with these planning provisions on this land will result in the loss of views enjoyed from those units examined.

In this instance the views enjoyed from these neighbouring properties are primarily of the tree lined street frontage, with glimpses of water views through the canopies of these trees. These trees to a large extent obscure views of the water which are the views of most importance. These views could not be described as "iconic". Furthermore in the instance of Unit 5 at least the view is also across a side boundary which is considered more difficult to protect. Not all the water views enjoyed by Unit 5 will be lost as water views to the horizon will still be preserved. Due to its lower elevation, all water views enjoyed by Unit 2 will however be lost.

In large part the views that are enjoyed from these neighbouring properties are largely due to the site currently containing a car park and a mixture of single and two storey buildings.

The planning controls that apply to the site specifically identify a height limit of 11 metres. Any development constructed to this height will result in the loss of views from this property. This is particularly evident from **Figure 4** above. Whilst the proposed development does exceed the 11 m building height, the portion of the development that exceeds this height limit is towards the centre of the site and not generally along the Akuna Street frontage. It should also be noted that the part of the development that will impact views from the residences examined comply and indeed fall under the FSR requirements that applies to this portion of the site.

The Proposal has also sought to provide opportunities for view corridors between the residential apartment blocks. This was not the case with the original proposal which provided a wall of development along the frontage of the site. Due to the orientation of the properties along Akuna Street however these corridors will provide little advantage in terms of preserving views of the water.

Whilst the proposed development does breach Council's building height limit, it is considered that the breach does not add unreasonably to the view loss brought about by the proposed development. Overall it is considered the loss of views that will be experienced by those residences assessed is not unreasonable and would not of itself warrant rejection of the current application.

#### **5.6.3.4      *Overshadowing***

Shadow diagrams have been supplied with the development application which indicate that overshadowing impacts of the proposed development onto adjoining property will be reasonable.

The proposed development is situated on the northern side of Akuna Street. The shadow diagrams that support the development application demonstrate that shadows cast between 9.00 am to 3.00 pm mid-winter will not affect the main living rooms or private open space areas of neighbouring dwellings.

Design Criteria 4A-1(2) of the NSW ADG stipulates that for sites outside the metropolitan areas of Newcastle, Sydney and Wollongong living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours of direct sunlight between 9:00 am and 3:00 pm at mid-winter.

The development application provides a solar access analysis which indicates that at least 70% of dwellings within the development will receive at least 3 hours of direct sunlight between 9.00 am and 3 pm mid-winter. This analysis identifies that a total of 68 or 70% of units living rooms and private open space areas will receive at least 3 hours of sunlight between the hours of 9:00 am and 3:00 pm during the winter solstice. This would be compliant with this provision of the NSW ADG.

Following a review of these drawings however it is apparent that 13 of the units shown receiving satisfactory sunlight access to living rooms and private open space areas, do not receive satisfactory sunlight as required by the ADG. As a result only 56.7% of units within the development would receive adequate sunlight required by the ADG. The units of concern are:

- A307 – both living room and balcony receive less than 3 hours of sunlight.
- B203 – both living room and balcony receive less than 3 hours of sunlight.
- B204 – both living room and balcony receive less than 3 hours of sunlight.
- B303 – living room receives less than 3 hours of sunlight. Balcony complies.
- B305 – living room receives less than 3 hours of sunlight. Balcony complies.

- C103 –Living room receives less than 3 hours of sunlight. Balcony complies.
- C202 - Living room receives less than 3 hours of sunlight. Balcony complies.
- C302 - Living room receives less than 3 hours of sunlight. Balcony complies.
- C402 - Living room receives less than 3 hours of sunlight. Balcony complies
- E101 - Living room receives less than 3 hours of sunlight. Balcony complies.
- E201 - Living room receives less than 3 hours of sunlight. Balcony complies.
- E301 - Living room receives less than 3 hours of sunlight. Balcony complies.

Under these circumstances the proposal would not satisfy Design Criteria 4A-1(2) or the objective of Section 4A of the NSW ADG which seeks to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space areas.

#### **5.6.4 Traffic, Vehicle & Pedestrian Access, Car Parking and Vehicle Manoeuvring**

##### **5.6.4.1 Traffic**

The application is supported by a Parking & Traffic Impact Assessment (revised) as well as supplementary submissions prepared by Jones Nicholson. These assessments identify that there will be changes in the level of service at some intersections within the surrounding locality as a result of the proposal.

Council engaged the services of Traffic Impact Services to review the Traffic Impact Assessment carried out by Jones Nicholson. Copies of the reviews carried out by Traffic Impact Services are included as **Annexure 4** to this report. The reviews carried out by Traffic Impact Services did not raise any objections to the methodology or findings of the assessments carried out by Jones Nicholson subject to the implementation of traffic management measures. The peer review concluded:

*“Although there has been a reduction in the Los from an ‘A’ to a ‘B’ for some of the movements at the modelled intersections this would not appear to warrant the need to undertake further action. However, any minor actions to improve the capacity or safety on the surrounding road system due to the additional traffic movement should be examined with a view to the development funding such action.*

*The main area to be impacted upon is Shoalhaven Street due to the Aldi entrance and as such consideration should be given for the developer to fund the following:*

##### **Shoalhaven Street and Bong Bong Street**

*Provide central medians in Shoalhaven Street at Bong Bong Street to provide for dual “Stop” signage on each approach. This will increase the safety of those*

*new motorists generated by the proposed development by increasing the awareness of the need to stop and by channelizing the intersection.*

#### **Entrance to Aldi at Shoalhaven Street**

*Ensure this entrance has good sight distance due to the high volume of traffic turning into and out of the development. Remove parking and/or provide kerb blisters on the road such that vehicles when exiting gain improved sight distances.*

#### **Terralong Street at Shoalhaven Street**

*Clarify the comment made by Jones Nicholson in Section 5 Conclusion for the installation of a No Right Turn sign in Terralong Street. It is presumed that this restriction is for Trucks only over a certain length or weight and not for all traffic turning.*

#### **Shoalhaven Street and Terralong Street**

*Examine the possibility of the widening of Shoalhaven Street on the southern approach to Terralong Street to provide for a short section of two lanes on this approach.*

*Only one lane is available at present to service left straight and right turn movements under a sign controlled intersection. Under the increased traffic generation from the development the results of SIDRA show that this approach has a slight reduction in the Level of Service from an “A” to a “B”. To retain the existing Level of Service of “A” may be achieved if undertaking this widening to provide for two lanes.*

*The provision of two lanes on this approach may also remove the delay problem likely from pedestrians on the marked pedestrian crossing in Terralong Street on the western approach.*

*Only slight widening is suggested to provide for a short length of additional lane capacity. Due to the existing landscaping careful design is required.”*

Council's Development Engineer has reviewed the Jones Nicholson assessment documentation and the reviews carried out by Traffic Impact Services. Council's Development Engineer agrees with the conclusions of the peer review undertaken by Traffic Impact Services and has drafted conditions for the implementation of traffic management measures should the Panel be of a mind to approve the application.

#### **5.6.4.2 Vehicle and Pedestrian Access**

- A separate service driveway is provided adjacent to the northern boundary of the proposed development to accommodate garbage services for residential and retail waste, as well as service vehicles for the supermarket and specialty shops.

- Service vehicles will ingress from Shoalhaven Street and will egress to Collins Street by an existing service laneway which is situated adjacent to the “Kiama Centrepont” car park.
- Two loading zones are provided off the service driveway. Loading zone 1 will accommodate a 19 m articulated vehicle for proposed supermarket deliveries and medium rigid vehicles for specialty shop deliveries. Loading zone 2 will accommodate medium rigid vehicles for garbage/waste collection services. The existing loading zone in Terralong Street may also be utilised for servicing the development. Deliveries and removals for residential units will be serviced via the Akuna Street frontage.
- Vehicle ingress and egress to the commercial and residential parking levels will be provided driveway access to Shoalhaven Street and the unnamed laneway off Akuna Street.
- Pedestrian access will be provided through the development from Terralong Street via the retail arcade and a defined pedestrian route between the rear of the supermarket and the ground level commercial parking level to a stairwell or lift to provide access to a pedestrian forecourt area situated along the Akuna Street frontage of the site.
- The Akuna Street pedestrian forecourt area provides pedestrian access either to Shoalhaven Street or to Akuna Street with the lift located to align and provide pedestrian access to the council public car park situated on the southern side of Akuna Street. The design limitations of this pedestrian forecourt are discussed in Section 5.6.1 of this report.
- No clearly defined pedestrian route is provided through the site from Terralong Street to the Shoalhaven Street frontage of the site (other than that provided by the existing footpath that runs along Terralong and Shoalhaven Street frontages.)

#### **5.6.4.3     *Car Parking***

As detailed in Section 5.3.1.2 of this report the revised development provides a total of 405 parking spaces within three basement car levels which complies with Council’s requirements (359 spaces) for the provision of off street car parking for a development of this nature. Whilst the original development proposal sought to rely upon “parking credits” associated with existing developments within the site, the revised proposal does not rely upon parking credits.

Council's Development Engineer advises that the dimensions of parking spaces comply with ASS 2890.

Public submissions raised issue that part of the subject site currently contains a public car park for 79 spaces. With the redevelopment of the subject site these spaces will be lost and the proposal does not include the replacement of these lost spaces in addition to the parking attributed to the proposal development.

I am advised by Council staff that:

*"... there was no restriction requiring the provision of any public car parking in connection with the Akuna Street (north) development site as compensation for the removal of the 79 spaces.*

*The Akuna Street (south) initial car parking design only incorporates 50 spaces and this is likely to be increased to provide the additional spaces lost. Suffice to say that the loss of the public spaces should have no bearing on your recommendations."*

#### **5.6.4.4 Vehicle Manoeuvring**

Jones Nicholson have provided turning paths for vehicles using the parking areas as well as service vehicles utilising the service laneway and loading areas.

Council's Manager Design and Development has reviewed the turning path analysis undertaken by Jones Nicholson. The primary vehicle manoeuvring issue of concern with the proposed development relates to the use of the service laneway to the west of the site which will provide egress for service vehicles onto Collins Street. This laneway is only 3.05 m in width. Whilst the Jones Nicholson turning path analysis shows a heavy vehicle able to travel down this path it is very narrow and does not leave any room for error.

AS 2890.2 provides parking requirements for commercial vehicles and stipulates the minimum driveway width for commercial vehicles should be 3.5 metres – this service laneway does not meet this standard.

Whilst the swept path analysis prepared by Jones Nicholson shows the service vehicles able to 'fit' within the laneway, it is extremely tight and leaves no room for error. Council's Development Engineer advises that there would only be a 45 mm clearance each side of a vehicles mirrors. It is considered this service lane is simply too tight to provide suitable service vehicle egress for the development.

In this regard Council's Manager of Environment and Health advises as follows:

*"The major concern is that the proposed egress laneway to Collins Street Kiama is not wide enough to safely allow a side loader, rear loader and/or front lift garbage collection vehicle and the large Aldi transportation vehicle to use this exit. On Friday 22 September 2017, I met with the owner and developer*

*of the site, Nicholas Daoud to determine if Council's Waste Collection vehicle could safely access the Council laneway from the proposed development.*

*Council's Waste Services truck driver had to reverse the truck up to where the Council laneway connected to the development site. This was due to a tree branch restricting clearance to the laneway from the development site.*

*The site inspection and photos indicated that there is minimal and insufficient clearance to provide safe access for the collection vehicle to exit Collins Street Kiama. The mirrors on the right hand side of the vehicle extended over the landscaped garden beds located on private property.*

*Also the preschool building on the left hand side of the egress laneway is not located on the property boundary and is recessed by 130 mm to 170 mm.*

*The mirrors of the left hand side of the waste vehicle also appeared to overhang onto the private property of the preschool. If the preschool site was redeveloped, then the external wall of any future development could be built to the property boundary thus reducing available access.*

*Council Waste Services section advised the egress laneway is too narrow and unsafe to use for the purposes of servicing waste bins from the proposed residential section of the development site. Due to these site constraints and narrowness of the existing laneway there is an extremely high risk of a vehicle causing damage to the preschool building or the adjoining brick retaining wall."*

With this in mind the Applicant has put forward two possible solutions:

1. Seeking the creation of a right of way, 300 mm wide, along the southern boundary of the shopping centre to the north of the laneway (Lot 4 DP 555589, 106 Terralong Street) to enable the widening of the service lane to a sufficient width for service vehicles. Such would provide additional width to the laneway providing a clearance of 195 mm each side of a vehicles mirror; or
2. Providing an alternative egress across the rear of No. 66 Collins Street to enable service vehicles to leave the site via Akuna Street.

Drawings of these options are included in **Annexure 5** to this report.

Council's Development Engineer advises:

*An ideal situation would be to have a least a clear 3.5 metre width; however, given that only one side of Lot 51 is obstructed by a wall (constructed for No. 64 Collins Street / Lot C in DP 160615) a 3.35 metre wide access way could be supported on the condition that the right of way is created to the benefit Council, a Registered Surveyor confirms that the wall and any obstructions (e.g services) are not located in Lot 51 and a chain supermarket (e.g. IGA, ALDI, Coles or Woolworths) confirms in writing that the width is acceptable. Conditions have been included below should the development application be recommended for approval by the assessing officer.*

The conditions recommended by the Council's Development Engineer would form requirements for a deferred commencement consent that would have to be satisfied before an operational consent could be issued.

With respect to these options the following comments are made:

- It is acknowledged the Applicant has secured a conditional in-principle written agreement from the owner of the shopping centre to the north of the lane in an email dated 3<sup>rd</sup> November 2017 to create a right of way across this land.

It is considered however that confirmation of the adequacy of what would be a 3.35 m wide laneway would be acceptable for the supermarket and waste contractor vehicles should be provided before any support is given to a service lane that does not comply with the minimum dimensions of the relevant Australian Standard.

- In the alternate option no detailed plans have been provided (other than swept path analysis) demonstrating how the vehicle access across No. 66 Collins Street would be achieved; and what amendments would be required to the proposal to accommodate such a change in service vehicles egress arrangements.

Given the above circumstances, based upon the current plans, it is my view that the existing service lane extending from the site to Collins Street is too narrow and inadequate to accommodate vehicles serving the site. It is also my view that at present there is insufficient information to confirm that the laneway even with the proposed easement would be satisfactory.

In addition to the above, Council's Development Engineer also advises that a drawing prepared by Jones Nicholson indicates the semi-trailer used to make deliveries to the supermarket on the site will be required to drive into the oncoming lane in Shoalhaven Street in order to enter the service lane from this street (**Annexure 6**).

Council's Development Engineer considers it appropriate that the design be revised to comply with AS2890.2 and not compromise the safety of the general motoring public. The Development Engineer recommends Deferred Commencement conditions addressing this issue as well.

It is considered however that this issue is not one that would be best addressed as a deferred matter as the design outcome and the implications for the proposal are unknown. Rather this issue should be resolved before any approval is granted. Given the existing swept path is unsatisfactory then this issue is another reason for which the proposal should not be supported.



In addition to the above a public submission has been made on behalf of the owner of Lot 1 DP 506352 which fronts Terralong Street and which adjoins the area of the proposed service driveway. This submission advises that a Right of Way currently burdens Lot 1 DP 506764 (which forms part of the site) and which currently benefits Lots 1 and 2 DP 506352. If the proposal is to be supported any future detailed design of the proposed service lane will need to be undertaken in such a manner that the right of way to this adjoining land is not adversely affected. Furthermore, the continuance of access to these adjoining parcels along this right of way during the construction phase of the development will also need to be considered as part of any Construction Environmental Management Plan.

## **5.6.5 Environmental Impacts**

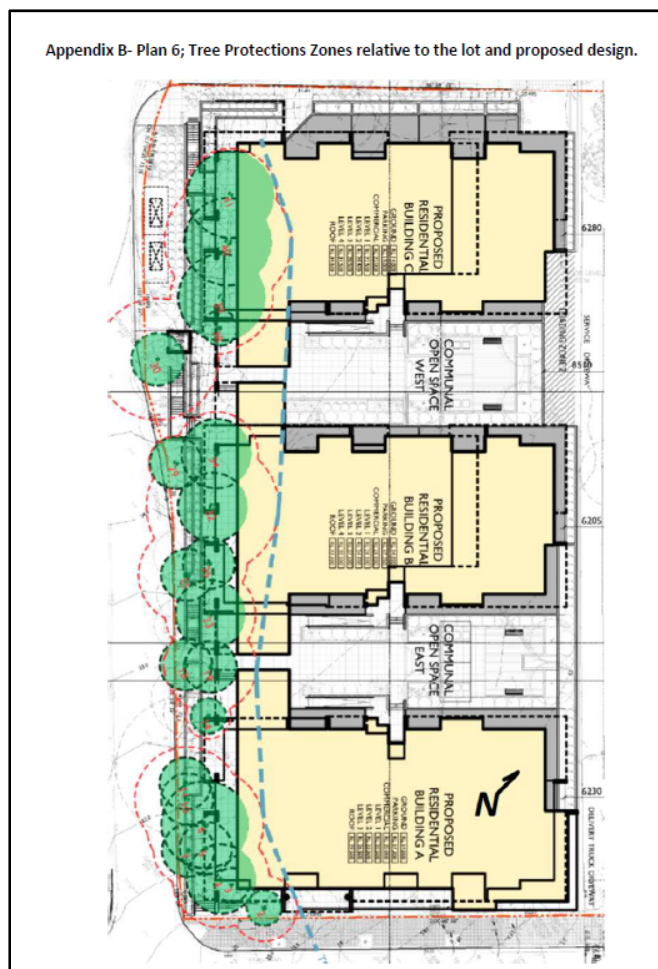
### **5.6.5.1 *Tree and Vegetation Removal***

Whilst the subject land is developed with a car park and various commercial buildings, the site contains 54 trees, with the majority of these trees located along the Akuna Street frontage of the site. The majority of the trees are native. The proposed development will require the removal of all these trees.

The development application is supported by an Arboricultural Impact Assessment prepared by Allied Tree Consultancy dated 14<sup>th</sup> October 2016, and a further supplementary report prepared by this firm dated 20<sup>th</sup> September 2017. The Arboricultural Impact Assessment recommends the removal of all the trees located within the site having regard to the design of the proposed development.

During an early briefing meeting with representatives of the Panel on the 15<sup>th</sup> March 2017, the Panel representatives raised concern that the development should be modified to preserve those trees situated along the Akuna Street frontage of the site.

The revised development application is supported by a supplementary arboricultural assessment that recommends that if construction is undertaken on one side of the trees along Akuna Street, the minimum distance any excavation can be is 4.5 m from any tree. This distance is the minimum distance to the face of the excavation and does not indicate the location of any proposed wall. A sketch depicting the effect of such tree protection zone (TPZ) on the site plan for the development is reproduced in **Figure 6** below. Council's Landscape Officer agrees with the findings of this report.



**Figure 6: TPZ relative to site and proposed site layout.**  
(Appendix B – Plan 6; Allied Tree Consultancy, 2017)

The revised development proposal still seeks to remove these trees. The Applicant's position is spelt out in the revised SEE prepared by TCG Planning which states:

*The location of the trees along the Akuna Street frontage of the development extends quite some way within the subject land. If these trees were to be retained, it would eliminate an extensive developable area, severely limiting the site's viability for development. Furthermore, this location now contains active commercial frontage, thereby achieving Council's apparent intended outcome in accordance with the KLEP 2011 development controls. There is no LEP or DCP control requiring retention of these trees. In addition, the Council and JRPP should be aware that the submitted Arborist report indicates that 21 of the 54 trees recommended to be removed due to the development have a 'Low Significance in Landscape' 'STAR' Rating (Significance of a Tree Assessment Rating), being 39% of the trees. 55% had a Medium STAR Rating and 6% had a 'High' STAR Rating. A significant proportion of the trees do not warrant retention and therefore, on balance, should not be required to be preserved.*

In a further supplementary submission by TCG Planning dated 30<sup>th</sup> October 2017 states:

*The extent of possible impact of the design based on the tree retention is demonstrated in Figure 1, which shows the TPZ for each tree with a line joining the perimeters of the larger TPZs. ADM Architects confirm that the area between the building facade and blue line equates to 355m<sup>2</sup> over just one level of the building. If redesign was required to retain the trees the loss of this floor area, when multiplied over a number of levels, would significantly impact on the feasibility of the project.*

Under the provisions of the Kiama LEP 2011 the subject land is zoned B2 Local Centre.

The objectives of the B2 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 objectives of the zone are to enable land to be developed primarily for commercial purposes. The zone objectives do not seek to specifically preserve or protect existing vegetation.

The Kiama LEP 2011 does not identify any of the trees located within the site as having significance, unlike other trees located within the vicinity of the site for instance along Terralong Street which are identified for their heritage significance

In terms of town centre landscaping, Chapter 26 of the Kiama DCP 2012, which relates specifically to the Kiama Town Centre (within which the site is located) states:

*Kiama is characterised by a rich and diverse heritage of trees and landscape species including remnants of original rainforest species such as palms and fig trees and later exotic planting such as the Norfolk Island Pines and coral trees. The Norfolk Island Pines (planted at the turn of the century) are the most identifiable landscape element within the Kiama Town Centre as they establish a formal character to both the coastal entrance to the town as well as the passage right along Terralong Street up to Blowhole Point. The trees provide shelter, shade and formal definition to the Kiama Town Centre. They also compliment, and provide a setting for, the heritage buildings along Terralong Street.*

*The development of a coordinated landscape strategy plan for the Kiama Town Centre is encouraged. Such a plan should have regard to the following principles:*

- *Retaining the formal entrance quality in the Kiama Town Centre that the Norfolk Island Pines currently provide. Avenue planting of the pines should be encouraged where the buildings are setback sufficiently from the street frontage.*
- *Providing supplementary street tree planting in the Kiama Town Centre with deciduous flowering trees (eg Chinese Tallow Trees, Magnolias and Jacarandas).*

- *Encouraging selected planting of coastal rainforest species such as fig trees in appropriate locations (eg Hindmarsh Park).*
- *Continuing involvement of Kiama residents in tree planting programs through consultation and exhibition of a landscape strategy for Kiama.*
- *Developing a maintenance and replacement program for saving the existing Norfolk Island Pines in the Kiama Town Centre, which may involve seeking specialist horticulturist advice.*

The above Chapter of the DCP does not specifically identify the trees located on the subject site or along Akuna Street as warranting any special attention or protection.

As outlined above the Arboricultural Impact Assessment recommends the removal of all the trees (except those on neighbouring properties). This report identified 21 of the 54 trees as having a “Low Significance in the Landscape” STAR rating or 39% of the trees, 55% had a medium rating, with 6% having a high rating.

Only two (2) of the overall sixteen (16) public submissions that were made in response to the two public exhibitions of this proposal raised objection to the removal of the trees on the site.

Given the B2 zoning that applies to the subject land; the lack of recognition of the trees by Council’s planning provisions; and as the retention of these trees was not one of the main issues raised by many public submissions; it is difficult to justify that the trees in question are of significance to the broader community.

Importantly under clause 6.8 of the LEP the development of this site is required to provide an “active street frontage” along Akuna Street. The retention of the existing trees along this street frontage would severely limit the ability to provide an active street frontage along this section of the street, particularly given the tree protection zones that would need to be provided around such trees.

Given these circumstances I believe there is insufficient planning justification for the protection of the trees in question and that the retention of these trees would unreasonably sterilise a significant portion of this development site from development if the trees were required to be retained. It would also frustrate the ability for any development of the site to satisfy the requirements of clause 6.8 of the LEP.

There are two trees located to the rear of 102 and 104 Terralong Street which adjoin the proposed service lane along the northern boundary of the site. The arboricultural assessment appears to only assess one of these trees. This assessment outlines that one of these trees (No. 57, *Harpephyllum caffrum*) is of low significance and limited useful life expectancy.

The TPZs for these trees extend over the boundary of the subject land and therefore subject to encroachment by the proposed works for the ground floor retail arcade and the service lane. According to the arboricultural assessments excessive works in this area will not compromise the stability of this tree however the vigour could be. If the works required in the area of the TPZ are excessive, and accounting for the species and existing condition, according to the arboricultural assessment the viability of the tree is not considered to render sufficient useful life expectancy to design around. However, the arboricultural assessments concludes the trees are neighbouring assets, therefore if the works are prone to adversely affect these trees, then the tree owners should be contacted and a proposal for removal and compensatory planting offered.

Council's Landscape Officer has reviewed these assessments and has recommended the report be reviewed to assess the impact of the construction and any encroachment into the structural root zone of these trees. Should the recommendation be for removal then the owners of the relevant parcels of land will need to consent to such removal.

The proposal does not seek the removal of these trees, and indeed the original arboricultural assessment recommends the retention and protection of the tree in question. The construction of the proposed ground floor retail arcade and the service laneway however has the potential to significantly encroach into the TPZ of the trees in question. Under these circumstances if the Panel are of a mind to approve this proposal it is considered that before any operational approval is granted a further arboricultural assessment should be undertaken of these trees to determine whether the proposed works will require the removal of these trees. If removal is required then the Applicant will need to make arrangements with the owners of these parcels of land to remove the trees before an operational approval will be able to be issued. Such could be a matter to be resolved as part of a deferred commencement consent.

#### **5.6.5.2      *Water Quality Impacts and Stormwater Management***

The application is supported by a Stormwater Disposal and a Water Sensitive Urban Design report and MUSIC model (prepared by Jones Nicholson) which addresses stormwater disposal methods and water quality.

The Jones Nicholson report has been reviewed by Council's Development Engineer who advises:

- Council's performance criteria for stormwater quality is detailed in the "*Kiama Municipal Council Water Sensitive Urban Design Policy*" (WSUD Policy). The performance criteria seeks the following targets:

- Total Suspended Solids (TSS) - 80% retention of the baseline annual load
  - Total Nitrogen (TN) - 45% retention of the baseline annual load
  - Total Phosphorous (TP) - 45% retention of the baseline annual load
  - Gross pollutants (GP) - 70% retention of the baseline annual load
- The site in large part serves as a public carpark. Jones Nicholson advises that

*“The existing site area is currently served by the Black Beach Stormwater Project with stormwater quality improvement devices such as Enviropod pit inserts and a sand filtration system in Hindmarsh Park. As the subject site in its existing state is a high pollutant generating site with 80% impervious surface, the Black Beach Stormwater Project will already have accounted for these pollutant loads in the modelling and design of the water quality system. This differs from many other parts of Kiama outside of the central business district where no water quality catchment management system is in place.”*
  - The stormwater quality report and Music model were peer reviewed by consultant firm “Footprint” on behalf of Council. The review identified that the percentage reduction in baseline pollutant loads would be: 43% TSS, 25% TN, 40% TP, 93% GP. TSS and TN reductions would be well below the targets nominated in the Kiama WSUD policy.
  - Although compliance has not been achieved in this instance, given stormwater from the site is currently being treated by a downstream public system Council’s Development Engineer considers non-compliance in this instance should not be a reason for refusal of the application. Conditions have been provided by Council’s Development Engineer if the Panel are of a mind to support the proposal.
  - The peer review also advised of a number of non-compliances, as follows:
    - *Model uses 2m<sup>2</sup> x 0.59m deep whereas actual size from drawings is 5.8m<sup>2</sup> x 0.7m deep. The model is therefore considered conservative.*
    - *The Stormwater 360 Stormfilter Operation, Design Maintenance and Performance Manual recommend a minimum of 1500mm headroom inside the vault for maintenance access. The engineering drawings show only 900mm.*
    - *The Stormwater 360 Stormfilter Operation, Design Maintenance and Performance Manual recommend a minimum hydraulic drop (from inlet to outlet) of 700mm for 460mm cartridges. Section 1 on Sheet C11 shows the difference to be about 600mm, whilst the unnamed section on the storm filter cartridge section detail shows considerably less.*

- *The plan and section of the stormfilter cartridge detail on Sheet C11 show the inlet pipe discharging directly into the OSD tank and bypassing the storm filter chamber. This contradicts the detail on Section 1 on Sheet C11.*

Council's Development Engineer has recommended Deferred Commencement conditions to address these non-compliances should the development application be approved. In my view however these issues are not necessarily matters that would be best dealt with a deferred commencement issues and could be dealt with as conditions of an operational consent to be addressed prior to the issue of a construction certificate if the panel were of a mind to approve the application.

## **5.6.6 Hazards**

### **5.6.6.1 Geotechnical**

The development application is supported by a geotechnical assessment carried out by SMEC Pty Ltd ("SMEC"). This assessment provides geotechnical findings, recommendations and advice to inform approval conditions and subsequent development on site. This report outlines a range of recommendations that should be incorporated into any approval if the panel are of a mind to consent to the development.

### **5.6.6.2 Site Contamination**

The development application is also supported by a preliminary contamination assessment carried out by SMEC Pty Ltd ("SMEC"). The key findings from this preliminary assessment are summarised below:

- *Heavy metal concentrations detected above laboratory limit of reporting (LOR) were below NEPM 2013 groundwater investigation levels (GILs) with the exception of zinc (18 µg/L) marginally above criterion of 15 µg/L.*
- *Based on likely historic use of solvents for cleaning at the printer site and up gradient dry cleaning business, a potential exists for volatile organic compounds (VOCs) to be present in seepage/ground water at the site, although VOCs in the form of VHCs and BTEX were not detected above LOR in the one groundwater grab sample obtained from the Site.*
- *TRH C<sub>16</sub>-C<sub>34</sub> concentration (330 mg/kg) was marginally above ecological screening level (ESL) criterion of 300 mg/kg at one location, with results of all other potential contaminants of concern either below LOR or below site assessment criteria.*
- *Given asbestos containing material (ACM) was identified at two ground surface locations, all VENM must be subjected to the appointed civil contractor's Unexpected Find Protocols to document ongoing conformance with the VENM status to prevent cross contamination with ACM or other foreign materials.*

- *The observed underlying natural silty clay weathered bedrock materials are deemed to be classifiable as VENM, as defined in NSW EPA (2014) Waste Classification Guidelines.*
- *Beneficial re-use as excavated natural material (ENM), for the purpose of complying with the Resource Recovery order (NSW EPA 2014b) is subject to additional testing.*
- *Based on the laboratory analysis conducted, the samples collected in near surface soil is preliminarily classified as General Solid Waste in accordance with NSW EPA (2014) Waste Classification Guidelines, Part 1: Classifying waste.*
- *All soil samples collected from the Site and tested for potential contaminants of concern were below the site assessment criteria, i.e. Health Investigation Levels for residential (HIL B) for the first three metres from the surface and commercial industrial land (HIL D) beneath basement carpark levels, and subsequent to incidental find protocols are considered suitable for re-use within the property boundary.*
- *Potential contamination issues within the proposed construction footprint include:*
  - *Potential uncontrolled fill materials, associated with an array of terraces and retaining wall structures, ranging from 1 m to 10 m high, constructed of an array of materials including brick and dry pack stone walls*
  - *ACM fragments on ground surface, given two fragments were sighted, are subject to unexpected find protocols*
  - *Potential unexpected finds of VOCs and vapours in the ground result of either, chemicals used at the printer on site or up gradient at the dry cleaning business*
  - *Underground assets – including decommissioned Telstra pits, septic tanks and various retaining walls located throughout the site*
  - *Hazardous Materials associated with the buildings.*
- *Additional environmental investigation is required of non-VENM material to ensure:*
  - *Correct waste classification is achieved for offsite disposal to landfill*
  - *ENM results are recorded and documented for the purpose of beneficial re-use.*

If the panel are of a mind to approve the application, conditions of consent framed by Council's Manager of Environment & Health will need to be incorporated into any development consent.

#### **5.6.6.3 Bushfire**

The subject land is not identified as bushfire prone land by mapping prepared by Kiama Municipal Council.



#### **5.6.6.4     Flooding**

According to the SEE in support of the development application Section 149 certificates for 55 and 61 Shoalhaven Street, 100 Terralong Street and Lot 1 Akuna Street confirms the land "is *NOT subject to flood related development controls*". Council's Development Engineer raises no objection to the proposal on grounds of flooding.

#### **5.6.7     Social and Economic Impacts**

It is understood that Council has long sought opportunities for a second supermarket within the Kiama CBD to provide retail competition with the existing Woolworths supermarket located along Terralong Street further west from the subject site.

The Applicant outlines that the Kiama Retail Study prepared by Hill PDA (2007) identified that by 2020 there would be a need for an estimated 7100 m<sup>2</sup> of supermarket and grocery floor space. This study identified the subject site as being suitable for a supermarket and speciality shops. The proposed development has the potential to meet part of the demand of the retail floor space demand within the Kiama CBD.

The provision of shop-top housing in this location also has the potential to contribute to increasing population within Kiama within close proximity of a town centre and its services; and reduce the potential for demand for residential housing sprawl within the Municipality. Shop-top housing also has the potential to improve the vibrancy of the CBD particularly outside peak work and holiday periods.

The design of the proposal however raises serious concerns.

The proposal seeks significant breaches of the 11 m building height limit and FSR requirements that apply to the subject site under the Kiama LEP 2011. In my view the application does not provide sufficient justification for such significant encroachments of these development standards.

The level grade change between the Akuna Street pedestrian forecourt and Akuna Street raises serious concerns for the future surveillance and security of this area.

In addition, the inability of the proposal to provide suitable communal open space and access to sunlight raises concerns about the amenity for future residents of the development which may also raise future social implications.

Concern is also raised that inadequate provision has been made for heavy vehicles serving the site to be able to enter and leave the site in a safe manner given the very narrow nature of the laneway extending from the site to Collins Street, and the inadequate turning path for trucks entering the site from Shoalhaven Street.

## **5.7 THE SUITABILITY OF THE SITE FOR THE DEVELOPMENT**

- Traffic

Vehicle access to the site will be from Shoalhaven and Akuna Streets; with service vehicle egress to Collins Street. Concerns are raised as to the suitability of the service lane to adequately cater for service vehicles entering and exiting the site.

- Land Contamination

A preliminary site contamination assessment prepared by SMEC supports the development application. This assessment makes recommendations for the management of the site prior to construction.

- Effect on Public Domain

The active street frontage to Terralong and Shoalhaven Streets; and the mixed use nature of the development with shop-top housing has the potential to contribute to the vibrancy of the town centre. Concern is raised however with the difficult integration of the Akuna Street pedestrian forecourt and the potential security and public safety concerns that may arise with the frontage for pedestrians.

- Utility Needs and Supply

Essential services are available to the site.

- Safety, Security & Crime Prevention

As outlined above concerns are raised in relation to the grade separation for part of the Akuna Street pedestrian forecourt and the poor public surveillance for part of the streetscape that will arise. This has the potential to raise safety and security concerns.

- Waste

As detailed in Section 5.6.4.4 Council's Waste Management Office raises serious concerns about the adequacy of the proposed service lane egress to Collins Street. Council's Waste Management Officer is of the view that this laneway will be inadequate to accommodate garbage trucks servicing the site. If this issue was able to be resolved, the Waste Management Officer proposes conditions that could be applied to a development approval if the Panel were of a mind to approve the development.

- Noise

The application is supported by acoustic assessments and supplementary submissions prepared by Acoustic Noise & Vibration Services which make recommendations to minimise noise impacts from the operational aspects of the project as well as from noise sources external to the site impacting on future residents of the development. Should consent be granted conditions should be imposed based upon the recommendations of this assessment.

- Risks to People and Property from Natural and Technological Hazards

The site is not subject to natural hazards such as bushfire or flooding. The site is also distant from the coastal edge to be subject to coastal hazard or inundation.

A preliminary site contamination and geotechnical assessment prepared by SMEC supports the development application. This assessment makes recommendations for the management of the site prior to and during construction. Should consent be granted conditions should be imposed based upon the recommendations of this assessment.

- BCA Compliance

Council's building officer has reviewed the proposal and raises no issues in relation to BCA compliance.

- Construction Impacts

Construction works will generate noise and potential impacts in terms of the structural integrity of surrounding development. Conditions of consent can be imposed to ensure construction works are undertaken within specified times to limit impacts upon the surrounding locality. The application is also supported by geotechnical assessment which makes recommendations in relation to protecting the structural integrity of local development. Conditions of consent can be imposed to ensure measures are put in place to minimise the potential for impacts on the integrity of surrounding development.

## **5.8 SUBMISSIONS**

### **5.8.1 Public Submissions**

#### ***The Original Public Exhibition***

The original development proposed was placed on public exhibition between 14<sup>th</sup> December 2016 and 17<sup>th</sup> January 2017. In response to the public notification of the

development application, Council received 9 public submissions. Five (5) submissions raised objection to the development application, while the remaining four (4) submissions did not object to the proposal but raised issues of concern with aspects of the development application. The following is a summary of the main issues raised by submissions:

**1. The Building**

- a. The building does not comply with the maximum building height limit that applies to the site.
- b. Such an intrusion of the building height limit will set an undesirable precedent for the Kiama town centre.
- c. The development is an overdevelopment of the site.
- d. The proposal will result in overshadowing of residents along Akuna Street.
- e. The “box like” appearance of the proposal will negatively affect the character of the township.
- f. The proposal will loom over Terralong Street resulting in a loss of character of the township.

**Comments**

- Following the initial exhibition of the proposal, the development application was revised. Whilst the revised proposal did involve an overall reduction in height of the development, the revised proposal still significantly encroaches the 11 m building height limit that applies to the site. The breach of the building height limit has been discussed in Section 5.1.9.3 of the report. As discussed the extent to which the Proposal exceeds the building height limit is not supported.
- Shadow diagrams that support the revised development application demonstrate the proposal will not result in overshadowing of adjacent residences in Akuna Street.
- The design and appearance of the proposed development is discussed in Section 5.6.1 of this report. As detailed in Section 5.6.1 of this report concerns are raised in terms of the design of the proposal in terms of encroachments of building height; the grade separation between the Akuna Street forecourt and the adjacent street; and architectural articulation of the development.

## **2. Traffic and Car Parking**

- a. It is unclear how vehicles will ingress and egress from the residential and retail parking areas.
- b. Increase in right turning vehicles from Terralong Street to Shoalhaven Street will create traffic congestion and conflicts. The local streets are already congested and the traffic generated by this proposal will exacerbate this situation.
- c. Akuna Street is a narrow street without footpaths. It is also used by school children as a pedestrian route. Increase in heavy vehicle movements will create conflicts with pedestrian movements.
- d. Collins Street has a steep grade which will make manoeuvring heavy vehicles difficult when entering Akuna Street.
- e. The subject land in part is already used for car parking. The proposal does not replace these parking spaces. The proposal will significantly reduce parking in the town. This will significantly impact businesses.
- f. The proposal only provides 96 parking spaces for 91 resident units. Not enough parking will be provided for residents.
- g. The proposal does not provide sufficient off-street car parking. Kiama already has limited off-street car parking.
- h. Right of Way currently benefits Lots 1 and 2 DP 506352. There may be implications for continued access along this right of carriageway as a result of project.
- i. How will retail parking be managed? Aldi normally have metered parking. This will limit general community parking.

### **Comments**

- The revised proposal was modified by relocating the original service delivery area for the supermarket from the Akuna Street frontage of the site to the ground floor basement level with service delivery vehicle access to be provided with separate ingress from Shoalhaven Street and egress to Collins Street. All vehicle access to the proposed commercial car parking areas will be via Shoalhaven Street. Vehicle access to the residential car parking level would be via both Shoalhaven Street as well as the unnamed laneway off Akuna Street.

- The revised development application is supported by a Traffic and Car Parking Impact Assessment, which has been reviewed by Council's Development Engineers as well as an independent traffic consultant. It is considered that the proposed development is likely to have an acceptable impact in terms of traffic impacts to the local road network subject to the imposition of conditions requiring local traffic management measures.
- All heavy vehicle servicing traffic movements have been removed from the Akuna Street frontage of the site to Shoalhaven and Collins Streets. The revised development application now also proposes a pedestrian forecourt along the Akuna Street frontage of the proposed commercial tenancies to provide pedestrian access along this part of the site. Issues pertaining to the acceptability of the service lane and the Akuna Street forecourt are discussed in Sections 5.6.4.4 and 5.6.1 respectively.
- The issue relating to the existing use of the site for public parking is discussed in Section 5.6.4.3 of this report.
- On-site car parking is discussed in detail in Section 5.3.1.2 in relation to Chapter 9 DCP 2012 Car Parking Requirements. As detailed in Section 5.3.1.2 of this report the proposal has been revised to provide an additional basement of car parking and now complies with Council's requirements for off-street car parking.
- The issue of the right of way serving Lots 1 and 2 DP 506352 is addressed in Section 5.6.4.4 of this report.

### **3. Waste Management**

- a. It is unclear how domestic and commercial waste will be stored and collected. Akuna Street is narrow and Shoalhaven Street steep for a large number of bins to be stored kerbside.

#### Comments

- Residential and commercial waste will be stored within areas situated within the Residential car park level, with all waste vehicles using the service lane along the northern boundary to service the site.

#### **4. Social Impacts**

- a. The introduction of a supermarket with access to Terralong Street will create conflicts with the use of shopping trolleys along Terralong Street which is a tourist street.
- b. The project is a predominantly residential development situated within a commercial area. Any residential development needs to be mindful that the Kiama Inn Hotel's licence enables it to trade to 2:00 am. Rare and valued live music venue. Concerned that a residential development of this scale will not take into account noise generated from the Hotel.
- c. If sites along Terralong Street re-developed in future, could involve buildings with 11 m building height. Future residents of subject development may object to loss of views or overshadowing. This situation should be considered now to avoid conflicts in the future.

#### **Comments**

- A Trolley Management Plan could be required as a condition of development consent to ensure that trolleys are returned to the proposed supermarket if the Panel were of a mind to approve the application.
- The revised development application includes a revised acoustic report which specifically addresses the proximity of the site to the Kiama Inn Hotel and makes recommendations for the construction of the development to mitigate the potential noise impacts associated with these premises. This issue is further addressed in Section 5.6.3.1 of this report.
- Properties fronting Terralong Street as with the subject site are also subject to an 11 metre building height limit. It is a long established principle that a consent authority can only consider the merits of a proposal that is before it and cannot consider what hypothetically might occur on adjoining lands in the future. Any development applications for redevelopment of adjoining lands along Terralong Street will be subject to consideration of issues pertaining to view loss and overshadowing whilst also recognising the reasonable development potential having regard to the zoning provisions that apply to these lands.

## **5. Noise Impacts**

- a. Conflicts will arise from future residents of apartments (many of whom are likely to be elderly) and delivery vehicles and vehicles entering and leaving car parks.
- b. Noise impacts from delivery vehicles and loading dock to residents along Akuna Street.

### Comments

- The development application is supported by an acoustic assessment which demonstrates the development, subject to its recommendations, will not adversely impact on the amenity of future or existing residential in terms of noise impacts. Council's Environmental Health Officer has reviewed these noise assessments and supports their findings and has framed conditions that can be included in a development consent.
- The loading dock area that was originally proposed fronting Akuna Street under the original proposal has now been relocated away from the Akuna Street frontage towards the northern boundary of the site and serviced by a proposed service laneway that will run along the northern boundary. Furthermore all service vehicles will enter the site from Shoalhaven Street and leave the site via Collins Street. All service vehicle movements have therefore been removed from Akuna Street.

## **6. Construction Issues**

- a. Existing Bluestone retaining wall is currently effective boundary between subject site and many properties along Terralong Street. What will be the impact of the development on this existing wall?
- b. Drainage issues, particularly during construction and high rainfall events and impacts to properties along Terralong Street.
- c. Demolition and construction works may potentially adversely impact on trade for commercial tenants and amenity of residential tenants (noise, dust, vibration and restriction on pedestrian movements along Terralong Street). Request that dust, noise and vibration emissions are monitored through demolition and construction phase.
- d. Adequate clear footpath along Terralong Street should be maintained.



- e. Concern that demolition and construction works may have detrimental impact on structural integrity of existing buildings. Need structural survey of adjacent buildings prior to commencement of works and monitored throughout works.

Comments

- The development application is supported by a geotechnical assessment carried out by SMEC. With respect to the Bluestone retaining wall this report states “... *The wall appears to be in a serviceable condition, however some cracking was noted towards the western end of the wall and in the return wall at the eastern end. It is suggested that more detailed investigations of the thickness of the wall be carried out to assess whether the rear of the wall extends into NCDOs boundary, as if piling was to intersect the wall this would cause major difficulties for NDCO’s construction and may cause issues for structural integrity of the wall. Such investigations are part of normal engineering practice and re not uncommon.*” A condition could be included in the conditions of consent with respect to this issue.
- The development application is supported by conceptual stormwater drainage details and plans, which have been reviewed by Council’s Development Engineers. It is considered that the proposed development is likely to have an acceptable impact in terms of stormwater drainage.
- Conditions of consent requiring the preparation of a revised Construction Environmental Management Plan as well as a Dilapidation Report be submitted before the issue of a Construction Certificate could be imposed as conditions of consent on a development consent.

**7. Economic Feasibility and Impacts**

- a. The application does not justify the economic feasibility of substantial increase in retail floor space. What are the implications for the Kiama commercial centre given proposed increase in commercial floor area?
- b. The proposed limited retail component will not meet the needs of local community. The proposal is predominantly an apartment complex.

Comments

- The revised Statement of Environmental Effects that supported the proposal states:

*... The Kiama Retail Study (Hill PDA, 2007) identified that by 2020 there is a need for an estimated 7100m<sup>2</sup> of supermarket and grocery floor space; and additional 3100m<sup>2</sup> of discount department floorspace and 5200m<sup>2</sup> of specialty floorspace. In considering three sites within the township (including part of the subject site 'Site 2'), it was indicated that Site 2 would be suitable for a supermarket and specialty shops but is not of a sufficient size for a discount department store. The proposed development provides a GFA of approx. 3700m<sup>2</sup> retail use (including supermarket and specialty shops) and 1140m<sup>2</sup> commercial floor space (upper levels Terralong St and Akuna/Shoalhaven Street frontages). The GFA of retail/commercial uses to be demolished is approx. 1790m<sup>2</sup> (retail floor area of Mitre 10) and approx. 1280m<sup>2</sup> commercial buildings (above Mitre 10 and Kiama Independent buildings). This represents a net increase of approximately 1900m<sup>2</sup> retail and 500m<sup>2</sup> commercial area for the site. The recently approved shop top housing development proposed by the same developer at the corner of Manning and Bong Streets (DA.10.2015.28.1) provides 2090m<sup>2</sup> of specialty shops. Together these two developments alone contributes significantly to the abovementioned figures and overall well documented demand for retail and commercial floor space in the Kiama Town Centre (including by the more recent Kiama Economic Development Strategy (SGS Economics and Planning, 2014). While the provision of even more retail/commercial premises is warranted in the Kiama Town centre, it is considered that the on-site provision of the subject land is sizeable and suitable, and the remaining short-fall should be required to be provided in other, more suitable areas of the business-zones than the western Akuna Street frontage.*

Following the preparation of the above document the proposal was further revised to provide 2475 m<sup>2</sup> of retail floor area and 1122 m<sup>2</sup> of commercial floor area.

### ***The Further Public Exhibition***

The further revised development proposal was placed on further public exhibition between the 15<sup>th</sup> and 29<sup>th</sup> August 2017. As a result of the exhibition of the further revised development proposal Council has received six (6) submissions, including a submission from the Kiama Central Precinct. Five (5) submissions raised objections to the proposal; while one (1) submission raised issues relating to whether the unnamed laneway formed part of the application.

The issues raised by these subsequent public submissions in relation to the development application can be summarised as follows:

#### **1. The Building**

- a. The development is an overdevelopment of the site and too dominant.
- b. The proposal will loom over Terralong Street shopping street resulting in a loss of character of the township.

- c. The proposal does not comply with many of the requirements of the Apartment Design Guide, Kiama Local Environmental Plan and Kiama Development Control Plan.
- d. Height of most of the buildings exceed 11 metres with setback issues to front and side boundaries. Due to its height the building will dominate and overshadow surrounding areas.
- e. All trees will be removed from Akuna Street.
- f. Inadequate private open space.
- g. Development largest development within the Kiama CBD, however will be predominantly residential rather than commercial and retail use.
- h. Environmentally unsustainable design with no solar provision.
- i. Careful consideration will need to be given to external finishes.
- j. The concept of an Aldi Store within the complex not compelling argument to justify project.
- k. The development application form and Statement of Environmental Effects should make express reference to the laneway given subterranean levels of the laneway form an integral part of the development.

**Comment**

- Issues pertaining to the design, external materials and colours, bulk and scale of the development are addressed in Sections 5.1.9.3 and 5.6.1 of this report.
- The breach of the building height limit has been discussed in Section 5.1.9.3 of this report with respect to the Kiama LEP 2011. As discussed the extent of the proposed exception to the building height limit is not supported.
- Issues pertaining to compliance with the Apartment Design Guide, Kiama LEP 2011 and the Kiama DCP are discussed in Sections 5.1.9.3 and 5.6.1, and **Annexure 3** respectively.
- Tree removal is discussed in Section 5.6.5.1 of this report.
- Issues pertaining to private open space and solar access are discussed in Sections 5.6.3.2 and 5.6.1 of this report.
- The mixture of commercial and retail and residential development is discussed in Section 5.6.7 of this report.

- Council in an email dated 5<sup>th</sup> October 2017 confirm that in their view the issue of owner's consent for works within the laneway have been satisfactorily addressed as the Statement of Environmental Effects makes specific reference to works within the laneway; and Council's General Manager has issued 'owner's consent' for the lodgement of the development application on this basis.

## **2. Traffic and Car Parking**

- a. The Proposal does not provide sufficient off-street car parking. Kiama already has limited off-street car parking.
- b. The subject land in part is already used for car parking. The Proposal does not replace these parking spaces. The proposal will significantly reduce parking in the town. This will significantly impact businesses.
- c. Increased traffic impacts.
- d. Consideration should be given to alternative transport route to bypass town centre. Turn Terralong Street into a pedestrian mall and make Minnamurra Street the alternative route.

### Comment

- On-site car parking is discussed in detail in Section 5.3.1.2 in relation to Chapter 9 DCP 2012 Car Parking Requirements. As detailed in Section 5.3.1.2 of this report the proposal has been further revised to provide an additional basement of car parking and now complies with Council's requirements for off-street car parking.
- The issue pertaining to the existing use of part of the site for public parking and the loss of this parking as a result of this development is addressed in Section 5.6.4.3 of this report.
- The development application is supported by a Traffic and Car Parking Impact Assessment, which has been reviewed by Council's Development Engineers. It is considered that the proposed development is likely to have acceptable traffic impacts to the local road network, and Council's Development Engineer recommends the imposition of conditions relating to the implementation of traffic management measures within local streets.

### **3. Construction Issues**

- a. Existing Bluestone retaining wall is currently effective boundary between subject site and many properties along Terralong Street. What will be the impact of the development on this existing wall?
- b. Drainage issues, particularly during construction and high rainfall events and impacts to properties along Terralong Street.
- c. Demolition and construction works may potentially adversely impact on trade for commercial tenants and amenity of residential tenants (noise, dust, vibration and restriction on pedestrian movements along Terralong Street). Request that dust, noise and vibration emissions are monitored through demolition and construction phase.
- d. Adequate clear footpath along Terralong Street should be maintained.
- e. Concern that demolition and construction works may have detrimental impact on structural integrity of existing buildings. Need structural survey of adjacent buildings prior to commencement of works and monitored throughout works.

#### **Comment**

- As detailed above, the development application is supported by a geotechnical assessment carried out by SMEC which makes recommendations in relation to the retaining walls. A condition can be included in the conditions of consent with respect to this issue.
- The development application is supported by conceptual stormwater drainage details and plans, which have been reviewed by Council's Development Engineers, who advises that, subject to the imposition of conditions of consent, that the stormwater can be satisfactorily managed.
- Conditions requiring a revised Construction Environmental Management Plan as well as a Dilapidation Reports be prepared and submitted before the issue of a Construction Certificate can be imposed if consent is to be granted to the proposal.

### **4. Waste Management**

- a. There is unsatisfactory waste storage and disposal plans.

Comment

- The development application has been reviewed by Council's Waste Management Officer, who raises concerns about the adequacy of the service lane to adequately accommodate garbage vehicles leaving the site. The referral does not raise objection in relation to the proposed measures for on-site waste management and includes recommended conditions that could be imposed on any development approval.

**5. Residential Amenity Impacts**

- a. Loss of water views from residents in Akuna Street.
- b. Loss of privacy – south facing units will overlook dwellings in Akuna Street.

Comment

- The potential impacts that the development will have on views enjoyed by residents of Akuna Street is addressed in Section 5.6.3.2 of this report.
- The issue of privacy impacts associated with this development is addressed in Section 5.6.3.2 of this report. It is my view that the impact of the development on the privacy of existing residential properties in Akuna Street is reasonable.

**5.8.2 External Referrals**

*Roads & Maritime Services*

The application was referred to the RMS. The RMS note that the development is located on and accessed via the local road network, within minimal immediate impacts to the State Road network. Given these circumstances, the RMS advise that they do not object to the development application in principle.

**5.8.3 Internal Referrals**

- Development Assessment Officer – Building

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

- Subdivision & Development Engineer

Identifies issue in terms of:

- The adequacy of the service lane for service vehicles leaving the site to Collins Street.

- Safety concerns about the swept path for service vehicles entering the proposed service lane from Shoalhaven Street.
- The adequacy of stormwater management measures for the proposal.

The Development Engineer is of the view that these issues do not necessarily require the refusal of the application; but do warrant the imposition of Deferred Commencement conditions addressing these issues.

- **Landscape Design Officer**

No objection has been raised in relation to the proposal and recommends conditions on any consent – refer to Section 5.6.5.1 of this report. Conditions of development consent have been recommended should the application be approved.

- **Environmental Health Officer**

No objection has been raised to the Proposal and conditions of consent have been recommended should the application be approved.

- **Heritage Adviser**

No objection has been raised in relation to the proposal – refer to Section 5.6.2 of this report. Conditions of development consent have been recommended should the application be approved.

- **Waste Management Officer**

Council's Waste Management Officer raises concerns about the adequacy of the proposed service lane egress to Collins Street to adequately accommodate waste collection services. This referral indicates that following a trial by Council's Waste Services vehicle it was considered the laneway is too narrow and provides insufficient clearance to provide safe egress for collection vehicles.

This referral also provided recommended conditions for on-site waste management.

## **5.9 THE PUBLIC INTEREST**

Council has long sought opportunities for a second supermarket within the Kiama CBD to provide retail competition with the existing Woolworths supermarket located along Terralong Street further west from the subject site. The proposal provides an opportunity to improve retail competition within the CBD.

The Kiama Retail Study prepared by Hill PDA (2007) identified that by 2020 there would be a need for an estimated 7100 m<sup>2</sup> of supermarket and grocery floor space. This study

identified the subject site as being suitable for a supermarket and speciality shops. The proposed development has the potential to meet part of the demand of the retail floor space demand within the Kiama CBD.

The provision of shop-top housing in this location also has the potential to contribute to the provision of housing within close proximity of the Kiama town centre and its services, reducing the potential for residential housing sprawl within the Municipality. Shop-top housing also has the potential to improve the vibrancy of the CBD particularly outside peak work and holiday periods.

The design of the proposal however raises serious concerns.

The proposed development does not comply with the maximum building height, FSR and “Active Street Frontage” provisions of the Kiama LEP. The application is supported by written requests seeking exceptions to these development standards. Whilst there is sufficient justification in my view to depart from the “Active Street Frontage” requirement with respect to this proposal, it is my view that there is insufficient justification to depart from the maximum building height and FSR limits to the extent proposed.

Concern is also raised that the Proposal will introduce public safety concerns with the provision of the Akuna Street pedestrian forecourt at a level which is significantly below the level of Akuna Street itself. This will result in a lack of passive surveillance of this pedestrian space.

The proposal also fails to provide satisfactory communal open space and sunlight access for future residents of the development in a manner consistent with the requirements of the NSW ADG.

In addition the proposal does not adequately provide for service vehicles to ingress and egress to and from the site.

Given these circumstances it is considered the proposal is not in the public interest.



## **6.0 CONCLUSION**

This development application has experienced a somewhat protracted assessment process involving several different design reiterations.

Council has long sought opportunities for a second supermarket within the Kiama CBD to provide retail competition with the existing Woolworths supermarket located along Terralong Street further west from the subject site. The proposal provides an opportunity to improve retail competition within the CBD.

Past retail studies undertaken for Council have identified that by 2020 there would be a need for a supermarket and additional retail floor space; and have identified the subject site as being suitable for a supermarket and speciality shops.

The provision of shop-top housing in this location also has the potential to contribute to providing housing within close proximity of the Kiama town centre and its services, and reduce the potential for urban sprawl within the Municipality. Shop-top housing also has the potential to improve the vibrancy of the CBD particularly outside peak work and holiday periods.

The design of the proposal however raises serious concerns.

The proposal does not comply with numerical standards outlined in Council's LEP in terms of building height and FSR. After consideration, I do not believe there is sufficient justification to support the extent to which the proposal exceeds these requirements, particularly the extent to which the proposal exceeds the maximum building height limit that applies to the site.

Following an independent urban design assessment carried out by BHI Architects on behalf of Council, concern is also raised that the proposal does not provide adequate communal open space or access to sunlight to a sufficient number of units for future residents of the development in accordance with requirements of the NSW ADG.

BHI Architects also raise concern as to the proposed grade separation between the Akuna Street pedestrian forecourt which will be set significantly below the level of Akuna Street, reducing passive surveillance of this pedestrian area raising public safety concerns.

The proposal also does not provide satisfactory ingress or egress to and from the site for service vehicles

The proposal has been assessed having regard to all relevant matters for consideration prescribed by Section 79C of the Environmental Planning & Assessment Act.

Given the proposal involves significant exceedances of building height and FSR limits that apply to the site; is unable to provide sufficient access to communal open space or sunlight for future residents as required by the NSW ADG; raises serious public safety concerns due to the grade

separation of the proposed Akuna Street pedestrian forecourt; and is unable to provide suitable arrangements for service vehicle ingress and egress to and from the site; the proposed development is not considered reasonable and refusal is recommended.

## **7.0 RECOMMENDATION**

That the Joint Regional Planning Panel refuse Development Application DA 2016.304.1 pursuant to Section 80 of the Environmental Planning and Assessment Act for the following reasons.

1. The development application does not comply with Clause 4.3 of the Kiama Local Environmental Plan 2011 in that it proposes a building height limit that significantly exceeds the 11 metre building height limit that applies to the site. The Applicant's written request pursuant to Clause 4.6 of the Kiama Local Environmental Plan 2011 does not provide sufficient justification that compliance with the building height limit under the specific circumstances of the case is unreasonable or unnecessary; and that there are sufficient environmental planning grounds to justify contravening the development standard.
2. The development application does not comply with Clause 4.4 of the Kiama Local Environmental Plan 2009 in that it proposes to exceed the floor space ratio of 1.5:1 that applies to the western part of the site. The Applicant's written request pursuant to Clause 4.6 of the Kiama Local Environmental Plan 2011 does not provide sufficient justification that compliance with the floor space ratio is unreasonable or unnecessary under the specific circumstances of the case; or that there are specific environmental planning grounds to justify contravening the development standard.
3. The proposal does not provide adequate communal open space to enhance residential amenity and provide adequate opportunity for landscaping as required by Section 3D of the NSW Apartment Design Guide. The development provides 1070 m<sup>2</sup> of communal open space whereas the Design Criteria of Part 3 of the NSW Apartment Design Guide recommends 1925.15 m<sup>2</sup> of communal open space for the subject site. Given the proposal is unable to provide adequate communal open space for future residents that meets the NSW Apartment Design Guide, the development is unable to satisfy the provisions of Clause 29 of State Environmental Planning Policy No. 65.
4. The proposed communal open space for Residential Apartment tower D and E is considered inadequate, poorly designed and sited. This communal open space has been sited to the west of this complex with access by a narrow corridor. Such a communal open space is not an easily identified area; and is not provided with a direct equitable access from common circulation areas. Such is considered to be inadequate having regard to the design guidelines as detailed in Part 3D of the NSW Apartment Design Guide. Given these shortcomings the communal open space provision for this part of the development is unable to satisfy the provisions of clause 29 of State Environmental Planning Policy No. 65.

5. The development does not optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space, in accordance with Section 4A Solar and Daylight Access of the NSW Apartment Design Guide with less than 70% of apartments receiving the minimum 3 hours of sunlight between the hours of 9:00 am to 3:00 pm mid-winter. The development therefore is unable to satisfy the provisions of Clause 29 of State Environmental Planning Policy No. 65.
6. The proposed service lane access providing egress for service vehicles to Collins Street from the development is too narrow for this purpose. Whilst an in-principle conditional agreement has been obtained from the owner of land to secure an easement, the laneway even allowing for the easement would not comply with the minimum width standard as outlined in the relevant Australian Standard. Insufficient information has been provided detailing suitable arrangements for service vehicles to service and leave the site in a safe manner.
7. The proposal does not provide satisfactory access for service vehicles entering the site from Shoalhaven Street. A semi-trailer entering the service lane from Shoalhaven Street will require to drive into the on-coming lane in Shoalhaven Street compromising the safety of the general motoring public.
8. The pedestrian forecourt provided to the Akuna Street frontage is located significantly below street level. Providing a public domain significantly below street level will compromise safety and security with reduced visibility from the street and minimise passive surveillance. The proposal will therefore not maintain or enhance the public domain contrary to the Section 3C Public Domain Interface of the NSW Apartment Design Guide. The inability to maintain or enhance the amenity of the public domain is contrary to the provisions of clause 29 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.
9. The development, and in particular the residential towers do not provide satisfactory fine scale articulation. The development form does not respect the character of the Kiama town centre comprising a scale of development with predominantly horizontal built form in contrast to the vertical built form that reflects the traditional character of development within the Kiama town centre. The development does not provide building facades which respect the character of the Kiama town centre contrary to the objective of Section 4M Façades of the NSW Apartment Design Guide and therefore the proposal is inconsistent with the provisions of Clause 29 of State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development.

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# **ANNEXURE 1**

**Architectural Drawing Set**

**prepared by  
ADM Architects**

**Akuna Street, Terralong Street  
and Shoalhaven Street, Kiama**

# **ANNEXURE 2**

## **Urban Design and NSW Apartment Design Guide Assessment**

**prepared by  
BHI Architects**

**Akuna Street, Terralong Street  
and Shoalhaven Street, Kiama**

# **ANNEXURE 3**

**Summary of NSW ADG Compliance Issues  
arising from BHI Assessment**

**prepared by  
Cowman Stoddart Pty Ltd**

**Akuna Street, Terralong Street  
and Shoalhaven Street, Kiama**

## SUMMARY OF NSW ADG COMPLIANCE ISSUES ARISING FROM BHI ASSESSMENT

### Akuna Street, Terralong Street and Shoalhaven Street, Kiama

<b>NSW ADG Guideline</b>	<b>BHI Review</b>	<b>Applicant's Response</b>	<b>Comments</b>
<b>3B Orientation</b> 3B-1 Building types and layouts respond to the streetscape and site while optimising solar access within the development  3B-2 Overshadowing of neighbouring properties is minimised during mid-winter	<p>The access from Akuna Street to the significantly lowered commercial forecourt and residential units is exceedingly complex and separates the commercial frontages from the streetscape. Greater than 6m street setbacks to Akuna Street result in a streetscape that is ill-defined. Solar access diagrams not provided.</p> <p>Above maximum height plane which increases shadow impact</p>	<p>Primary living and balcony areas of the majority of apartments are oriented to north, north east and north west and are articulated to respond to streetscape.</p> <p>Rear setback ma</p>	<p>Refer Section 5.6.1 of Report.</p> <p>The shadow diagrams that support the development application demonstrate the proposal will not lead to excessive overshadowing of neighbouring properties having regard to the provisions of Section 4A of the ADG.</p>
<b>3C Public Domain Interface</b> 3C-1 Transition between private and public domain is achieved without compromising safety and security	<p>The transition between private and public is not clear, with convoluted lower entry points into residential and commercial removed from the streetscape. Safety and security is compromised by having the public domain significantly below street level on Akuna Street, with reduced visibility from the streetscape.</p>	<p>Currently there is no footpath and the property boundary extends to the kerb, resulting in pedestrians having to walk within the street reserve. The proposal would increase safety by providing a dedicated pedestrian forecourt to all the shop fronts along Akuna Street.</p> <p>Retaining walls are located between the forecourt and the street boundary to make up the level difference that exists between the forecourt and the road. The level difference is greatest at the laneway but reduces towards Shoalhaven Street, Refer drawing A- 207 for details.</p>	<p>Refer Section 5.6.1 of Report. The Akuna Street pedestrian forecourt is located significantly below street level and will provide reduced visibility from the street minimising passive surveillance of this area.</p>



<b>NSW ADG Guideline</b>	<b>BHI Review</b>	<b>Applicant's Response</b>	<b>Comments</b>
3C-1 <i>continued</i>		Also note that a new footpath is shown on the landscape and site plans along the street frontage of Block D&E. This footpath connects across the lane into the forecourt mentioned above.	
3C-2 Amenity of the public domain is retained and enhanced	<p>Despite offering new landscaping, significant trees on Akuna Street are being removed.</p> <p>A significant portion of the public domain is located within basements with limited light/ventilation.</p> <p>Removal of the forecourt from the street frontage results in public domain with limited light/ventilation.</p>	Refer to Section 5.6.5.1 of this SEE.	<p>Refer to Section 5.6.5.1 of Report.</p> <p>Refer Section 5.6.1 of Report.</p>
<b>3D Communal and Public Open Space</b>			
3D-1 Communal open space is consolidated, well designed, easily identifiable and useable area	647sqm of communal open space is provided for residents, which is less than 35% of that required by the ADG. Given the limited scale of the communal open space, it would be expected that the quality of this space would be higher. The provided communal open space is largely paved, with minimal planting in raised planter boxes.	The communal space has been designed by Ochre Landscape Architects. The drawings would indicate a mixture of elements not only paving. These include planter beds, water features and decking. The spaces are located between buildings and orientated to the north. ADM Architects have prepared 3d shadow analysis that confirms that more than 50% of the communal space receives 2 hours of sun mid-winter in accordance with ADG requirements.	Refer Section 5.6.1 of Report. The communal open space for residential tower D and E is not easily identifiable, and does not provide equitable access from common circulation areas.
3D-2 Communal open space can be used for a range of activities	The communal space can also act as thoroughfares for residential access, so will unlikely be suitable as space for communal activities.		Refer Section 5.6.1 of Report.

**Summary of NSW ADG Compliance Issues arising from BHI Assessment**  
Akuna Street, Terralongs Street and Shoalhaven Street, Kiama

<b>NSW ADG Guideline</b>	<b>BHI Review</b>	<b>Applicant's Response</b>	<b>Comments</b>
3D-4 Public open space, where provided, responds to the existing pattern and uses of the neighbourhood	The public thoroughfares through the site are enclosed in a basement with compromised amenity and safety issues, with no precedent in the existing pattern and uses of the neighbourhood		Public access from retail arcade servicing ground floor retail premises.
<b>3E Deep Soil Zones</b> 3E-1 Deep soil zones are suitable for healthy plant and tree growth, improve residential amenity and promote management of water and air quality	The planter beds, in order to replace the deep soil requirements on the site, would require a minimum of 7% coverage of the site, resulting in 539sqm of planting with minimum 6m dimensions. Only a small fraction of this has been provided.	No deep soil zone is provided due to Town Centre/Business zone context and 100% site coverage for retail commercial premises.  Substantial planter beds are provided at residential podium level to achieve water infiltration outcomes.	Section 3E recognises that achieving this design criteria may not be possible where: <ul style="list-style-type: none"> <li>• The location and building typology have limited or no space for deep soil at ground level (eg. CBDs, constrained sites, high density areas, or in centres);</li> <li>• There is 100% site coverage or non-residential uses at ground level.</li> </ul> The ADG therefore recognises that it is difficult to achieve deep soil zones for development sites such as the subject site. The ADG does require in these circumstances that acceptable stormwater management be achieved. Stormwater management is addressed in Section 5.6.5.2 of this report.
<b>3G Pedestrian Access and Entries</b> 3G-1 Building entries and pedestrian access connects to and addresses the items public domain	Building entries are significantly below street level. Reduced visibility from the streetscape to building entries causes safety concerns.		Refer Section 5.6.1 of Report.

**Summary of NSW ADG Compliance Issues arising from BHI Assessment**  
Akuna Street, Terralong Street and Shoalhaven Street, Kiama

<b>NSW ADG Guideline</b>	<b>BHI Review</b>	<b>Applicant's Response</b>	<b>Comments</b>
3G-2 Access, entries and pathways are accessible and easy to identify	Lowered entry points from the streetscape increase entry complexity and reduces accessibility and visibility.		Refer Section 5.6.1 of Report.
3G-3 Pedestrian links through developments provide access to streets and connect destinations	<p>The pedestrian link from Shoalhaven Street to Akuna Street and Terralong Street is a stairway into the retail basement with no clear pedestrian pathway through it. This is a safety hazard and not suitable for a pedestrian thoroughfare.</p> <p>The pedestrian link from Akuna Street to Terralong Street is through a basement with a 1.5m wide pathway between a 41m blank wall and car parking. This is not suitable from a pedestrian amenity, safety or functionality point of view for what is meant to be a significant pedestrian thoroughfare.</p> <p>Pedestrian access from Terralong Street comprises a poorly delineated pedestrian pathway which leads to a retail arcade completely enclosed by a delivery truck driveway above. This is a dark, unpleasant space without natural sunlight or ventilation.</p>	Refer Section 5.6.1 of this Report.	Refer Section 5.6.1 of Report.
<b>3J Bicycle and Car Parking</b>  3J-1 Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas			Car parking satisfies Council's requirements. Refer Section 5.3.1.2 of Report.

**Summary of NSW ADG Compliance Issues arising from BHI Assessment**  
Akuna Street, Terralong Street and Shoalhaven Street, Kiama

<b>NSW ADG Guideline</b>	<b>BHI Review</b>	<b>Applicant's Response</b>	<b>Comments</b>
3J-2 Parking and facilities are provided for other modes of transport	To be shown on plan.	The following bike parking has been added to the documents: <b><u>Residential</u></b> (drawing A-104) TOTAL = 42 spaces <b><u>Commercial</u></b> (drawing A-102) TOTAL = 8 spaces <b><u>Retail</u></b> TOTAL = 20 spaces	Bike parking satisfies Council requirements as shown on plan.
3J-3 Car park design and access is safe and secure	The basement car parking level is a labyrinth of blind aisles – this can simply be mitigated by removing some car parking spaces to promote clearer circulation paths in a looped arrangement.		Basement parking layout has been modified and now satisfies Council requirements.
<b>4A Solar and Daylight Access</b>			
4A-1 Optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space	Solar Access diagram to be provided	ADM have indicated a “red dot” on each plan deemed to receive 3 hours of sun. The number of units achieving solar access exceeds the minimum. 3d analysis drawings are now also provided. Refer drawing A-405 and A-406.	Refer Section 5.6.3.2 of Report. Following a review of solar access diagrams prepared by the Applicant it is my view that the proposal does not provide adequate sunlight to living rooms and private balconies for a sufficient number of residential apartments.
4A-2 Daylight access is maximised where sunlight is limited	Some units do not have direct sunlight access as per the ADG compliance summary.		Refer Section 5.6.3.2 of Report.
4A-3 Design incorporates shading and glare control, particularly for warmer months	Window sun hoods are not evident on the drawings provided.		Modified plans show sun hoods.

**Summary of NSW ADG Compliance Issues arising from BHI Assessment**  
Akuna Street, Terralong Street and Shoalhaven Street, Kiama

<b>NSW ADG Guideline</b>	<b>BHI Review</b>	<b>Applicant's Response</b>	<b>Comments</b>
<b>4B Natural Ventilation</b> 4B-1 All habitable rooms are naturally ventilated 4B-2 Natural ventilation for single aspect apartments is maximised 4B-3 The number of apartments with natural cross ventilation is maximised	Refer to Compliance Summary Table REVISED for more information. Some apartments marked as cross-ventilated will likely not achieve cross-ventilation as per requirements of ADG.	ADM have indicated a "green dot" on each plan design deemed to be cross ventilating. The number of units achieves cross ventilation exceed the minimum.	Proposal complies with ventilation requirements.
<b>4C Ceiling Heights</b> 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building	With a 3m floor to floor height and an assumed 0.2m structural thickness, only 0.1m is allocated for ceiling space.  A 3.3m minimum ground floor, floor to ceiling height should be provided at the street level	A 3.0m floor to floor allows for : <ul style="list-style-type: none"> <li>- 200mm slab.</li> <li>- 75mm ceiling cavity,</li> <li>- 10mm plasterboard</li> <li>- 15mm floor finish.</li> </ul> This is the consistent approach across all ADM projects.  This is difficult to achieve provided the height constraints. Because the uses are likely small offices spaces rather than retail, a 2.4m finished ceiling height would be acceptable.	Ceiling height is considered adequate for intended use.

**Summary of NSW ADG Compliance Issues arising from BHI Assessment**  
Akuna Street, Terralong Street and Shoalhaven Street, Kiama

<b>NSW ADG Guideline</b>	<b>BHI Review</b>	<b>Applicant's Response</b>	<b>Comments</b>
<b>4D Apartment Size and Layout</b> 4D-1 Spatial arrangement and layout of apartments is functional, well organised and provides a high standard of amenity	Annotations of units' size on plans should be checked, as they do not correspond to the ADG compliance table in many cases. Some units' living spaces do not meet the minimum width dimensions (B206,B202). Bedrooms also undersized (D205,E201). Oversized storage rooms are provided in each apartment, which reduces the efficiency of layouts and increases building bulk. It is unclear how these rooms will function.	The matrix has been updated and corrected. Refer updated SEPP 65 report.	Plans modified and are now adequate.
<b>4E Private Open Space and Balconies</b> 4E-1 Primary private open space and balconies are appropriately sized 4E-4 Private open space and balcony design maximises safety	Private open spaces are not dimensioned. This information is required for a complete assessment. The units below street level have not demonstrated compliance with safety principles.	ADM Architects have prepared a dimensioned part typical plan for each unit block to demonstrate compliance. Refer drawing A-109	Plans modified and are now adequate.
<b>4G Storage</b> 4G-1 Adequate, well designed storage is provided in each apartment 4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments	The storage in each apartment is oversized and its use appears ambiguous. Not nominated for individual apartments.	Due to space restrictions, it is not possible to allocate all the required storage within the carpark. Storage space to exceed the minimum requirements are therefore provided within all apartments as shown on plans. The areas are shown within the compliance matrix found in the SEPP 65 report.	Whilst storage mix between units and car park not consistent with ADG – proposal does provide more overall storage than required.

**Summary of NSW ADG Compliance Issues arising from BHI Assessment**  
Akuna Street, Terralong Street and Shoalhaven Street, Kiama

<b>NSW ADG Guideline</b>	<b>BHI Review</b>	<b>Applicant's Response</b>	<b>Comments</b>
<b>4I Noise and Pollution</b> 4I-1 In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of the buildings	Acoustic isolation has not been demonstrated between the loading bay/truck driveway and apartments.	Acoustic response appended to this submission	Refer Section 5.6.3.1 of Report.
<b>4L Ground Floor Apartments</b> 4L-1 Street frontage activity is maximised where ground floor apartments are located  4L-2 Design of ground floor apartments delivers amenity and safety for residents	Akuna street apartments lowered below street level with no street activation.          Underground apartments lack amenity, and safety is not demonstrated.		Refer Section 5.6.1 of Report          Refer Section 5.6.1 of Report.
<b>4M Façades</b> 4M-1 Building facades provide visual interest along the street while respecting the character of the local area	Finer scale articulation is not provided to the residential levels. A clear mixture of traditional materials is not evident in the design, with largely grey and white materials shown.  The built form does not respect the character of the local area, comprising a much greater scale of development without street activation, predominantly horizontal built form expression in contrast to the verticality of the Town Centre, and the building massing and	With respect to the ability of the development to meet Objectives 4M (Façades) of the Apartment Design Guide and the suggestion that finer scale articulation is not provided, we consider that this is a subjective comment and we provide the following in response: <ul style="list-style-type: none"> <li>The use of four defined buildings at the upper levels, separated by communal open space and/or the laneway ensures that the overall built form presents as smaller structures</li> </ul>	Refer Section 5.6.1 of Report. The development form does not sufficiently respect the traditional vertical built form of the Kiama town centre.

**Summary of NSW ADG Compliance Issues arising from BHI Assessment**  
Akuna Street, Terralong Street and Shoalhaven Street, Kiama

<b>NSW ADG Guideline</b>	<b>BHI Review</b>	<b>Applicant's Response</b>	<b>Comments</b>
4M-1 <i>continued</i>	streetscape interface does not adequately respond to the topography of the site.	<p>with viewing corridors between. This provides an upper scale of building which is reflective of the scale of commercial buildings in Terralong Street.</p> <ul style="list-style-type: none"> <li>The buildings contain articulation in form, material, and colours evidenced in: <ul style="list-style-type: none"> <li>The defined base, particularly when viewed from Terralong Street, established through the use of darker colours to emphasise the lower level commercial space.</li> <li>The emphasis which is placed on vertical sections within the building achieved through the framing of select windows of widows and balconies, with a darker wall colour used in the framed vertical sections.</li> <li>Varied balcony treatments at different levels though the buildings including both solid balustrade and glass handrails.</li> <li>The use of face brickwork for that section of the building which fronts Terralong Street, which is set against a backdrop of zinc cladding.</li> <li>The use of a relatively neutral colour scheme at the upper level of the building which provides opportunity for each element (such as roof overhangs and balconies) to maintain its individual prominence.</li> </ul> </li> </ul>	



**Summary of NSW ADG Compliance Issues arising from BHI Assessment**  
Akuna Street, Terralong Street and Shoalhaven Street, Kiama

<b>NSW ADG Guideline</b>	<b>BHI Review</b>	<b>Applicant's Response</b>	<b>Comments</b>
<b>4O Landscape Design</b> 4O-1 Landscape design is viable and sustainable  4O-2 Landscape design contributes to the streetscape and amenity	Removal of significant trees to Akuna Street reduces streetscape amenity.		Refer Section 5.6.5.1 of Report
<b>4P Planting on Structures</b> 4P-3 To contribute to the quality and amenity of communal and public	The provided communal open space is largely paved, with minimal planting in raised planter boxes.	The communal space has been designed by Ochre Landscape Architects. The drawings would indicate a mixture of elements not only paving. These include planter beds, water features and decking.	Refer Section 5.6.1 of Report.
<b>4Q Universal Design</b> 4Q-2 A variety of apartments with adaptable designs are provided	The adaptable apartment layouts provide an onerous burden on those adapting them to amend layouts at high cost. In one case, an inaccessible ensuite is coupled with an accessible bedroom, potentially making it redundant. More suitable arrangements should be provided.	Refer letter from Howard Mutrie access consultant specifically addressing this matter.  The submission from Howard Mutrie dated 17 <sup>th</sup> October 2017 states:  <i>The proposed changes to the units is consistent with the intent of the adaptable housing standard and is in fact quite minimal. It needs to be considered that some time has elapsed since the Standard was written and at the time it was not envisaged it would be called up in DCPs as it now is in NSW. The approach endorsed by the NSW branch of the Association of Consultants in Access Australia is to allow more change to the design provided it is planned and does not require structural changes or impact adjoining units. As a member of the</i>	Refer Section 5.6.1 of Report.

**Summary of NSW ADG Compliance Issues arising from BHI Assessment**  
Akuna Street, Terralong Street and Shoalhaven Street, Kiama

<b>NSW ADG Guideline</b>	<b>BHI Review</b>	<b>Applicant's Response</b>	<b>Comments</b>
4Q-2 continued		Standards Committee responsible for writing the Standard I am satisfied that the proposed units meet the requirements of the Standard.	
<b>4S Mixed Use</b> 4S-1 Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement  4S-2 Residential floors are integrated within the development, safety and amenity is also maximised	<p>The building to the South-Western portion of the site does not provide business or retail premises to Akuna Street.</p> <p>The commercial tenancies provided to the South-Eastern portion of the site are not at ground level – they are technically a basement level greater than 3m below the street level in places – with greater than 6m street setbacks to Akuna Street and landscaping/awnings obscuring views to the frontage, ensuring that they are not seen from the street and are difficult to access. This will result in a street frontage which is challenging, if not impossible, to activate.</p> <p>Some apartments are provided below the street level.</p>		<p>Refer Section 5.1.9.3 of Report.</p> <p>Refer above.</p>
<b>4T Awnings and Signage</b> 4T-1 Awnings are well located and complement and integrate with the building design	Awnings are not readily evident on the drawings. Building overhangs to the commercial level below the Akuna Street frontage block views to these uses.	An awning/balcony is provided as shown on drawings A-207. Good sight lines to/from the shop fronts to Akuna Street remain possible.	Visibility to pedestrian forecourt along Akuna Street restricted.

**Summary of NSW ADG Compliance Issues arising from BHI Assessment**  
Akuna Street, Terralong Street and Shoalhaven Street, Kiama

<b>NSW ADG Guideline</b>	<b>BHI Review</b>	<b>Applicant's Response</b>	<b>Comments</b>
<b>4U Energy Efficiency</b> 4U-1 Development incorporates passive environmental design  4U-3 Adequate natural ventilation minimises the need for mechanical ventilation	Evidence to be provided.  The lowest floor of residential units facing Akuna Street are sunken below street level. The plans are unclear, but it appears that the bedrooms of at least 4 apartments face a blank wall underground, which is not adequate to achieve cross ventilation, which will reduce the total number below ADG compliance.		Plans show compliance.
<b>4V Water Management and Conservation</b> 4V-2 Urban stormwater is treated on site before being discharged to receiving waters  4V-3 Flood management systems are integrated into site design			Site not flood liable.
<b>4W Waste Management</b> 4W-1 Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	All residential waste is concentrated in one room rather than being associated with each apartment block. There are no waste chutes, which means that residents must travel up to 80m through the basement with no discernible pedestrian pathway, causing safety concerns, to convey waste and recycling to the communal residential waste area.		Council's EHO supports waste management approach. However egress for service vehicles inadequate.

# **ANNEXURE 4**

## **Reviews of Traffic Impact Assessment**

**prepared by  
Traffic Impact Services**

**Akuna Street, Terralong Street  
and Shoalhaven Street, Kiama**

# **ANNEXURE 5**

**Proposed Right of Way Easement  
for Widening Service Lane  
and  
Alternate Egress Option  
across 66 Collins Street**

**Akuna Street, Terralong Street  
and Shoalhaven Street, Kiama**

# **ANNEXURE 6**

**Turning Path for Truck Access  
from Shoalhaven Street**

**prepared by  
Jones Nicholson**

**Akuna Street, Terralong Street  
and Shoalhaven Street, Kiama**