

ASSESSMENT REPORT

DEVELOPMENT APPLICATION (REVISED) (2016STH035 – 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

April 2018

Assessment Report

Project	Development Application (Revised) (2016STH035 DA – DA10.2016.304.1)
Address	Various Allotments, Terralong, Akuna and Shoalhaven Streets, Kiama
Our ref:	16/108
Prepared by	Stephen Richardson
Final	13/4/2018

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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); one hundred (100) residential units; and multi-level basement car park containing a total of 350 spaces.
Street Address	Various Allotments, Terralongo, Akuna and Shoalhaven Streets, Kiama
Applicant / Owner	Applicant: ADM Architects Owner: Kiama Municipal Council
Number of Submissions	<ul style="list-style-type: none"> Public exhibition of revised development application (19th February to 5th March 2018). This period was extended until the 9th March 2018 following problems with Council's "DA Tracker" on its website. A total of seventy-seven (78) submissions have been made all objecting to the revised proposal.
Regional Development Criteria (Schedule 4A of the Act)	The proposal has a capital investment value > \$20 million. Council related development with a value > \$5 million. (Kiama Municipal Council is the owner of the land on which the development is proposed to be carried out.)
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> List of all relevant environmental planning instruments <ul style="list-style-type: none"> State Environmental Planning Policy No. 55 – Remediation of Land; State Environmental Planning Policy No. 64 – Advertising Signage; State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development; State Environmental Planning Policy No. 71 – Coastal Protection; State Environmental Planning Policy (State & Regional Development) 2011; State Environmental Planning Policy (Building & Sustainability Index – BASIX) 2004; State Environmental Planning Policy (Infrastructure) 2007; State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017;

	<ul style="list-style-type: none"> – State Environmental Planning Policy (Coastal Management 2018) – Kiama Local Environmental Plan 2011. • 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"> – There are no proposed environmental planning instruments that have been notified and which are relevant to the revised proposal. • List any relevant Development Control Plan: <ul style="list-style-type: none"> – Kiama Development Control Plan 2012. • 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"> – Nil. • List any coastal zone management plan: <ul style="list-style-type: none"> – Nil. • List any relevant regulations: <ul style="list-style-type: none"> – Environmental Planning & Assessment Regulations 2000
List of all documents submitted with this report for the panel's consideration.	<ul style="list-style-type: none"> • Architectural Drawing Set prepared by ADM Architects • Urban Design Assessment prepared by BHI Architects • NSW Apartment Design Guide Compliance Checklist prepared by Cowman Stoddart Pty Ltd • Review of Traffic Impact Statement prepared by Traffic Impact Services • Correspondence in connection with Service Vehicle Ingress and Egress • Recommended Conditions of Consent
Recommendation	Approval
Report by	 Stephen Richardson Director and Town Planning Consultant Cowman Stoddart Pty Ltd M. Appl.SC., B.T.P (1 st Class Hons), Grad. Dip. Env. Mgt. MPIA CPP
Report date	13 th April 2018

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>Lot and DP</i>	<i>Address</i>	<i>Existing Use</i>	<i>Area (m²)</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			7700.6 (excluding laneway)

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

The Development Site is an irregular shaped parcel of land with an overall area of 7700.6 m² (excluding the unnamed laneway). A portion of the subterranean land of the Council-owned public unnamed laneway (comprising an area of 304 m²) will be utilised by the development for public amenities within the retail arcade and a linkage to the commercial 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).

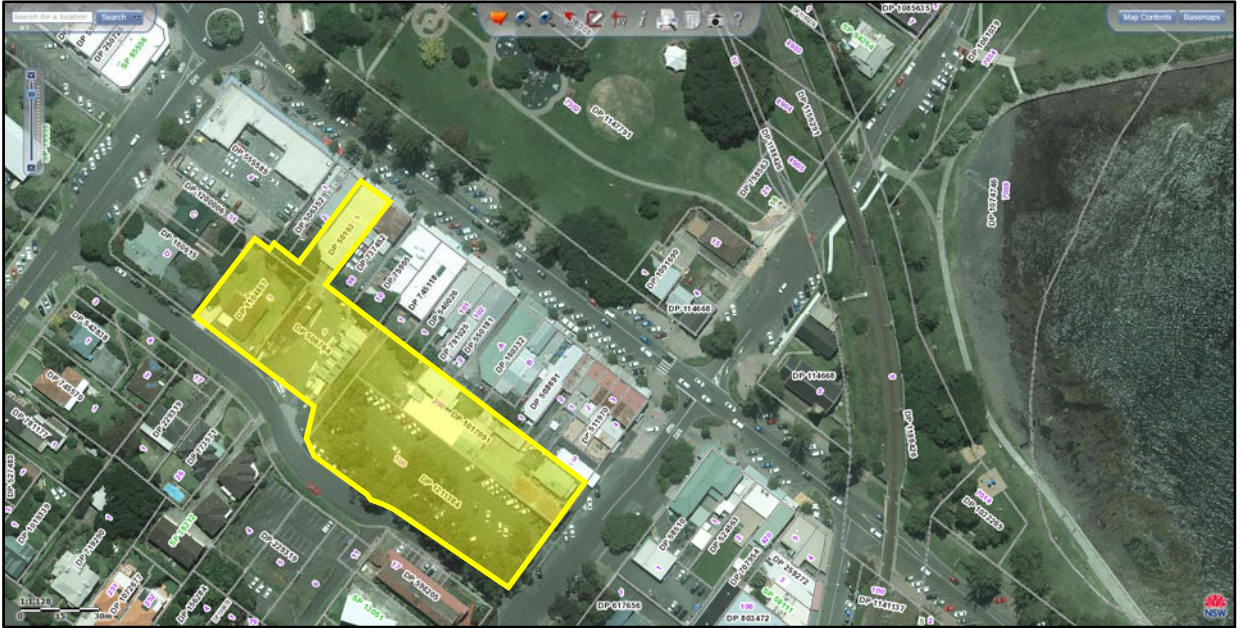


Figure 1: Aerial photograph of Development Site and locality
(Source: <http://maps.six.nsw.gov.au/>)

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

Our firm submitted an Assessment Report dated 24th November 2017 for the previous proposal for this site which consisted of 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) on the subject land. The proposal would have involved a maximum of four storeys (above ground level) with up to three basement levels and will provide a total of 405 car parking spaces. This Assessment Report recommended that the Joint Region Planning Panel (“the Panel”) refuse this development application.

On the 11th December 2017 the Southern Joint Regional Planning Panel (“the Panel”) considered the Assessment Report prepared by Cowman Stoddart Pty Ltd and resolved to defer determination of the development application to enable the Applicant to submit amended plans that would address:

1. *The Panel resolved to defer the development application as described in Schedule 1 for amended plans to address:*
 - a. *The appropriate relationship of the building to Akuna Street. Significant trees on Akuna Street should be preserved. To accommodate some trees, it may be appropriate to provide a more residential presentation to Akuna Street subject to resolving privacy for dwellings. A pedestrian pathway within the site should also be explored. There would be scope to address this more in a revised Clause 4.6.*
 - b. *Resolution of the issues raised in the assessment report including:*
 - i. *Measures requiring retention of trees on adjoining properties.*
 - ii. *Details of the easement for service arrangements.*
 - iii. *SEPP 55 contamination*
 - iv. *Location of communal open space on western boundary*
 - v. *Capacity for improved landscape and provision of canopy trees on site.*
2. *That the current and amended plans be reviewed by Council’s external architecture / urban design consultants to improve the urban design response.*
3. *That any amended plans be readvertised and notified.*
4. *That a further report be prepared assessing the amended proposal in accordance with Section 79C of the EPA Act.*

Following the Panel’s decision, the Applicant’s Architect has consulted with Council’s Architectural / Urban Design consultants, BHI Architects (“BHI”), to discuss the key urban design outcomes identified by both the Panel as well as BHI. This has included the Applicant’s Architect

supplying multiple iterations of architectural documentation and sketch options for BHI to review and provide feedback.

Following this consultation between the Applicant's Architects and BHI, the Applicant has revised the proposal and submitted amended plans and documentation for consideration. This report discusses the amended proposal and provides an assessment of the revised proposal having regard to the relevant heads for consideration as detailed in Section 4.15 (previously S.79C) of the Environmental Planning & Assessment Act in accordance with point 4 of the Panel's deferral decision.

4.0 DESCRIPTION OF THE REVISED DEVELOPMENT PROPOSAL (“THE REVISED PROPOSAL”)

4.1 THE REVISED PROPOSAL

The revised proposal seeks approval for the demolition and removal of all existing structures on the site and the construction of a mixed-use development consisting commercial components comprising; a supermarket, six (6) retail shops and three (3) retail “kiosks” in a retail arcade; two (2) upper level commercial premises fronting Terralong Street; and three (3) shops fronting Shoalhaven and Akuna Streets. The Applicant has supplied documentation confirming the ‘Aldi’ supermarket chain as the likely tenant of the supermarket.

The revised proposal also includes “shop top housing” comprising a total of one hundred (100) residential units.

The proposal will involve a maximum of four storeys (above ground level) with up to five basement levels and will provide a total of 350 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. (The application also includes advertising signage for the supermarket.) Three additional and separate shops will front the Akuna and Shoalhaven Street frontages of the site.

Off-street car parking will be contained over five separate levels, including: a lower basement level (2) containing 80 commercial spaces; a basement level (1) providing 79 commercial parking spaces; a parking area on the same level as the retail arcade level containing 53 commercial parking spaces; a residential parking level containing 109 residential parking spaces and a mezzanine parking level above the main residential parking level containing a further 29 parking spaces. The revised proposal will provide a total of 350 off-street car parking 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 to 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 one-hundred (100) 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:

<i>Building</i>	<i>1 bed</i>	<i>2 bed</i>	<i>3 bed</i>	<i>Total</i>
A	7	12		19
B	10	14	-	24
C	10	14		24
D and E	11	20	2	33
Total	38	60	2	100

The proposal is configured as follows:

<i>Level (as referred to on the Architectural Drawing Set)</i>	<i>Proposed Use(s)</i>
Basement Level 2	<ul style="list-style-type: none"> Commercial parking for 80 car parking spaces
Basement Level 1	<ul style="list-style-type: none"> Commercial parking for 79 parking spaces
Ground Retail and Parking Level	<ul style="list-style-type: none"> 10 retail tenancies and supermarket with retail arcade. Total floor area – 2419 m² (excluding arcade floor space and “back of house” areas). Amenities and part arcade constructed under laneway. Commercial parking area for 53 parking spaces (including 4 disabled parking spaces) and 9 motor cycle parking spaces.
Residential Parking	<ul style="list-style-type: none"> Second storey commercial tenancy off Terralong Street frontage with floor area of 245 m². Loading docks for the supermarket, and a second separate loading dock area for the other retail and commercial tenancies. A total of 109 parking spaces, including 25 accessible spaces, Bicycle parking for 44 spaces; Residential and commercial waste storage areas.
Residential Parking Mezzanine	<ul style="list-style-type: none"> 29 residential parking spaces.
Akuna/Shoalhaven Commercial / Residential Level 1	<ul style="list-style-type: none"> Third storey commercial tenancy fronting Terralong Street comprising a floor area 235 m². Three (3) retail tenancies fronting Shoalhaven and Akuna Streets comprising a total floor area of 285 m².

<i>Level (as referred to on the Architectural Drawing Set)</i>	<i>Proposed Use(s)</i>
	<ul style="list-style-type: none"> • First residential level containing twenty-three (26) residential units, including foyers to each of the towers / buildings. • Pedestrian access from Shoalhaven Street top a lobby (A) to service residential apartments in Building A. • Pedestrian access from Akuna Street to Lobbies D & E to service residential apartments in Buildings D & E. • Three separate communal open space areas located between Buildings A, B and C comprising a total area of 790 m² and communal open space area located on the north side of Buildings D and E comprising an area of 218 m², providing a total communal open space of 10080 m². The communal open space for Buildings D & E are connected to a communal room comprising a floor space of 60 m².
Residential Level 2	<ul style="list-style-type: none"> • Second residential level containing thirty (30) residential units. • Separate pedestrian access from Akuna Street to Lobbies (B & C) to service residential apartments in Buildings B & C.
Residential Level 3	<ul style="list-style-type: none"> • Third residential level containing thirty-one (31) residential units.
Residential Level 4	<ul style="list-style-type: none"> • Fourth residential level containing thirteen (13) residential units.

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 with Bluestone clad base feature wall, Dulux “Timeless Grey” and “Milton Moon” for walling and a combination of black and clear glazing.,

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

4.2 DESIGN AMENDMENTS

The revised proposal proposes the retention of twelve of the existing trees along the Akuna Street frontage of the site. These trees have been selected for retention following consultation with Council’s urban design consultant, BHI, who had regard to the findings of the Applicant’s Arboricultural assessment.

The retention of these trees has resulted in the development being set back further from Akuna Street to ensure adequate Tree Preservation Zones are provided to these trees.

The Akuna Street frontage of the development has been improved by the removal of the previous difficult pedestrian forecourt and commercial frontage. This has been replaced with a residential presentation to Akuna Street; with a pedestrian footpath proposed at

street level, using footpath materials that will protect the root systems of the trees that are to be preserved.

The overall extent to which the revised proposal exceeds the 11-metre building height limit that applies to the site have also been reduced by removing two dwelling units from the northern part of the upper level of Buildings B and C; and setting back the northern extent of the uppermost level of Building D & E.

The key amendments associated with the revised proposal in response to the JRPP's deferral of this application are detailed in **Table 2** below:

Table 2
Key Amendments

<i>Item</i>	<i>Amendment to Design</i>
Residential/Commercial Spaces	<ul style="list-style-type: none"> An increase in the number of residential units from 97 to 100 apartments resulting from replacement of commercial floor fronting Akuna Street, to provide a residential presentation to this street. <ul style="list-style-type: none"> Three (3) shops adjacent to the Akuna and Shoalhaven Street intersection, with a GFA of 285 m².
Building A	<ul style="list-style-type: none"> Residential lobby access direct from Shoalhaven Street; Commercial uses maintained fronting Shoalhaven Street, accessed at Shoalhaven St level (approx. RL 20); Commercial uses extended around the corner along the Akuna frontage accessed from Akuna Street & Shoalhaven Street corner (approx. RL 22); Taller building form provided at corner of Shoalhaven Street by adding an additional level comprising of a cluster of 3 units (comparable to those in units B & C); Twelve (12) trees along the Akuna Street frontage maintained.
Building B	<ul style="list-style-type: none"> Residential lobby access direct from Akuna Street; Maintain natural ground/TPZ between trees and buildings and provide bridge/raised walkway to accommodate entry.
Building C	<ul style="list-style-type: none"> Residential lobby access direct from Akuna Street; Natural ground/TPZ between tree and buildings maintained and bridge/raised walkway provided to accommodate entry; Tree 30 maintained, public lift relocated away from TPZ, situated within building footprint.
Building D&E	<ul style="list-style-type: none"> Residential entry path/ disabled ramp from Akuna Street to respective lobbies redesigned to land on Level 1 which results in removal of courtyard walls and addresses amenity issues around overlooking into courtyards to Units E105 and D101;

Table 2 (continued)

<i>Item</i>	<i>Amendment to Design</i>
	<ul style="list-style-type: none"> • Communal space adjoining (west) boundary adjoining Building D removed and replaced with significant screen including tree planting. • Communal open space and common room provided to northern side of development.
Terralong Street Frontage	<ul style="list-style-type: none"> • Proposed parapet height reduced to align with adjoining parapet, maintain glazed balustrade at a setback of 1:1 behind parapet line; • Vertical opening proportions provided in lieu of horizontal (eg. by removal of repetitive horizontal sunshades); • Primary pedestrian street entry architecturally identified; • Render provided in lieu of face brick.
Carparking	<ul style="list-style-type: none"> • Reduction in the footprint of the carparking areas to allow for retention of trees fronting Akuna Street; • Change in the RL of carparking levels; • Reduction in size of the Basement 1 carpark and inclusion of a Basement 2 carpark. • Provision of an additional mezzanine level residential carpark in the western portion of the development under Building D and E.

5.0 SECTION 4.15 ASSESSMENT

5.1 RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

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

Clause 7 of SEPP 55 in part states:

- (1) *A consent authority must not consent to the carrying out of any development on land unless:*
 - (a) *it has considered whether the land is contaminated, and*
 - (b) *if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) *if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*

A revised Preliminary Contamination Assessment dated 1st March 2017 prepared by SMEC accompanies the revised development application. In summary SMEC's assessment concludes the site will be suitable for the proposed use of the site as a multi-storey mixed use residential and retail development subject to certain measures being undertaken. This issue is further addressed in Section 5.6.7.2 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 revised proposal 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 earlier plans for the proposal were amended with the removal 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 façade and design. 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 revised 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 revised proposal 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.

Annexure 3 to this report provides a compliance checklist arising from an assessment of the revised proposal having regard to the ADG.

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 Sections 5.6.1 and 5.6.2 of this report.

There are several areas where the revised proposal does not strictly comply with the design criteria of the ADG, including:

Communal Open Space

Objective 3D-1 of the ADG seeks:

“An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping.”

Design Criteria 1 stipulates:

Communal open space has a minimum area equal to 25% of the site.

Communal open space is provided within three distinct areas of the site; between Buildings A and B; between Buildings B and C; and to the north of Buildings D & E. The overall combined area of communal open space shown on the Architectural drawings is 1008 m². The development will also provide a common room as part of Buildings D & E with a floor area of 60 m².

The subject land comprises an area of 7198 m². (This area excludes the area of 100 Terralong Street which does not include any ‘shop top housing’.) Pursuant to Design Criteria 1 above the development should therefore supply 1798 m² of communal open space. The development therefore provides a shortfall of 790 m² of communal open space.

Applicants Position

The Statement of Environmental Effects prepared by TCG Planning justifies the shortfall of communal open space as follows:

“The total area of COS (communal open space) does not meet the design criteria. This is due to the Business Zone context of the site and the development being shop top housing. This situation is recognised in the ADG and it is noted that more generous private open space areas (balconies) are provided than the minimum ADG guidelines, and the site is within close proximity to Hindmarsh Park, and the coastal foreshore parklands within the Kiama Town Centre locality.”

Comments

The Assessment Report dated 24th November 2017 did raise concern about communal open space provision for Buildings D & E with the earlier version for the project as it was proposed to provide communal open space for this building along the western boundary

with access to this communal open space provided by a narrow and uninviting corridor. It was considered the location of this previous communal open space area would not provide equitable access for all residents of this part of the development.

The Panel when considering this previous proposal required further resolution of the *“location of communal open space on the western boundary”*.

The revised proposal has relocated the communal open space area for Buildings D & E to the north of these buildings and attached to a common room. Access to this common room and communal open space will be a more direct route by a short corridor directly from the lobby for Building D. Placing this communal open space area on the northern side of this building will ensure better sunlight and will provide improved access. This option includes the provision of a common room which will provide an opportunity for an indoor meeting and common space for residents in addition to the communal open space provision. This is considered an improved solution for communal open space provision for this part of the development.

The previous communal open space area situated to the western boundary of the site has now been set aside for screen plantings (including canopy trees) consistent with the reasons for deferral by the Panel.

The revised proposal will however still provide a shortfall of communal open space in terms of the above design criteria.

The Design Guidance that supports this section of the ADG does recognise there are circumstances where development may be unable to achieve the design criteria such as small lots, sites within business zones, or in dense urban areas. In these cases, the Design Guidance suggests that such developments should:

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

The subject site is situated within the B2 Locale Centre zone under the Kiama LEP 2011.

Due to height restrictions associated with the subject land, (and acknowledging the development already encroaches this height limit) there is limited scope to provide communal open space on the roof top of the development. The development however does make provision for a common room within Buildings D & E.

The private open space areas provided to the individual apartments are generous when compared to the ADG balcony dimension requirements.

The subject land is also situated with close proximity (within 100 m) and walking distance to Hindmarsh Park which also integrates with the Kiama Harbour coastal foreshore reserve. The site therefore is within close proximity to public open space.

Given the above circumstances and given the modifications that have been undertaken to the revised proposal compared to that originally considered by the Panel, it is considered that the revised proposal now provides an adequate provision of communal open space.

Deep Soil Zones

Objective 3E-1 of the ADG seeks:

“Deep soil zones provide areas on site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.”

Deep soil zones are areas of soil not covered by buildings or structures. They provide environmental benefits such as allowing infiltration of rain water to the water table; reducing storm water runoff; promoting healthy growth of trees.

Under the relevant design criteria, a site greater than 1500 m² (as is the case with this proposal) should provide 7% of the site area as a deep soil zone, with a minimum dimension of 6 m.

Applicant's Position

The Application states that the development does not provide a deep soil zone.

The Applicant contends that because the ground floor areas are commercial uses, there is no opportunity for deep soil zones. However, substantial planter beds at residential podium level are provided.

Comments

The Design Guidance which supports this Design Criteria recognises that achieving this design criteria may not be possible on some sites including where:

- The location and *building typology have limited or no space for deep soil at ground level (eg. Central business district, constrained sites, high density areas, or in centres)*
- *There is 100 % site coverage or non-residential uses at ground level.*

Where a proposal does not achieve deep soil requirements, the ADG stipulates that acceptable stormwater management should be achieved, and alternative forms of planting provided such as on structures.

The subject site is situated within the Kiama CBD.

Furthermore, the residential apartments sit upon commercial and related uses which cover almost 100% of the site.

The revised proposal is supported by a Stormwater Management Plan prepared by Jones Nicholson that adopts Water Sensitive Urban Design principles.

It should be noted that the development site is not entirely devoid of deep soil zones as the revised development footprint will now be set back from the Akuna Street frontage in order to protect and preserve existing significant trees along this frontage. Whilst some of this frontage will contain paving and timber decking to enable pedestrian pathways, this paving and decking will be designed to be permeable to protect the root systems for these existing trees. As a result, the Akuna Street frontage of the development will still provide a form of deep soil zone. The Applicant estimates that this area of the site would comprise an area of 375 m² which would comprise about 5% (4.87%) of the overall site area, a shortfall of 2% of the criteria detailed in the ADG. Due to the curvature in the alignment of Akuna Street along this section of the road frontage a variable dimension will be provided ranging from about 5.5 to 8.9 metres.

Given these circumstances it is my view that there is sufficient justification for the proposal not achieving this specific Deep Soil Zone Design Criteria.

Ceiling Heights

Objective 4C-1 of the ADG states:

“Ceiling height achieves sufficient natural ventilation and daylight access.”

Objective 4C-3 states:

“Ceiling heights contribute to the flexibility of the buildings use over the life of the building.”

The Design Criteria seeks to ensure that habitable rooms provide a ceiling height of 2.7 m and non-habitable rooms provide a ceiling height of 2.4 m. The revised proposal complies with these criteria.

The Design Criteria however goes on to state that if located in mixed use areas, a development should provide 3.3 m for ground and first floor to promote future flexibility of

use. The ground and first floor levels of the residential apartments do not provide a floor to ceiling height of 3.3 m.

The Applicants Position

The Applicant contends:

Given the extent of commercial uses at ground level, and the constraints imposed by the natural topography of the site, it would be unreasonable in this instance to provide further opportunity for commercial spaces at the residential levels.

Comments

The residential apartments will provide ceiling heights of 2.7 m which the ADG recognises will provide suitable natural ventilation, daylight access and sense of space within these apartments.

The issue is whether there is a need for the ground and first floor units within the development to provide increased ceiling height to provide flexibility for the future use of these units.

The residential level 1 units however are specifically designed for residential use. When considering the original proposal, the Panel reflected that it was more appropriate for a residential presentation to Akuna Street in order to preserve significant trees along this road frontage. In response, the revised proposal has been modified to preserve significant trees along the frontage and in doing so has removed the majority of the commercial frontage to Akuna Street.

Furthermore, the residential levels sit upon commercial and retail floor space including a supermarket and retail arcade; as well as retail frontage to Shoalhaven Street.

Given these circumstances it is considered the development achieves the primary objective of Objective 4C-1 in so far the proposed residential units will be provided with a ceiling height that will achieve sufficient natural ventilation and daylight. However, given the specific circumstances on this case, there is no need for the first and second level residential units to provide an increased ceiling height to provide flexibility in use over time, as the development already provides sufficient scope for commercial use within the overall development footprint.

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.

On the 3rd April 2018 State Environmental Planning Policy (Coastal Management) 2018 commenced. This SEPP is further discussed in Section 5.1.9 of this Assessment Report. Under the Savings and Transitional Provisions detailed in Clause 21 of this SEPP the provisions of the former planning provisions (SEPP 71) continue to apply to a development application lodged, but not finally determined, immediately before the commencement of this Policy. Given this development application was lodged with Kiama Municipal Council before the commencement of this SEPP, SEPP 71 continues to apply to the development application.

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

- Having regard to the matters dealt with in Clause 8 of the SEPP and detailed below it is considered the revised proposal is not inconsistent with the aims of this SEPP.
- The revised proposal will have no adverse impacts on existing public access to and along the coastal foreshore for pedestrians or persons with a disability.
- The subject site does not adjoin a coastal foreshore area and therefore does not provide scope for opportunities to provide new public access to and along the coastal foreshore for pedestrians or persons with a disability. The revised proposal does however provide scope for pedestrian access and including disabled access through the development site from Akuna Street to Terralong Street which provides an improved indirect pedestrian access through to Hindmarsh Park and the subsequent foreshore reserve.
- For the reasons given in Sections 5.6.1, 5.6.2 and 5.6.3 of this Assessment Report the revised proposal is considered a suitable development given its type, location and design and its relationship with the surrounding area.
- The revised proposal will not have any detrimental impact on the amenity of the coastal foreshore. It will not result in overshadowing of the coastal foreshore or significant loss of views from a public place to the coastal foreshore.
- The revised proposal will not have any adverse impact upon the scenic qualities of the coast.
- The subject site is not identified as containing significant biodiversity vegetation or habitat under Council's LEP. Whilst the revised proposal does include removal of existing vegetation, it also now includes the retention of significant trees along the Akuna Street frontage of the site.

- The revised proposal will not create any adverse impacts upon fish, marine vegetation and their habitats.
- There are no identified wildlife corridors that affect the site.
- The subject site is not adjacent to the coastal foreshore and it is not expected that coastal processes and hazards will have any likely impacts on the development; nor that the development itself will have any adverse impact upon coastal processes.
- The revised proposal measures do not raise potential for conflict between land-based and water-based coastal activities.
- The subject site is developed and is not expected to have Aboriginal cultural heritage significance.
- The revised proposal includes provision for stormwater management measures both during and post development to minimise likely impacts of development on the water quality of coastal waterbodies.
- The revised proposal will not have any adverse impact on items of heritage, archaeological or historic significance. This is addressed in Section 5.6.3 of this Assessment Report.
- The provision of “shop top” housing within a central business district such as the subject site provides scope to reduce the potential for urban sprawl and provides a means to encourage a compact urban area of Kiama.
- It is considered that the revised proposal now incorporates a range of measures to minimise its cumulative impacts on the amenity and environment of the locality.
- The revised proposal is supported by BASIX Certification which demonstrates the proposal; incorporate suitable waste and energy efficiency measures. The revised proposal also now makes sufficient provision for daylight access to individual units. It is considered the revised proposal incorporates measures to ensure that water and energy usage by the proposed development is efficient.

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 revised proposal is supported with replacement 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 revised proposal contains 100 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 350 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.

The application was referred originally 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 m² (including 304 m² 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 m²) may be cleared without requiring authority under SEPP (Vegetation in Non Rural Areas) 2017.

According to information previously supplied by the Applicant with respect to the earlier proposal an area of 1335 m² will require to be cleared of vegetation, which includes 629 m² of vegetation removal along the Akuna Street frontage with the balance comprising removal of vegetation elsewhere on the site. The revised proposal now seeks to retain 12 trees along the Akuna Street frontage that had previously been proposed to be removed with the earlier proposal.

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 State Environmental Planning Policy (Coastal Management) 2018

This SEPP commenced on the 3rd April 2018. As detailed in Section 5.1.4 above under the Savings and Transitional Provisions detailed in Clause 21 of this SEPP the provisions of the former planning provisions (SEPP 71) continue to apply to a development application lodged, but not finally determined, immediately before the commencement of this Policy. SEPP 71 therefore applies to the development application.

The aim of this SEPP is to 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 SEPP would apply to the subject land, subject to the Savings and Transitional Provisions detailed in Clause 21 of the SEPP.

The site is situated within an area identified as partly “Coastal Environment Area” and partly “Coastal Use Area” under this draft SEPP. Were the SEPP to apply to this

development proposal (which it does not) it is not anticipated that the revised proposal would be inconsistent with the provisions of this SEPP.

Coastal Environment Area

The “*Coastal Environment Area*” provisions would apply to the eastern part of the site (approximately). It would not be expected the revised proposal as it applies to this part of the site would be inconsistent with the thrust of the provisions of Clause 13 of the SEPP that applies to this area:

- As supported by the geotechnical assessment prepared by SMEC the revised proposal would not have any adverse impacts on the integrity of surface and subsurface hydrology. Furthermore, given the developed nature of the site the development will not have an adverse impact on the ecological environment. The land for instance is not identified as having biodiversity values under the Kiama LEP 2011.
- The revised proposal will not have any adverse impact upon coastal environmental values or processes.
- The revised proposal will also not have any adverse impacts on water quality of the “marine estate”. The development is supported by a stormwater management plan to reduce adverse impacts on water quality of stormwater. Measures are also proposed to minimise environmental impacts during the construction phase.
- Marine vegetation will not be affected by the revised proposal. Whilst the proposal does involve the removal of native vegetation on the site, this vegetation has not been identified as significant biodiversity vegetation by Council’s LEP. The revised proposal also makes provision for the retention of significant trees along the Akuna Street frontage of the site.
- The revised proposal will not result in any adverse impacts on existing public open space or access along foreshore areas.
- Given the development nature of the site it is not expected that the revised proposal would result in any adverse impacts on Aboriginal cultural heritage.
- The revised proposal will not have any impacts on the use of the surf zone.

Coastal Use Area

The “*Coastal Use Area*” provisions would apply to the western part of the site (approximately). It would not be expected the revised proposal as it applies to this part of the site would be inconsistent with the thrust of the provisions of Clause 14 of the SEPP that apply to this area:

- The revised proposal will not have any adverse impact on access along foreshore areas.
- The revised proposal will not result in overshadowing, wind funnelling and loss of views from public places to foreshores.
- The revised proposal will not have an adverse impact on the visual amenity or scenic qualities of the coast or coastal headlands.
- Given the development nature of the site it is not expected that the revised proposal would result in any adverse impacts on Aboriginal cultural heritage.
- As demonstrated in Section 5.3 of this Assessment Report the revised proposal will not have any adverse impact on the cultural and built environment heritage.

5.1.10 Kiama Local Environmental Plan 2011

5.1.10.1 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 an original briefing meeting in connection with an earlier version of the proposal, the Panel questioned whether the proposal satisfied the definition of “shop top housing”.

The revised 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.*

5.1.10.2 Specific Clauses

Principal Development Standards

Building Height

Clause 4.3 requires that the height of the building does not exceed the maximum height shown on the Height of Buildings Map. In this instance the maximum building height map indicates a maximum building height of 11 metres applying to the subject land measured vertically from the highest point of the building to the existing ground level below.

The maximum overall height of the proposed building is 13.68 m (at a midpoint of the roofline of residential building or Tower A at the Shoalhaven Street frontage of the site). The roofline of the top most floor of each of the residential flat buildings of Towers encroach the 11 metres building height, with the extent of encroachments ranging from 0.03 metres to 2.68 m. Portions of the lower floor level below the top most floor also encroaches the 11 metres height limit from 0.330 m (Building C) 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 5.1.10.3 below).

Floor Space Ratio

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 revised proposal comprises a FSR for the eastern part of the site of 1.53:1 which is less than the 2:1 FSR that applies to this part of the site. The development however proposes a FSR of 2.19:1 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 5.1.10.3 below).

Miscellaneous Provisions

Coastal Zone

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.

Heritage

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; I55 Old Fire Station; I57 Hindmarsh Park (including war memorial) and I63 street trees. This issue is further addressed in Section 5.6.3 of this report.

Additional Local Provisions

Acid Sulphate Soils

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.

Earthworks

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

The revised proposal is supported by a revised geotechnical assessment prepared by SMEC (this should also be read in conjunction with the 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 impact on soil stability or drainage patterns in the locality.

Flooding

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 Engineer raises no concerns with respect to flooding for this site.

Biodiversity

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.

Watercourses and Riparian Land

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.

Active Street Frontages

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 Revised 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 proposal therefore meets the provisions of clause 6.8 except for that part of the proposal that fronts the majority of the Akuna Street. The ground floor level for

the majority of the Akuna Street frontage of the site 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 takes the view at odds 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 are achieved, and therefore clause 6.8(3)(a) is achieved. Notwithstanding this position clause 4.6 written request addressing this issue accompanies the revised proposal as well.

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 5.1.10.3 below).

5.1.10.3 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 5.1.10.2 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 maximum overall height of the revised proposal is 13.68 m (at a midpoint of the roofline of residential building or Tower A at the Shoalhaven Street frontage of the site). The roofline of the top most floor of each of the residential flat buildings of Towers encroach the 11 metres building height, with the extent of encroachments ranging from 0.03 metres to 2.68 m. Portions of the lower floor level below the top most floor also encroaches the 11 metres height limit from 0.330 m (Building C) 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 each of the buildings or towers which exceed the height limit from 2.68 m for Building A, 1.4 m for Building B; 1.58 m for Building C; and 1.93 m for Building D.

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 A, B, and C with approximately half the roof of Building D & E encroaching the height limit; and in terms of vertical measurement the proposed height breach is most significant for Tower A (2.43 m to 2.68 m); Tower B (1.34 m to 1.4 m); Tower C (1.28 m to 1.58 m); and Tower D & E (1.73 m to 1.93 m).

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. Retaining walls exist along many of these rear property boundaries resulting in ground floor levels being much lower than the subject land that fronts Akuna Street. 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 increase in the height of Building A has occurred due to a request by Council's independent architect to provide a taller building form at the corner of Shoalhaven Street by adding an additional level comprising a cluster of 3 units. This is intended to improve the built form when viewed from Shoalhaven Street.
- 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 development proposal the subject of my previous Assessment comprised a maximum building height of the development of 13.78 m (**Figure 2**).

As is evident from **Figure 2** below, each of the buildings associated with this earlier proposal encroached the building height limit to some degree, in some instances only to a minor degree, but in other cases to a more significant degree.

This previous proposal generally complied 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 and Building D 1020 mm); however, the upper floor level of the development still encroached for each of the blocks as follows:

- Block A – 835 mm (north-eastern corner);
- Block B – 1040 mm to 1850 mm along the northern edge of roof
- Block C – 2580 mm to 2780 mm along the northern edge of roof
- Block D & E – between 2250 mm and 2350 mm (along northern edge of roof).

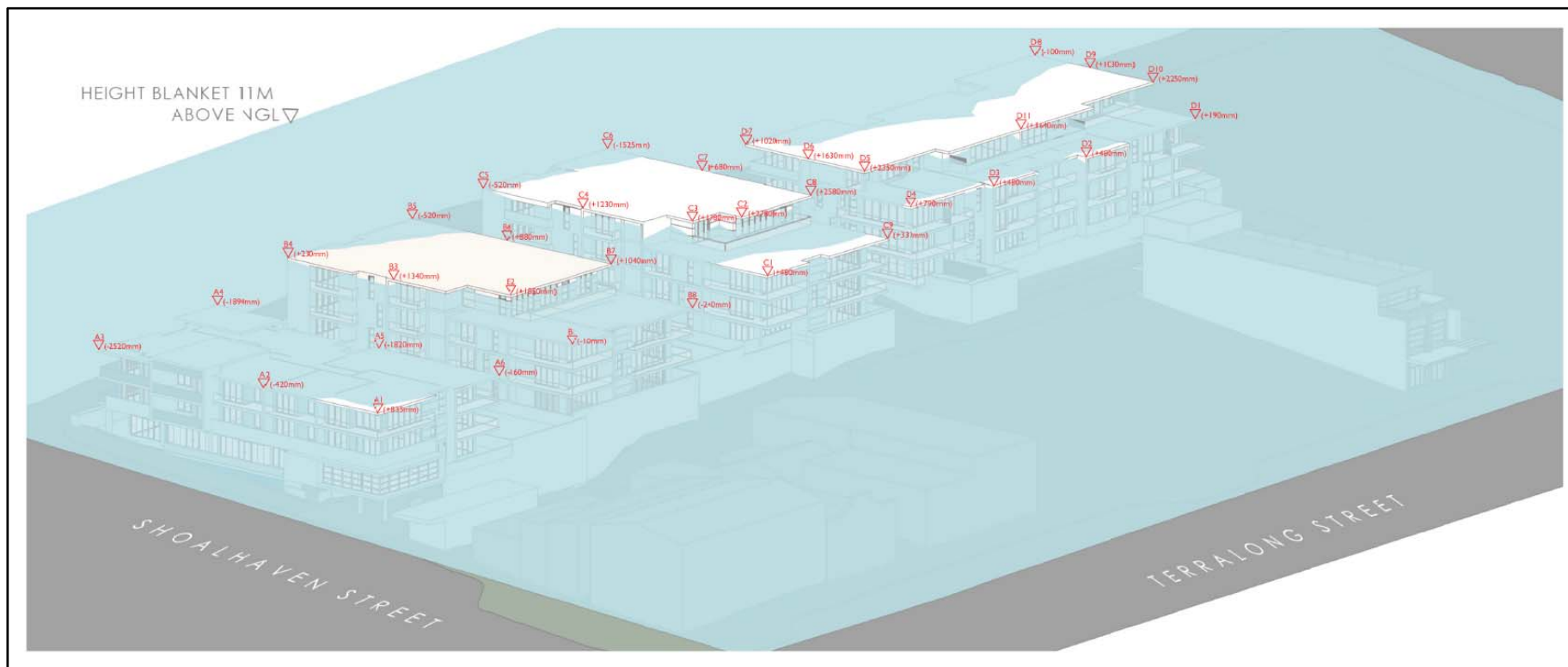


Figure 2: Building Height Plane for Original Proposal.
(ADM Architects Drawing A701-D dated October 2017)

The revised proposal will have a maximum height above ground level of 13.68 m for Building A along the Shoalhaven Street frontage of the site (**Figure 3**)

This revised proposal also generally complies with the 11 m building height limit along the Akuna Street frontage of the site with the exception of encroachments at the south-eastern corners of; Building B of 580 mm, Building C of 480 mm and Building D of 1020 mm. On the face, it would appear the extent of encroachment along the Akuna Street frontage of the development has increased, however it should be noted that the retention of the significant trees along the Akuna Street frontage of the site, Buildings A, B and C has been set back further from the Akuna Street frontage of the site to the previous original proposal. The existing ground levels at these points is lower when compared to the original Akuna Street façade of the original development. As a result, whilst the overall extent of building height encroachments for Buildings B, C and D & E have been reduced, there is an apparent increase in height encroachment along the Akuna Street frontage. In reality the height of the development when viewed from Akuna Street has however not changed from the original Proposal.

The exception to the above is Building A. The height of Building A has been increased in the revised proposal with the addition of an additional floor level containing three residential units. This additional floor level is now proposed following advice from Council's Architectural and Urban Design consultant (BHI Architects). As will be discussed in Section 5.6.1 below, BHI have taken the view that the Akuna and Shoalhaven Street corner of the development should be articulated with built form emphasis through an additional storey of apartments at the corner and a stepped awning to match Buildings B and C. As a result, Building A encroaches the 11 m building height limit along its Akuna Street frontage by 1780 mm at the corner, although this encroachment reduces to 30 mm at the western corner of this building.

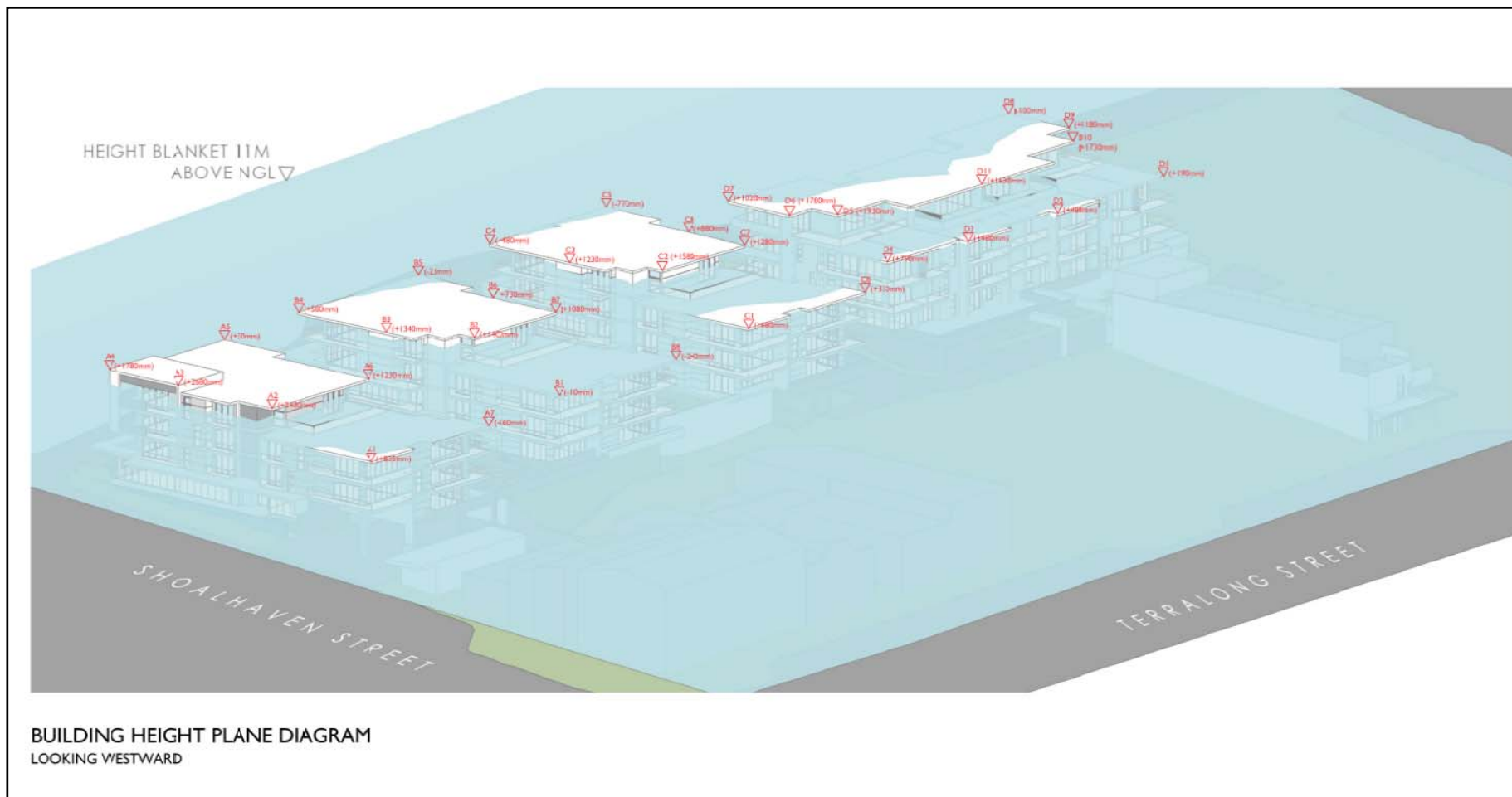


Figure 3: Building Height Plane for the Revised Proposal
(ADM Architects Drawing A701-X dated February 2018)

The revised proposal involves the following building height encroachments:

- Block A – between 1780 mm and 2680 mm for the corner “feature” and reducing to between 1230 mm and 2430 mm along the northern edge of the roof.
- Block B – between 1080 mm to 1400 mm along the northern edge of roof (a reduction of up to 450 mm from the original proposal);
- Block C – between 1280 mm to 1580 mm along the northern edge of roof (a reduction of up to 1200 mm from the original proposal);
- Block D – between 1730 mm to 1930 mm along the northern edge of roof (a reduction of up to 520 mm).

Almost all of the public submissions objecting to the revised proposal identifies the height of the revised proposal, and the extent to which it exceeds the maximum building height limit that applies to the site as a reason for objecting to the revised proposal. Such submissions outlined that the bulk and height of the development would be inconsistent with the character of the Kiama town and in particular when viewed in context of existing heritage buildings, the Terralong streetscape, and Hindmarsh Park (also an identified Heritage item).

Issues pertaining the building height and its implications for the character of development within the Kiama township are discussed further in Section 5.6.2 of this report.

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 objectives of the relevant clause in this instance clause 4.3 states:

- (a) *to ensure future development is in keeping with the desired scale and character of the street and local area,*

- (b) *to allow reasonable daylight access to all developments and the public domain.*

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 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.

At its meeting on the 11th December 2017 the Panel did not raise specific concern about the height of the previous proposal, and this issue was not specifically reflected in the formal Record of Deferral.

The extent to which the revised proposal exceeds the 11 m height limit has been reduced from the previous proposal for each of the buildings with the exception of Building A. The encroachments of the building height limit for each of Buildings B, C and D are all under 2 metres, and in the case of Buildings B and C generally under 1.5 metres (with the exception of the north eastern corner of Building C which encroaches the building height limit by 1.58 metres).

The exception to the above is Building A, the height of which has been increased from the previous proposal. Building A now encroaches the building height limit by up to 2.68 m. The height of Building A, and in particular the corner portion of Building A, has been increased following advice from Council's Architectural and Urban Design Consultant, to emphasise the importance of this corner position (see Section 5.6.1).

In my view, and having considered the Applicant's clause 4.6 submission, whilst the development will encroach the 11-metre building height limit as explained above, the revised proposal will still achieve the stated objectives that underpin clause 4.3.

- The revised proposal will be in keeping with the desired scale and character of the street and local area. In this regard the height of the revised proposal will generally be compliant with the 11 m height limit to the Akuna Street frontage. Indeed, the height of the revised proposal along the Akuna Street frontage of the site will in large part sit beneath the 11 metre height limit. The exceptions being:
 - Encroachments at the south-eastern corner of each of the buildings which range from 480 mm (Building C) to 1020 mm (Building D). These encroachments relate to only small portions of the frontage of these buildings and arise due to the fall of the land along the Akuna Street frontage.
 - The increased height of Building A, and in particular the Akuna and Shoalhaven Street corner of the development. The increase in height of this part of the development is the direct result of urban design advice from BHI to emphasise this corner location.
- With the exception of Building A, the parts of the revised proposal where the most significant encroachments of the building height limit occur are located toward the northern extent of the upper level of the development. This part of the revised proposal is largely internalised within the site, and this part of the development, will not be visually prominent with the broader townscape. As discussed in Section 5.6.2 of this report which includes photomontages prepared by the Applicant Architects, when viewed from vantage points from along Terralong Street (the main shopping street) and Hindmarsh Park for instance, the development will not be visually dominant, despite its exceedance of the building height limit. Under these circumstances the development will not be out of character with development within the locality.
- As is evident from the sunlight access diagrams prepared by the Applicant's Architect, the revised proposal will not result in adverse overshadowing of surrounding properties, any communal or public open space areas and will ensure adequate sunlight access to apartments and private open space areas within the development.
- The retention of significant trees along the Akuna Street frontage, in conjunction with proposed landscaping along this street frontage, will 'soften' the visual impact of the development while retaining an element of the existing vegetated streetscape along Akuna Street.

It is also my view, having regard to the Applicant's clause 4.6 submission, that the revised proposal whilst encroaching the 11-metre building height limit, will still achieve the stated objectives of the B2 zone that applies to the land:

- The revised proposal does provide retail and commercial uses (including a supermarket) that will serve the needs of people who live in, work in and visit the local area.
- The subject land is situated within close proximity of the Kiama Railway station (270 m); bus stop (50 metres from Terralong Street frontage of site); taxi rank (50 m). The establishment of a supermarket and commercial developments as part of the proposal will encourage employment opportunities in a location that is accessible.
- As detailed in the bullet point above the site is within walking distance of a range of public transport services. The site is also situated within walking distance of a range of commercial, community and recreational facilities. The development also provides bicycle parking facilities which exceed Councils requirements. A retail development with shop-top housing in this location has the potential to maximise public transport patronage and encourage walking and cycling.

There are also environmental planning grounds that justify the revised proposal most notably the development provides scope for an integrated development approach to this overall strategically placed development site within the Kiama CBD; as opposed to piecemeal development over the various allotments.

Furthermore, the revised proposal now makes provision for the retention of significant trees along the Akuna Street frontage of the site as requested by the Panel; as well as enabling pedestrian access along this road frontage where currently there is no such provision.

Maintaining the development standard in this case will have little public benefit. As detailed above, the main areas of encroachment of the height limit are to the north of the upper level. The building height encroachment will not create a significant visual impact within the locality. Furthermore, the development will not result in any significant overshadowing impacts of surrounding development.

The encroachment of the building height limit in this case also does not raise any matters of significance for State and regional planning relevance.

Given the above circumstances and having regard to the Applicant's written request made pursuant to clause 4.6 of the Kiama LEP 2011, it is my view there is sufficient justification to warrant supporting the encroachments of the 11-metre building height limit that applies to the site pursuant to clause 4.3 of the Kiama LEP 2011 by the revised proposal.

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 1.53:1 which is less than the 2:1 FSR that applies to this part of the site. The development however proposes a FSR of 2.01:1 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 1887 m² additional GFA located on Site A. It is noted that the retail arcade and back or house area of Aldi are accommodated below ground however the floor area is included in the calculation of FSR. 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.
- 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 originally 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 with height exceedance across the less visible central parts of the site 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 1887 m² 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. 1887m²);*
- *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.*
- *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 2.19:1 for the western Block A 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."

Comments

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

At its meeting on the 11th December 2017 the Panel did not raise specific concern about the non-compliance with the floor space ratio requirements as it applies to the site, and this issue was not specifically reflected in the formal Record of Deferral.

The stated objectives that underpin clause 4.4 in relation to the floor space ratio state:

- (a) *to ensure that development is in keeping with the optimum capacity of the site and the local area,*
- (b) *to define allowable development density for generic building types.*

The zone objectives of the B2 zone are detailed above.

Given the lack of strategic planning merit underpinning the difference in floor space ratio requirement that applies to the two parts of the site, I do see merit in an approach that seeks to "average" the floor space ratio across the development site. This is particularly the case given this development provides an integrated approach to the development of the overall site in terms of built form, vehicle access and parking. The overall revised proposal provides a FSR of 1.76, which does sit between the two FSR limits that apply to the overall development site namely 1.5:1 for the western part of the site; and 2:1 for the eastern part of the site.

As identified by the Applicant, the calculation of the floor space ratio for the western part of the site includes floor space that is largely encapsulated below ground level. This floor space does not of itself create any external impacts either in terms of the bulk and scale of the development, streetscape or impacts on neighbouring properties (ie. such as overshadowing or privacy).

Having regard to the objectives that underpins clause 4.4, notwithstanding the non-compliance with the FSR for part of the western part of the site, the revised proposal will still in my view be in keeping with the optimum capacity of the site and the local area given:

- Council's urban design consultant (BHI) now indicates the revised proposal provides an appropriate relationship to Akuna and Terralong Streets (refer to Section 5.6.1).

- The revised proposal now retains and protects significant trees along the Akuna Street frontage of the site, while also providing pedestrian access along the Akuna Street frontage of the site.
- Council's Heritage Adviser advises the proposed development will have minimal impact on the setting and significant views to and from heritage items in the vicinity (refer Section 5.6.3).
- The development is able to provide sufficient on-site car parking to meet the demands for both the commercial land uses as well as residential apartments proposed within the development (refer Section 5.6.5.3).
- As is evident from the traffic assessment undertaken in support of the application, the findings of which are supported by Council's own independent traffic consultant as well as Council staff, the development will not generate a level of traffic that cannot be accommodated within the local road network (subject to certain works and upgrades) (refer Section 5.6.5.1).
- The revised proposal will not significantly impact the amenity of surrounding properties in terms of loss of privacy or overshadowing (refer Section 5.6.4).

As detailed above, the revised proposal is also considered to be consistent with the objectives of the B2 zone that applies to the land.

The encroachment of the building height limit in this case also does not raise any matters of significance for State and regional planning relevance.

Given the above circumstances, and having regard to the Applicant's written request made pursuant to clause 4.6 of the Kiama LEP 2011, it is my view there is sufficient justification to warrant supporting the strict non-compliance with the 1.5:1 floor space ratio requirement as it applies to the western part of the site that applies to the site pursuant to clause 4.4 of the Kiama LEP 2011 with respect to the revised proposal.

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 Terralong and Shoalhaven Streets frontages and to that part of the Akuna Street frontage adjacent to the Shoalhaven Street intersection, with two retail tenancies having frontage to Akuna Street (with one retail tenancy entirely fronting Shoalhaven Street). Clause 6.8 is satisfied for this part of the development. The Proposal, however, west of Building A does not meet Clause 6.8 as the ground floor of Buildings B - E do not provide business or retail premises facing Akuna Street, but rather provide 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 Akuna Street / Shoalhaven Street intersection should be the focus and limit of commercial uses on Akuna Street, where pedestrian activity is greatest. The central; and western parts of Akuna Street are not considered suited for business uses having regard to the topography and general disconnection with the township.
- 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 focus of retail traffic should therefore be Shoalhaven Street and similarly, pedestrian traffic should be focussed on this street, rather than 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 due to the need to retain existing trees. The previously proposed footpath forecourt along Akuna Street has been removed due to the difficulty of achieving appropriate levels and tree retention. In the eastern portion of the subject site (where active use is appropriate and grades permit) a timber deck is proposed to protect the existing trees to be retained and provide a pedestrian forecourt area. Stone set permeable paving provides an informal footpath to the west, where grades are more challenging. The inability to provide a suitable pedestrian footpath/road reserve in front of the western portion of the site makes it an unsuitable location for commercial uses due to the variation in levels, where the footpath will be sited at a greater level than that of future commercial premises.
- This part of Akuna Street is considered to be characterised as a low level 'service road' providing access to the (existing) residential properties fronting Terralong Street (and the residential component of the proposed development site) rather than a shopping/business street. Furthermore, the steeper topography and physical separation from the other primary shopping street/s of Kiama make Akuna Street a difficult place to access for less mobile persons should they wish to access retail and business services from Terralong Street. While safe and level access is provided from the supermarket/retail level of the development, (via a lift and unnamed laneway footpath), this is "tucked away" and not a route that is likely to be frequently utilised as a means of access by the community.
- 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 m² of supermarket and grocery floor space; and additional 3100 m² of discount department floorspace and 5200 m² 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 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

The Record of Deferral by the Panel specifically states:

- “1.(i) The appropriate relationship of the building to Akuna Street. Significant trees on Akuna Street should be preserved. To accommodate some trees, it may be more appropriate to provide a more residential presentation to Akuna Street subject to resolving privacy for dwellings. A pedestrian pathway within the site should be explored. There would be scope to address this more in a revised clause 4.6.”*

I 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 majority of 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. Terralong and Shoalhaven Street are clearly commercial streets containing a range of commercial premises; whereas Akuna is primarily a residential street (notwithstanding the B2 zone that applies to the land).
- The revised proposal provides an improved treatment to the Akuna Street frontage compared to the previous proposals. The previous difficult pedestrian forecourt has been removed. Significant trees along the street frontage are now proposed to be retained. A pedestrian path way is proposed along the Akuna Street frontage of the site, however designed in a manner to protect the trees that are to be retained. The revised proposal has been modified in a manner consistent with the earlier concerns raised by the Panel in connection with the previous proposal.
- 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.
- The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages in certain business zones. As recognised by the Applicant, the wording of the objective implies the clause should only apply to certain street frontages. In my view compared to Terralong and Shoalhaven Streets, Akuna Street is not a commercial street frontage that warrants the need to attract pedestrian traffic along the street. Apart from the small commercial development opposite, the street mainly contained residential developments and does not presently provide any formalised pedestrian footpaths.

- As detailed above, the revised proposal is also considered to be consistent with the objectives of the B2 zone that applies to the land.
- The lack of an active street frontage to Akuna Street in this case also does not raise any matters of significance for State and regional planning relevance.

Given the above circumstances and having regard to the Applicant's written request made pursuant to clause 4.6 of the Kiama LEP 2011, it is my view there is sufficient justification to warrant supporting the strict non-compliance with clause 6.8 Active Street Frontage as it applies to Akuna Street, pursuant to clause 6.8 of the Kiama LEP 2011 as it relates to the revised proposal.

5.2 ANY DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

There are no draft environmental planning instruments, either at a state or local level, that have relevance to the revised proposal.

5.3 DEVELOPMENT CONTROL PLANS

5.3.1 Kiama Development Control Plan 2012

5.3.1.1 Chapter 5 – Medium Density development

The revised 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 revised Proposal breaches the building height, FSR and active street frontage development standards as outlined under LEP 2011. 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 are addressed above within Section 5.1.10.3 of this report. These matters have been discussed in detail and the breaches with respect to building height and FSR are now considered acceptable.

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

Refer discussion on Chapter 26 Kiama Town Centre.

- Control C12 – 75% of dwellings must have dual aspect. 60 of 100 apartments (60%) have 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 the ADG 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 m²;
 - two-bedroom apartments – 20 m²;
 - three plus bedroom apartments – 24 m²;
 - ground floor or podium apartments to have POS of min. 15 m²;
 - 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 m² (min. depth 2.4 m);
- Two bedroom apartments: 11 m² (min. depth 2.0 m);
- Three bedroom apartments: 60 m² (min. depth 2.2 m).

The minimum balcony areas and minimum width of balconies comply with the ADG/SEPP 65 requirements. DCP controls are contrary to Clause 6A of the SEPP.

- **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 discussed further in Section 5.1.3.

- **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. The issue of deep soil zones is also addressed with respect to the provisions of the ADG (refer Section 5.1.3).

5.3.1.2 Chapter 9 Car Parking Requirements

The revised proposal incorporates three basement car parking levels accommodating a total of 350 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 = 716 m² @ 1 space / 35 m² = 20.5 car spaces.
- Akuna and Shoalhaven Streets commercial
 - Total GLFA = 285 m² @ 1 space / 35 m² = 8.2 spaces.
- Shopping Arcade and Supermarket
 - Total GLFA = 2724 m² @ 6.1 spaces / 100 m² = 167 spaces.

Total retail and commercial parking allocation equates to 196 car spaces

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:
 - 38 x 1-bedroom car spaces;
 - 60 x 2-bedroom car spaces.
- 2 spaces per 3 bedroom dwellings:
 - 2 x 3-bedroom car spaces.
- 1 space per 2 dwellings for visitor parking:
 - 100 units – 50 spaces.

Total residential parking allocation equates to 152 spaces.

Consequently, a total of 348 parking spaces are required to be provided. The development provides 350 spaces which complies. (It should be noted that the proposal includes the use of two stack parking spaces that will be available for the sole use of two

2-bedroom units. Under these circumstances an additional two visitor spaces have been provided to ensure the development satisfies the overall visitor parking requirement for the development.)

Under Council's DCP a total of 66 bicycle parking spaces should be provided comprising:

- 51 residential bicycle parking spaces; and
- 15 commercial / retail bicycle spaces.

The proposal provides a total of 74 bicycle parking spaces comprising 52 resident and visitor spaces and 22 commercial/retail spaces which more than satisfies the Council's DCP requirements.

The revised proposal 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;
- 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.

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 revised proposal seeks approval for breaches of the 11 metres height limit pursuant to Clause 4.6, which are now supported by this assessment.

Sections 5.6.1 and 5.6.2 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 5.1.10 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 5.6.3 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

Having regard to clause 92 of the EP & A Regulations 2000:

- The proposal does not compromise the strategic actions or principles (Appendix C – table 13) or provisions adopted within the NSW Coastal Policy 1997.
- The revised proposal includes the demolition of existing buildings on the site. Demolition works will be required to be carried out in accordance with the provision of AS 2601.

5.5 ANY COASTAL ZONE MANAGEMENT PLAN

Nil.

5.6 THE LIKELY IMPACTS OF THE PROPOSED AMENDED DEVELOPMENT

5.6.1 Urban Design

At its meeting on the 11th December 2017 the Panel resolved to defer consideration of this development application in part to resolve the following urban design issues:

- The appropriate relationship of the development to Akuna Street.
- Significant trees on Akuna Street should be preserved. To accommodate some trees, the Panel indicated that it may be appropriate to provide a more residential presentation to Akuna Street subject to resolving privacy for dwellings.
- A pedestrian pathway within the site should also be explored.

The Panel also requested that the current and amended plans be reviewed by Council's external architecture / urban design consultants to improve the urban design response.

Following the JRPP deferral resolution, Council engaged the services of BHI Architects ("BHI") (the original urban design / architectural consultants who provided advice in connection with the original proposal that was presented to the JRPP) to review the plans of the proposal, and to make recommendations to improve the urban design response of the proposal; as well as review the plans for the revised proposal. A copy of BHI's assessment report is included in **Annexure 2** to this report.

The following is a summary of the main findings of the assessment report prepared by BHI.

1. *Preservation of Significant Trees along Akuna Street*

BHI Architects reviewed the Applicant's Arborist Report prepared by Allied Tree Consultancy to determine which trees could be deemed 'Significant Trees', and thus retained on the site. This methodology involved identifying trees comprising "medium" or "high quality" STARS rating as defined by the arborist, and excluding those in locations which would be unreasonably prohibitive to development of the site.

The trees deemed to be 'Significant' by BHI based upon this methodology and therefore suitable to be retained included trees numbered 7, 9, 10, 11, 12, 15, 18, 20, 27, 29, 30 and 31 (as identified by the Arborist Report). These trees are located within the subject site, along the Akuna street level rather than at the bottom of the significant slope within the site, allowing them to be retained without substantial intervention or impact on the re-design of the proposal.

BHI recommended that the built form line be adjusted to respond to the Tree Protection Zones of the trees identified to be 'significant' in order to facilitate protection and retention. BHI also recommended a lightweight raised walkway, level with Akuna Street in order to achieve level entry to commercial and residential buildings without significant impact on tree root zones.

2. *Appropriate Built Form Relationship to Akuna Street*

The original proposal was identified as having an inappropriate relationship to Akuna Street, with commercial uses sunken substantially below street level, convoluted access arrangements and lack of public domain amenity.

In order to achieve an appropriate relationship to Akuna Street BHI made the following recommendations:

- Reduce the extent of commercial frontage to Akuna Street in order to retain significant trees which would make the commercial frontage untenable. Retain a strong commercial presence to the Shoalhaven and Akuna Street corner and in response to the commercial uses on the opposite side of Akuna Street.
- Provide level street access to commercial uses from Akuna Street to activate the street frontage and allow natural light penetration.
- Provide level street access to residential lobbies from Akuna Street to give the buildings a street address, improve access and activate the street frontage.
- Provision of an appropriate public domain at street level, including a walkway along the street frontage, retention of significant trees and provision of supplementary landscape planting.
- Integrate the public lift connection to Aldi and the retail arcade within the built form to encourage amenable pedestrian movement across the site and a more consistent built form.
- Revision of access to residential building D and E due to privacy, solar access and ventilation concerns from common building entry circulation to units D101/D201 and E105/E205.

3. *Appropriate Built Form Relationship to Terralong Street*

Having regard to Kiama DCP's architectural character requirements for the Terralong Street including; built form and scale; architectural proportions; and materials; and the need to articulate the entry to the retail arcade; BHI made the following built form recommendations to achieve an appropriate relationship to Terralong Street:

- Provide a consistent parapet height with the adjacent building.
- Provide vertically-proportioned elements to the building to replace the proposed horizontal expression.
- Provide a stronger entry expression to the retail arcade to replace the inconspicuous opening proposed.
- Revision of the proposed building materiality –face brickwork is not supported, and the choice of colours is not consistent with the architectural character requirements of Kiama DCP.

Consultation with the Applicant

The key urban design outcomes identified by BHI Architects were discussed with the Applicant and his Project Architect at a meeting on the 7th January 2018, with the following items agreed upon to be addressed:

Building A

1. Residential lobby access from Shoalhaven Street.
2. Maintain commercial uses fronting Shoalhaven Street, accessed at Shoalhaven Street level (approx. RL 20).
3. Extend commercial uses around the corner along the Akuna Street frontage accessed from Akuna Street and Shoalhaven Street corner (approx. RL 22).
4. Provide a taller building form at corner of Shoalhaven Street by adding an additional level comprising of a cluster of 3 units (comparable to those in units B and C).
5. Pay particular attention to the corner treatment to emphasise its importance, including the awning which will step up around the corner. The commercial use must address the commercial uses to the Southern side of Akuna Street.
6. Maintain significant trees along the Akuna Street frontage.

Building B

7. Residential lobby access from Akuna Street.
8. Maintain natural ground/TPZ between trees and buildings but provide bridge/raised walkway to accommodate entry.

Building C

9. Residential lobby access from Akuna Street.
10. Maintain natural ground/TPZ between trees and buildings but provide bridge/raised walkway to accommodate entry.
11. Maintain Tree 30, relocate public lift away from TPZ to be situated within building footprint.

Building D & E

12. Residential entry path/ disabled ramp from Akuna Street to respective lobbies to be redesigned to land on Level 1 (intent is to remove courtyard walls and amenity issues around overlooking into courtyards to Units E105 and D101).

13. Remove communal space adjoining (west) boundary adjoining Building D and replace with significant screen planting.

Terralong Street frontage

14. Reduce proposed parapet height to align with adjoining parapet, can maintain glazed balustrade at a setback of 1:1 behind parapet line.
15. Vertical opening proportions in lieu of horizontal preferred – (eg. remove horizontal sunshades).
16. Architecturally identify primary pedestrian street entry.
17. Render in lieu of face brick - refer DCP for colours.

Consultation Outcomes

Following this meeting, multiple iterations of the architectural documentation and sketch options were issued by The Project Architect for review by BHI; and BHI provided feedback at each stage.

As a result, BHI indicate the following improved urban design outcomes have been achieved:

Akuna Street

- *The Akuna Street and Shoalhaven Street corner is articulated with built form emphasis through an additional storey of apartments at the corner and a stepped awning.*
- *The deck footpath and commercial shopfronts to the Akuna Street and corner sensitively respond to the retention of significant trees and street levels.*
- *The public lift to the basement retail is incorporated within the built form, with an amenable commercial pathway provided from the Akuna Street frontage. An awning articulates the public entry.*
- *Residential lobbies are accessed directly from the Akuna Street streetscape to provide a street address, simplify circulation and activate the streetscape.*
- *Greater built form separation is achieved for the residential blocks by removing the commercial frontage, resulting in a better landscaping and streetscape amenity outcome.*

Terralong Street

- *The height of the front awning on the street frontage was raised to articulate the entry into the retail arcade.*
- *The balustrade material at the top level was changed to clear glazing and stepped back from the frontage at a 1:1 proportion to minimise its streetscape impact.*
- *Window and door reveal depths were articulated to avoid a flat façade*
- *The window proportions and spacing is more consistent with the more successful buildings along Terralong Street*
- *Colours appropriate for use in the Kiama Town Centre as per the Kiama DCP have been included, with the face brick replaced by a rendered finish.*

Conclusion

The Assessment Report prepared by BHI concludes:

Revised architectural documentation and reporting was lodged by the applicant with Kiama Council on 16th February 2018. This documentation has been reviewed by BHI Architects within the context of the key urban design outcomes established at the introduction to this assessment, and ongoing discussions with the applicant and Kiama Council. This documentation is consistent with the design solutions that were offered by the applicant in ongoing consultation with BHI Architects, and therefore satisfies the following urban design outcomes for the site:

1. *Preservation of significant trees on Akuna Street.*

2. *An appropriate built form relationship of the building to Akuna Street, including commercial and residential uses.*
3. *An appropriate built form relationship of the building to Terralong Street.*

BHI Architects confirms that the amendments to the design offered by the applicant constitutes an improvement of the urban design response to the site as measured against the objectives established by the Joint Regional Planning Panel.

5.6.2 Building Height, Scale and Character of Development

As discussed in Section 5.1.10.3 of this report almost all of the public submissions objecting to the revised proposal identified the height of the revised proposal, and the extent to which it exceeded the maximum building height limit that applies to the site as grounds for objecting to the revised proposal. Such submissions outlined that the bulk and height of the development would be inconsistent with the character of development within the Kiama township and in particular when viewed in context of existing heritage buildings, along the Terralong streetscape, and Hindmarsh Park (also an identified Heritage item).

Heritage issues are further discussed in Section 5.6.3 of this report.

The extent to which the revised proposal exceeds the maximum building height limit is discussed in Section 5.1.10.3 of this report. In general, the portions of the development which exceed the 11 metre building height limit occur towards the northern extent of the upper level of the development. The revised proposal has removed two of the dwelling units from Buildings B & C; and has set back the northern extent of Building D & E from the original proposal. These modifications to this upper level have had the effect of reducing the extent to which the development exceeds the building height limit.

The Applicant's Architect has also prepared photomontages which depict the revised proposal when viewed from along Terralong Street as well as from Hindmarsh Park. These photomontages have been reproduced in this report with the approval of the Project Architect. **Figure 4** is a plan detailing the locations from where the views of the photomontages were taken while **Figures 5 to 11** are the Applicants Architects photomontages which have been reproduced in this report. The lettering detailed in **Figure 4** refers to the specific photomontages in **Figures 5 to 11**.

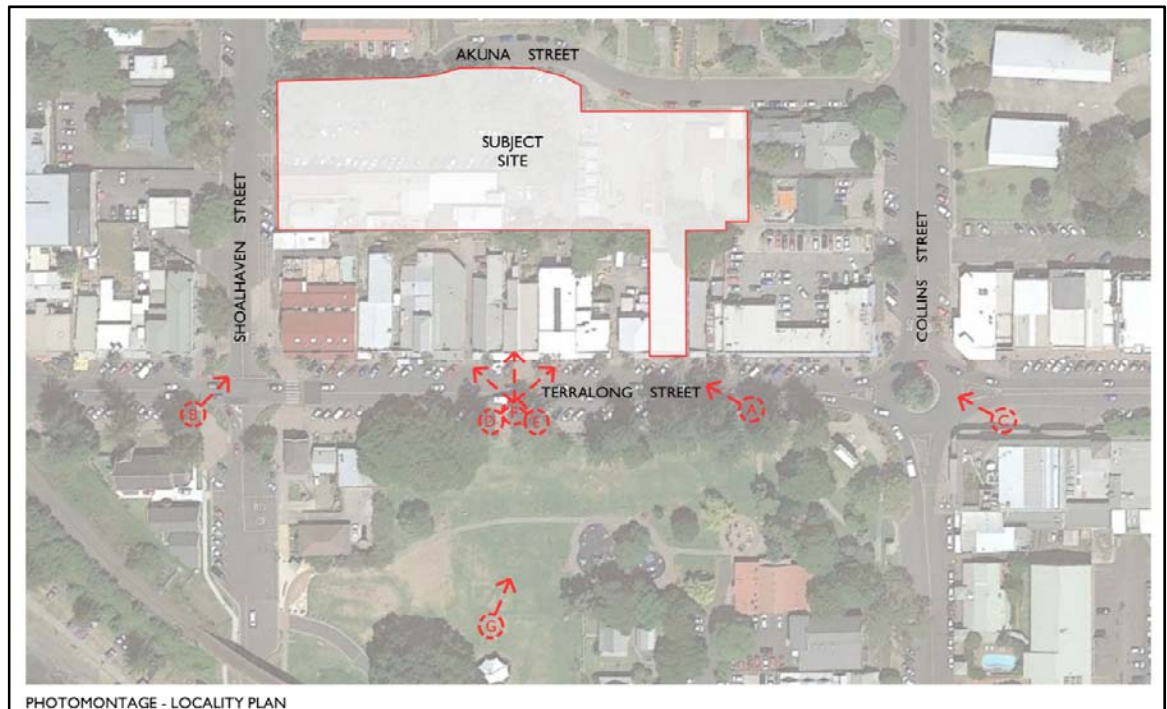


Figure 4 – Location from where views of photomontages taken.

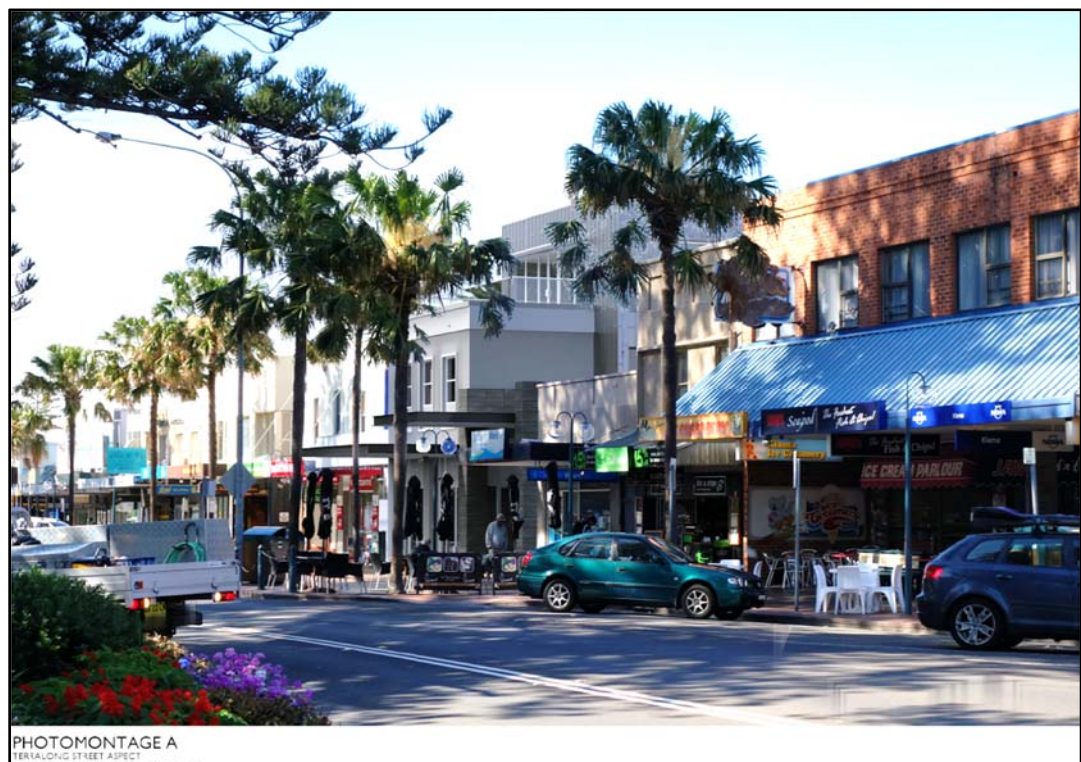


Figure 5: Photomontage A (view from Terralong Street).



Figure 6: Photomontage B
(view of revised proposal from corner Terralong and Shoalhaven Streets).



Figure 7: Photomontage C
(view of revised proposal from corner Terralong & Collins Streets).



Figure 8: Photomontage D (view of revised proposal from along Terralong Street).



Figure 9: Photomontage E (view of revised proposal from along Terralong Street).

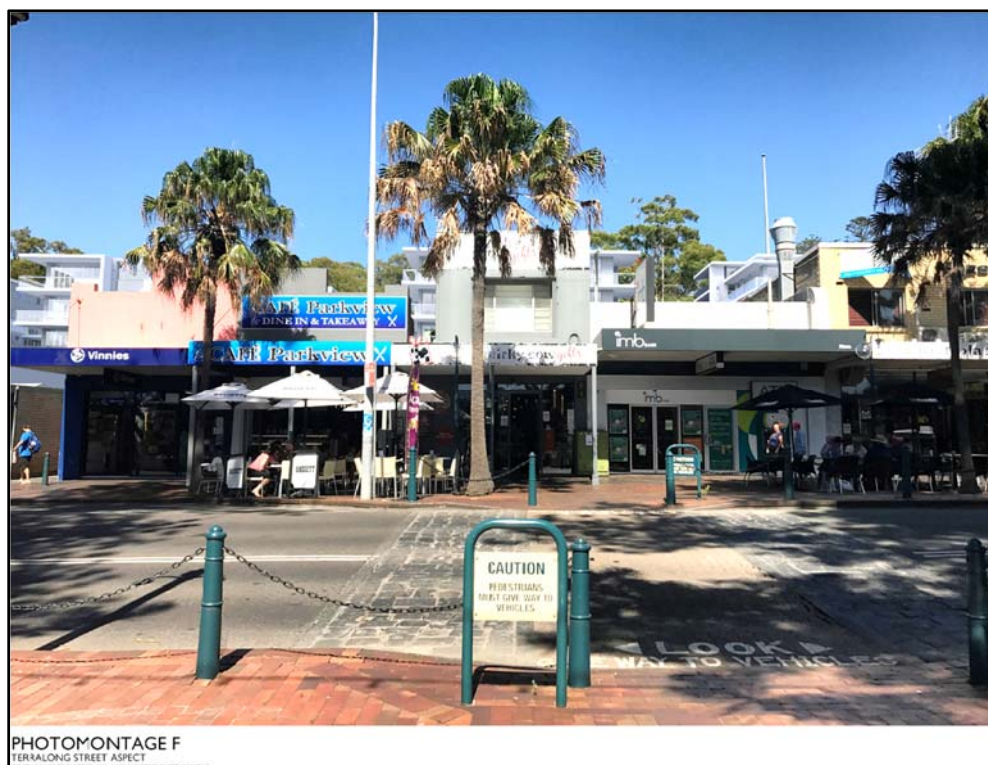


Figure 10: Photomontage F (view of revised proposal from along Terralong Street).



Figure 11: Photomontage G (view of revised proposal from within Hindmarsh Park).

Figure 5 depicts a view of the proposed commercial development when viewed from Terralong Street. This part of the development complies with the 11 metre building height limit that applies to the site. Whilst this part of the development is 3 storeys in height, and adjoining developments are primarily 2 storey height, the setting back of the upper level of the revised proposal assists with reducing the visual bulk and scale of the development to an extent that this part of the proposal is considered to satisfactorily fit within the Terralong streetscape.

Figures 6 to 10 provide views of the development when viewed from various vantage points along Terralong Street. Due to the distance separation between the development and Terralong Street; and the general height of development along the Terralong streetscape; photomontages prepared by the Applicant's Architect demonstrate that whilst parts of the development may be visible, they are well set back from the streetscape and the revised proposal will not be visually dominant when viewed from along Terralong Street as feared by many public submissions.

Apart from the separation distance between the site and Terralong Street; and the intervening height of development along Terralong Street, the visual bulk and scale of the development is also minimised with the setting back of the upper level from the northern edge of the development; the breaking of the development into septate 'buildings or towers' and the articulation of the individual buildings or towers.

Figure 11 provides a depiction of the view of the development when viewed from a position within Hindmarsh Park. From this location the revised proposal will not be as shielded by existing development along Terralong Street and will be more pronounced, when compared to views taken from along Terralong Street. However again the development will still be stepped back from Terralong Street, and due to the mature trees that are located along Terralong Street and within the park itself, the visual prominence of the revised proposal will be largely screened from view from within Hindmarsh Park as is evident from this photomontage. It should be noted that this photomontage has been taken from a position where the view of the development site will be more open compared to other possible vantage points within the park, where the mature trees along Terralong Street will largely screen the development from view.

Having considered the photomontages that have been prepared by the Applicant's Architect, it is considered the revised proposal, despite exceeding the LEP building height limit and floor space ratio for part of the site will not result in a development that will visually dominate the existing traditional built form and streetscape along Terralong Street or the character of the township when viewed more broadly from along Terralong Street or within Hindmarsh Park.

5.6.3 Heritage

As outlined in Section 5.1.10 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 provided the following comments in connection with 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 revised 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.

With respect to the revised proposal Council's Heritage Adviser made the following initial comments and recommendations:

HERITAGE SIGNIFICANCE:-

- 1) *There is a bluestone retaining wall located on the northern boundary of the development site. A heritage item also 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

- 1) *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.”

Following the public exhibition of the revised proposal, Council received many submissions which raised concern as to the impact that the development will have on heritage items and values of the Kiama town centre. These submissions included a detailed submission from the Kiama Historical Society. The following is a summary of the primary issues raised by the Kiama Historical Society with Council's Heritage Advisers comments in response to these issues.

Kiama Historical Society

- 1) Documentation of the Heritage Process undertaken and Council requirements for this development application.
 - a. There is no documentation which records the process by which Council's Heritage Adviser determined that a Statement of Heritage Impact was not required for this project.
 - b. The DA does not address all heritage items that may be impacted by the development.
 - c. No heritage assessment undertaken for 55 Shoalhaven Street which is to be demolished) or 66 Collins Street.
 - d. No adequate, clear and labelled plan has been provided to show extent to which development has potential to impact the significance of Kiama's Central Heritage Area.
 - e. No attempt has been made by Council's Heritage Adviser to identify the heritage significance of the 11 LEP listed items in the Central Kiama Heritage Area.

Council's Heritage Adviser's Comments

- a) *The process for assessing the subject DA was as follows:*
 - *Site visits to the subject site and heritage items in the vicinity noted in Table 6 of the Statement of Environmental Effects (SEE), in addition to heritage items I139 and I40 in Shoalhaven Street, and I83-85, I87 and I88 in Bong Bong Street were undertaken.*
 - *A review of development application documentation provided including plans and Statement of Environmental Effects was undertaken. As infill development the appropriateness of the proposal was assessed for potential impacts on heritage items in the vicinity with respect to scale, form, siting, materials and colour*

and detailing; potential impacts on significant views (to and from heritage items in the vicinity); and setting. Based on an analysis of the above it was concluded that potential detrimental impacts on heritage items in the vicinity would be minimal and that a statement of heritage impact was not required.

- b) *No heritage assessment was considered necessary for the dwelling in Shoalhaven Street (proposed for demolition) for the following reasons:*
- *The fibro and iron single-storey Inter War Period dwelling is not rare; is considered typical and common; is not representative of exterior characteristics which distinguish the California Bungalow style; and the integrity of its residential setting is substantially compromised by adjacent commercial development.*
 - *The dwelling would not be considered worthy of potential listing when assessed against the above criteria and compared to existing items listed in the LEP including but not limited to I83 located nearby (corner Bong Bong Street and Shoalhaven Street) and I41 – 91 Shoalhaven Street.*
 - *No past heritage study including Kiama Heritage Study 1987, Illawarra Regional Heritage Study Review 1994, Kiama Heritage Review 2000 and Review of Kiama Council Draft LEP Heritage Items 2007 identified or recommended the dwelling for potential listing.*
- c) *Reference to undertaking a heritage assessment of 66 Collins Street:*
- *The list of potential heritage items referred to in the 2007 heritage review in pt b above did not include this property, nor was it included in the 1987 and 1994 reviews. It is noted that 66 Collins Street is not located within the development site and thus will not be physically impacted by same. The visual appreciation of this dwelling from primary views in Collins Street will not be adversely impacted by the proposed development.*
- d) *Reference to 'Kiama Central Heritage Area' or 'Central Kiama Heritage Area and failure of the Heritage Advisor to consider the combined contribution of these items:*
- *The area referred to above is not listed as a Heritage Conservation Area in Schedule 5 of the LEP, and there is no basis for considering the impact of the development on heritage items in the vicinity (as a group) in an area the Historical Society considers to be a conservation area. The Kiama Town Centre Charrette 2002 rightly refers to this part of the Town Centre as the 'Central Precinct'. By elevating the status of the Central Precinct to that of a conservation area, the Historical Society submission distorts the criteria by which the proposed development is assessed.*

Kiama Historical Society

- 2) Assessment of Council's Response to heritage issues associated with this Development Application.

- a. As a Heritage Impact Assessment was not required or prepared for this proposal the proponent was not required to address specific heritage impacts both direct and indirect on heritage significance of listed heritage items in the vicinity of the development. Nor was there a need to address the impact on Kiama Central Heritage Area. There the need to address potential impacts based upon the Burra Charter Criteria was not undertaken.
- b. Council's failure to identify the need for a Statement of Heritage Impact has resulted in omission of any professional heritage assessment of direct and indirect impacts the proposed development will have on Kiama's Central Heritage Area.
- c. Potential impact to Hindmarsh Park / Terralong Street group of heritage items. No assessment of visibility of these buildings from vantage points such as Hindmarsh Park and its associated buildings.

Council's Heritage Adviser's Comments

- a) *The heritage-related provisions in Kiama DCP 2012 assist applicants in designing sympathetic infill development within heritage sites or in the vicinity of 3 heritage items. The above do not replace the need to prepare a statement of heritage impact when required and at Council's discretion, and in this instance careful and detailed analysis of the development proposal by the Heritage Advisor (which is highlighted in this advice) confirms that due process has been followed. Much of Historical Society submission confuses heritage-related issues with urban design-related issues, by elevating the Kiama Central Precinct to that of a conservation area as previously noted.*
- b) *The submission contends that as a Statement of heritage Impact was not prepared, that no professional assessment was carried out on the potential detrimental impacts of the proposed development on heritage items in the vicinity. Nothing could be further from the truth as documented in this advice and all previous advice to Council. Considerable effort has gone into determining the visual catchment and significant views to and from heritage items in the vicinity, and assessing the potential detrimental impact on the same.*

Kiama Historical Society

- 3) Potential Heritage Impacts to the Heritage significance of individual LEP Listed Items and Kiama's Iconic Cultural and Landscape Heritage from the proposed Development.
 - a. The proposed development has a high potential to impact the heritage significance of Kiama's Central Heritage Area including Hindmarsh Park and Memorial Arch, all listed items within Hindmarsh Park and adjacent Terralong, Collins and Shoalhaven Streets.

Council's Heritage Adviser's Comments

- a) *There is repeated reference to 'Kiama Central Heritage Area' and elevated status of the area by the Historical Society when discussing the potential impacts of the proposed development on heritage items in the vicinity. As I have responded to this in detail in point 1d above, there is no need to duplicate a response other than to say again that the Historical Society submission has skewed and raised the level of scrutiny of this DA which it does not merit from a heritage perspective.*
- b) *Potential impacts on views and settings:*
- *The proposed development will have little or no detrimental impact on the visual appreciation, setting and significant views (to and from) of the majority of heritage items located in the vicinity of the subject site as identified in the SEE and Historical Society submission.*
 - *Given the large footprint of Hindmarsh Park (I57), from various vantage points the proposed development could be considered to be within the visual catchment of same. There will be views to the proposed development generally limited to distant glimpses through mature street trees in Terralong Street to the upper levels of same, but these views are separated by existing commercial development located along the southern side of Terralong Street. From Hindmarsh Park the proposed development will be viewed more as a backdrop, and as previously noted no significant views from the heritage item will be obscured.*
 - *There are no significant views the proposed development will obscure from I55 (Former Fire Station) and I38 (Presbyterian Church) along the northern side of Terralong Street. The proposed development will not obscure significant views towards the Harbour, east and west along Terralong Street and the recently made Conservation Area at Pheasant Point from the above noted heritage items and cannot be considered to be within their visual catchment.*
 - *All the other heritage items located in Hindmarsh Park including I91 – I95 (timber cottages in Collins Lane) cannot possibly be considered to be within the visual catchment of the proposed development.*
 - *I54 (Devonshire House) and I54 (Tory's Hotel) are directly within the visual catchment of the proposed development. When viewed from mid-range vantage points in Terralong Street, the proposed development will appear as a backdrop behind these heritage items. These impacts are considered minor and acceptable. Significant views from these items to Hindmarsh Park, Harbour and along Terralong Street will not be obscured or adversely impacted by the proposed development. The scale of the proposed development will not have a dominating effect on I54.*
 - *Considering potential detrimental view impacts on heritage items located to the south of the development site, significant views of the Harbour from 53 – 57 Bong Bong Street (I87) are likely to not be compromised but were not tested in detail as noted in advice of 19 December 2017. Significant and iconic historic views to and from the Pheasant Point Conservation Area will not be impacted by the proposed development.*

- c) *Reference to the Heritage Advisors failure to consider the potential impact of the scale and form of the proposed development on the 'Kiama Central Heritage Area':*
- *Again, the Historical Society view that the Kiama Central Precinct should be regarded as a conservation area, and that the proposed development be assessed on that basis, is misguided and shifts what are urban design-related issues to heritage issues. References to breaches of height limits, the proposed development being 'too modern', and the proposed development not being permeable, ie. it 'forms a barrier through the centre of the township' are substantially urban design-related issues.*

Council's Heritage Adviser's Conclusion

The Council's Heritage Adviser makes the following conclusions in response to the Kiama Historical Society's submission:

In conclusion Council can be assured that considerable analysis and thought has gone into the assessment of this development application by Council's Heritage Advisor. As has been detailed in this advice, there will little or no detrimental impacts on heritage items in the vicinity of the proposed development.

As noted in pt 1b above, the Inter War dwelling in Shoalhaven Street (proposed for demolition) has not been recommended for listing in previous heritage studies. It is considered to be common and there are superior Inter War dwellings already listed in Schedule 5 of the LEP. It does not warrant a heritage assessment.

As discussed in pt 3b above, the proposed development will have minimal impact on the setting, and significant views (to and from) heritage items in the vicinity. The proposed development will not obscure any significant views from heritage items in the vicinity along and to the north of Terralong Street. Of heritage items located south of the proposed development, significant views of the Harbour from 53 – 57 Bong Bong Street (187) are likely to not be compromised but were not tested in detail as noted in advice of 19 December 2017. Significant and iconic views towards the Pheasant point Conservation Area from 187 will not be impacted by the proposed development.

By elevating the Kiama Central Precinct to that of a conservation area, the Historical Society has assessed the appropriateness of the proposed development with respect to scale, form and character in a manner which is skewed. There is no basis for assessing the impact of the proposed development on heritage items in the vicinity as a group or as a conservation area. As previously noted much of the criticisms of the proposed development by the Historical Society are considered to be urban-design related and not heritage related.

Having regard to the views and findings of Council's Heritage Adviser, it is considered the revised proposal would not have an adverse impact on heritage items that either adjoin or that are located within the vicinity of the subject site. These views are further reinforced having regard to the photomontages prepared by the Applicant's Architects and which are discussed in Section 5.6.2 above.

5.6.4 Amenity

5.6.4.1 Construction Impacts

Many public submissions raised concerns about the potential impacts to the amenity of the locality arising during the construction phase of the development.

It is inevitable that the construction phase for a development of this scale will have the potential to create impacts on the amenity of the locality. Such impacts could include but not be limited to:

- i) Site contamination;
- ii) Excavation, transportation and disposal of soil and wastes;
- iii) Dust from excavation and construction processes;
- iv) Noise and vibration from demolition, excavation, construction and transportation;
- v) Stormwater runoff, treatment, pumping and disposal of ponded rainwater in excavation;
- vi) Soil and other materials being tracked onto public roads causing dust and potential stormwater pollution;
- vii) Litter and debris from demolition, excavation and construction blowing off site.

The development application is supported by a preliminary Construction Environmental Management Plan (CEMP) prepared by Jones Nicholson Consulting Engineers (dated 30 November 2016).

Council's Environmental Health Officer (EHO) has reviewed the development application and including the Applicants CEMP. Council's EHO recommends that an amended CEMP be required to be prepared and submitted to Council prior to the issuing of the Construction Certificate.

The revised CEMP will need to address all the environmental impacts and controls required to be implemented associated with the demolition, site remediation, excavation and construction stages of the development and including environmental management measures associated with; all site remediation to be undertaken, asbestos management; noise and vibration control; air, dust and site water monitoring; unexpected finds protocol; incidents management; contingency; as well as dewatering of excavations.

The recommended conditions of consent included in **Annexure 6** of this report includes a condition requiring an amended CEMP for the project.

5.6.4.2 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 revised proposal is supported by the acoustic assessments and supplementary advice prepared by Acoustic Noise and Vibration Services that supported the original proposal. 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, and these are detailed in the recommended conditions of consent included in **Annexure 6** to this report.

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. The proprietors of this establishment have previously raised concerns during earlier public exhibition for this development application, 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 acoustic assessments address 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 also included in any development consent.

5.6.4.3 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.

At its meeting on the 11 December 2017 the Panel recommended that the Applicant present a more residential presentation to Akuna Street frontage in order to preserve significant trees along this street frontage. In doing so the Panel highlighted the need to resolve privacy for dwellings.

In order to retain significant trees along the Akuna Street frontage as required by the Panel, the setback of the development to that part of Akuna Street to the east of the laneway, has generally been increased. Whilst Building A at the corner of Shoalhaven and Akuna Streets will provide a setback to Akuna Street of 3.395 metres, Building B will provide a setback between 3.2 m to 5.595 m, while Building C will be set back between 8.9 metres and 9.15 metres. For that part of the development to the west of the laneway, ie. Buildings D & E, setbacks will range between 3.34 metres and 5.66 metres.

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 at least 6 metres from habitable rooms and private balcony spaces.

Overall separation distances and setbacks are compliant with the ADG. Compliance with these separation distances will ensure that reasonable levels of visual privacy is provided within the proposed apartments and adjacent properties.

It should also be noted that with the retention of significant trees along part of the Akuna Street frontage, in conjunction with proposed landscaping along the Akuna Street frontage will also assist in providing a level of visual screening of the development when viewed from Akuna Street minimising privacy impacts.

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. In each case private open spaces are situated away from the proposed development site and shielded by buildings.

It should also be noted that the design and layout of the apartments along the Akuna Street frontage has also been undertaken in a manner so that the living rooms and open spaces that they open out tend to be oriented away from the Akuna Street frontage.

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

5.6.4.4 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 12 and 13**).



Figure 12: View from balcony of 5/10 Akuna Street (ADM Architects).



Figure 13: 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 trees located along the Akuna Street frontage of the site, 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. In particular, 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.

The pink shading in **Figures 12** and **13** 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 well under the FSR that 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 from 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 underdeveloped nature of 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 12** 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.

At its meeting on the 11th December 2017 the Panel did not raise specific concern about the issue of view loss from neighbouring properties, and this issue was not specifically reflected in the formal Record of Deferral.

Whilst the proposed development does breach Council's building height limit and floor space ratio LEP requirements, 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.

5.6.4.5 *Overshadowing*

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

The revised proposal 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 detailed solar access analysis drawings which indicate that at least 70% of dwellings within the revised proposal will receive at least 3 hours of direct sunlight between 9:00 am and 3:00 pm mid-winter. This analysis identifies that a total of 72 or 72% 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 is compliant with this provision of the NSW ADG.

Under these circumstances the revised proposal would now satisfy the NSW ADG which seeks to optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space areas.

5.6.5 Traffic, Vehicle and Pedestrian Access, Car Parking and Vehicle Manoeuvring

5.6.5.1 Traffic

Many public submissions raised concerns that the proposal would result in increased traffic generation that would adversely impact on the carrying capacity of the local road network.

The revised proposal 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 peer review the Traffic Impact Assessments carried out by Jones Nicholson in support of the original development application and copies of the reviews carried out by Traffic Impact Services were included with the previous Assessment Report and are again included in **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 included in the recommended conditions of consent included in **Annexure 6** for the implementation of traffic management measures should the Panel be of a mind to approve the application.

5.6.5.2 *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 the Akuna Street frontage of the site.
- 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.)

5.6.5.3 *Car Parking*

As detailed in Section 5.3.1.2 of this report the revised development provides a total of 350 parking spaces which complies with Council’s requirements for the provision of off street car parking for the revised proposal

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.

Council staff have previously advised 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.”

5.6.5.4 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 Development Engineer 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 response to this concern the Applicant has negotiated a right of way of 300 mm width across the adjoining Lot 4 DP 555589 to enable this egress laneway to be widened to 3.35 m. In Section 5.6.5.4 of the original Assessment Report it was outlined that further confirmation was required to support a service lane egress from the site of 3.35 m (and therefore less than the minimum requirement under the relevant Australian Standard of 3.5 m) would be satisfactory for future service vehicles associated with the proposed supermarket and waste contractor.

The Panel in its Record of Deferral also sought resolution of the easement for service arrangements.

The Applicant subsequently supplied email correspondence with representatives of ALDI (the future supermarket tenant) which indicates that if the Applicant's Traffic Engineer is able to verify that *"a 19 metre truck can turn into the lane, traverse the lane, manoeuvre in and out of the ALDI loading dock and exit out of the laneway. If all those points are satisfied, ALDI will also be satisfied that the laneway functions adequately for truck deliveries."*

The Applicant's traffic engineering consultant, Jones Nicholson subsequently issued a further submission which concludes:

Based upon the updated architectural drawing set and manoeuvring checks completed by Jones Nicholson, we verify that a 19m articulated heavy vehicle:

- *Can enter the proposed development via the truck service driveway from Shoalhaven Street without crossing the centreline of Shoalhaven Street;*
- *Can manoeuvre into and out of the proposed loading bay to deliver goods to the proposed ALDI store;*
- *Can traverse the service driveway and laneway intersecting Collins Street via the proposed 3.35m minimum width lane; and*
- *Can leave the proposed development via the laneway intersecting Collins Street and manoeuvre onto Collins Street to depart the Kiama town centre.*

Council's Development Engineer accepts Jones Nicholson's verification in this regard.

The waste contractor in this instance will be Kiama Municipal Council. Council has further confirmed a service lane with a width of 3.35 m is the minimum width measurement required for a waste vehicle to service the site.

Given these circumstances it would appear that there is now sufficient information to confirm that the proposed northern service lane, with the proposed 300 mm wide easement to the adjoining land to the north, will be of sufficient width to accommodate service vehicles leaving the site to Collins Street.

If the panel are of mind to approve the development however, an operational consent should not be granted until such time as this easement is registered and the subject land has benefit over this strip of land. Under these circumstances the registration of the easement should form a condition on a *deferred* commencement consent that would need to be resolved before an operational consent could be issued.

Concern was also raised with the earlier proposal as plans supporting this earlier proposal showed the semi-trailer used to make deliveries to the supermarket on the site would be required to drive into the oncoming lane in Shoalhaven Street in order to enter the service lane from this street.

The revised proposal has amended the Shoalhaven Street vehicle entrances to the site. These amendments have modified the vehicle entrances with consequent changes to the floor layouts of the Shoalhaven Street commercial footprint, enabling a service vehicle to manoeuvre into the site from Shoalhaven Street without the need to travel into the on-coming path of travel along Shoalhaven Street. This issue has therefore also been resolved.

In addition to the above a public submission was previously 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 restricted. 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.

5.6.6 Environmental Impacts

5.6.6.1 *Tree and Vegetation Removal*

Many public submissions in relation to the revised proposal raised concern as to the extent of vegetation disturbance associated with the revised proposal.

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

At its meeting on the 11th December 2017 the Panel specifically sought measures requiring the retention of significant trees along the Akuna Street frontage of the site.

The revised proposal has been amended in such a manner that 12 trees along the Akuna Street frontage will be retained.

The retention of these specific trees follows advice from Council's urban design consultant, BHI Architects, who undertook a review of the Applicant's Arborist Report prepared by

Allied Tree Consultancy to determine which trees could be deemed ‘Significant Trees’, and thus retained on the site. This methodology involved identifying trees comprising “medium” or “high quality” STARS rating as defined by the arborist and excluding those in locations which would be unreasonably prohibitive to development of the site.

The trees deemed to be ‘Significant’ by BHI and therefore suitable to be retained included trees numbered 7, 9, 10, 11, 12, 15, 18, 20, 27, 29, 30 and 31 (as identified by the Arborist Report). These trees are located along the Akuna street level rather than at the bottom of the significant slope within the site, allowing them to be retained without substantial intervention or impact on the re-design of the proposal.

BHI recommended that the built form line be adjusted to respond to the Tree Protection Zones of the trees identified to be ‘significant’ in order to facilitate protection and retention. BHI also recommended a lightweight raised walkway, level with Akuna Street in order to achieve level entry to commercial and residential buildings without significant impact on tree root zones. These recommendations have been incorporated into the revised proposal.

In its Record of Deferral, the Panel also sought measures requiring the retention of trees on adjoining properties.

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 outlines that these trees are 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 assessment 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.

The Applicant has subsequently submitted a Tree Management Application to Council seeking the removal of these trees. Council approved this application on the 21st March 2018 permitting the removal of these trees.

The only other group of trees of concern are a group of “weed trees” identified as “Area C” by the Arborist’s report and which are located on the adjoining No. 92. These trees will also be adversely impacts by the development. The Applicant has subsequently received the consent of the owner of this adjoining land to remove these trees and has obtained a Work Authority Tree Permit on the 6th April 2018 from Council to clear these trees as well.

5.6.6.2 *Water Quality Impacts and Stormwater Management*

The revised proposal 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 issues including:

- Model uses 2 m² x 0.59 m deep whereas actual size from drawings is 5.8 m² x 0.7 m deep. The model is therefore considered conservative.
- The Stormwater 360 Stormfilter Operation, Design Maintenance and Performance Manual recommend a minimum of 1500 mm headroom inside the vault for maintenance access. The engineering drawings show only 900 mm.
- The Stormwater 360 Stormfilter Operation, Design Maintenance and Performance Manual recommend a minimum hydraulic drop (from inlet to outlet) of 700 mm for 460 mm cartridges. Section 1 on Sheet C11 shows the difference to be about 600 mm, 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.

Conditions of consent have been detailed in the recommended conditions of consent included in **Annexure 6** requiring these matters to be addressed prior to the issue of a Construction Certificate if the panel were of a mind to approve the application.

5.6.7 Hazards

5.6.7.1 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. The recommendations of this report have been included in the conditions of consent included in **Annexure 6** to this report.

5.6.7.2 Site Contamination

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

- *In terms of human health, all soil samples selected from the borehole investigation and tested for potential contaminants of concern were below the site assessment criteria, ie. Health Investigation Levels for residential land use (HIL B), and subsequent to incidental find protocols are considered suitable for re-use within the site.*
- *In terms of potential ecological receptors, all soil samples tested for potential contaminants of concern were below the site assessment criteria with the following exception:*
 - *BH8/0.3m - TRH C16-C34 (330 mg/kg) above NEPM (2013) ESL criterion of 300 mg/kg.*
- *All other contaminants of concern tested in selected soil samples were either below the laboratory limit of reporting (LOR) or below the adopted site assessment criteria.*
- *The site is not within an acid sulfate soil prone area however the potential for acid rock occurrence has not been assessed in detail.*
- *NSW EPA Contaminated Land Records Database identified no notice records within the area of the site.*
- *Potential contamination issues at the site include:*
 - *The up gradient dry cleaning business located across Akuna street from the carpark;*
 - *Waste and chemical storage areas and above ground storage tank at the printery site;*
 - *Potential use of fill behind an array of retaining walls from contemporary to historic in various conditions, ranging from 1 m to 10 m high, constructed of materials including brick to dry pack stone walls;*
 - *Potential ACM fragments on ground surface from building structures;*
 - *Underground holding tanks previously used for water separated from silver halide salts, silver chloride, silver bromide or silver iodine;*
 - *Underground assets including sewer, stormwater and separator pits.*
- *The fill depth and quality may vary significantly due to the steep aspect of the local topography and terracing throughout the site*
- *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.*
- *It is considered that the site will be suitable for the proposed multi-storey mixed-use residential and retail development, subject to:*
 - *Removal of the observed ACM fragments;*
 - *Removal and disposal of the holding tanks and any other separator/septic pits which may be identified, including appropriate validation;*

- *Collecting a groundwater sample from monitoring well GW02 to check for potential volatile contamination from the upgradient dry cleaners;*
- *Appropriate management and disposal of all hazardous building materials during demolition works (to prevent impacts to the site);*
- *Implementation of an unexpected finds protocol to manage any occurrences of potential contamination during earthworks.*

If the panel are of a mind to approve the application, conditions of consent framed by Council's Manager of Environment & Health have been incorporated into the recommended conditions of development consent included in **Annexure 6**.

5.6.7.3 Bushfire

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

5.6.7.4 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.

5.6.8 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 m² 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 the Kiama 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.

Many public submissions raised concern that the proposal would constitute the largest development within the Kiama CBD, however is predominantly residential rather than commercial and retail use. Public submissions stressed that greater focus should be

placed on commercial / retail use consistent with B2 zoning that applies to the site which focusses on business, retail, community and entertainment uses. A number of submissions identified the community were under expectation that the development would include supermarket and only 30 apartments.

I am advised by Council staff that at no time has Council indicated that the development of the site would be limited to only 30 apartments. Indeed, given the building height and floor space ratio limits that apply to the site, a limit of only 30 apartments would likely be a considerable underdevelopment of the site.

The revised proposal makes provision for a combined commercial gross floor area of 4936.3 m², which includes:

- 3 storey retail and commercial frontage to Terralong Street;
- Retail arcade with pedestrian access to Terralong Street;
- A supermarket;
- Retail frontage to Shoalhaven and partly Akuna Street.

The commercial component of the development is either provided at or with access to the ground floor street levels to Terralong and Shoalhaven Streets which are primary commercial streets within the Kiama town centre. As highlighted above such will be consistent with the thrust of the 2007 Kiama Retail Study prepared by Hill PDA (2007). Given these circumstances it is considered this aspect of the proposal is consistent with the objective of the B2 zone that applies to the land.

As outlined in Section 5.1.10 “*shop top housing*” is also permissible within the B2 zone. The incorporation of shop top housing is therefore permissible within the B2 zone. The combined Gross Floor Area is 8932.3 m² which is greater than that proposed for the commercial component of the development. Such is not however unusual for a development of this nature where commercial floor space is provided at ground level and provides direct contact between shoppers and retail floor space, while floor space above is utilised for residential purposes. As outlined above housing within the CBD has the potential to improve the vibrancy of the CBD and support the viability of the commercial uses within the town centre particularly outside main tourist seasons.

Public submissions also raised concern about the housing mix provided in the development, suggesting a high number of single bedroom dwellings will result in many dwellings being used for shorter term tourist accommodation. The proposal proposes 38 x one bedroom, 60 x two bedroom and 2 x three bedroom dwellings. Clearly this housing mix is skewed to smaller dwelling units. Such however does provide opportunities for

changing demographics within the community with an aging population and increasing single or smaller households that do not require larger dwellings. As they are smaller in scale, there is the potential that such dwellings will be more affordable than if they were larger dwellings. Given the provisions of clause 6.10 of Council's LEP there is the possibility that these dwellings may be used for short term accommodation. This is the case however for all dwellings within the Kiama municipality.

The design of the original proposal however raised serious concerns in terms of its building height, its relationship and treatment to Akuna Street, and servicing. As a result of the Panel's deferral of the application, Council's urban design consultant, BHI, has had an opportunity to liaise with the Applicant's Architect with the view of improving the urban design response of the project. The revised proposal now provides an urban design response which is now considered acceptable.

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 previously raised about the suitability of the service lane to adequately cater for service vehicles entering and exiting the site have now been overcome or can be overcome as long as an easement is created that would have the effect of widening the driveway egress to Collins Street.

- **Land Contamination**

A revised 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. Previous concerns raised about the difficult integration of the Akuna Street pedestrian forecourt and the potential security and public safety concerns have now been overcome by the revised proposal following consultation between the Applicant's Architect and Council's urban design consultant.

- **Utility Needs and Supply**

Essential services are available to the site.

- **Safety, Security and Crime Prevention**

As outlined above previous concerns 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 under the previous proposal raising safety and security concerns have been overcome with the revised proposal.

- **Waste**

As detailed in Section 5.6.5.4 previous concerns about the adequacy of the proposed service lane egress to Collins Street to cater for waste vehicles have now been addressed. Council's Waste Management Officer is of the view that this laneway will now be adequate to accommodate garbage trucks servicing the site provided the egress is widened with the proposed easement. As this issue can be resolved, the Waste Management Officer proposes conditions which are detailed in the recommended conditions of consent included in **Annexure 6** of this report 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. Conditions addressing noise mitigation measures are detailed in the conditions of consent included in **Annexure 6** of this report if the Panel were of a mind to approve the development.

- **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 revised preliminary site contamination and geotechnical assessment prepared by SMEC supports the development application. This assessment concludes the site will be suitable for the proposed development subject to 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 associated with a project of this scale will inevitably 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 development proposal was placed on public exhibition between 14th December 2016 and 17th January 2017. In response to that original public notification, Council received nine (9) submissions. Five (5) submissions raised objection; while the remaining four (4) submissions did not object to the proposal but raised issues of concern with specific aspect of the development application.

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

The revised proposal, the subject of this Assessment Report, was placed on public exhibition between (19th February to 5th March 2018). This period was extended until the 9th March 2018 following problems with Council's DA Tracker which prevented the public from accessing documents on the system.

A total of seventy-eight (78) submissions have subsequently been made as a result of this most recent public exhibition process, all objecting to the revised proposal.

Included within these submissions, were submissions made by or on behalf of:

- The Kiama Central Precinct;
- The Kiama Historical Society.

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 a significant overdevelopment of the site and too dominant.
- b. The proposal will loom over Terralong Street shopping street and Hindmarsh Park resulting in a loss of character of the township and detracting from the heritage qualities of Hindmarsh Park.
- c. Any new development should reinforce the character of the site and be sensitive to significant elements with regard to scale, density, form and siting, including consideration of significant view corridors and spatial relationship consistent with the surrounding neighbourhood. The revised proposal does not achieve these goals but will impose a monolithic set of buildings that will dominate the CBD. The design makes no concession to local character.
- d. The proposal does not comply with many of the requirements of the Apartment Design Guide, Kiama Local Environmental Plan and Kiama Development Control Plan.
 - i. The majority of the development exceeds the maximum building height limit of 11 metres and FSR requirements that applies to the site under the Kiama LEP 2014. Due to its height and scale the building will dominate and overshadow surrounding areas.
 - ii. The development will provide a low level of amenity for future residents of the development in terms of; solar and light access; lack of private and communal open space; inadequate ceiling heights; lack of drying areas; no alternative energy or heating sources; inadequate disabled access; and compromised privacy for future residents.
 - iii. The development will not provide compliant setbacks to boundaries.
 - iv. The development does not provide a suitable mix of housing types being predominantly 1 and 2-bedroom apartments. The proposal does not provide a sufficient number of 3 or 4-bedroom dwellings at an affordable price. Concerns that the majority of these smaller apartments will be used for short term holiday accommodation at the expense of provide opportunities for affordable housing.

- e. The façade of the development is not integrated with the surrounding streetscapes and presents a modern contemporary appearance and will not be sympathetic with Kiama heritage townscape, historic buildings and streetscape character. The appearance of the development should recognise the predominate scale (height, bulk, density, grain) of existing development and response sympathetically in its design.
- f. The proposal will represent the largest development within the Kiama CBD, however will be predominantly residential rather than commercial and retail use. Greater focus should be placed on commercial / retail use consistent with B2 zoning which focusses on business, retail, community and entertainment uses. Community were under expectation that the development would include supermarket and only 30 apartments.
- g. Significant retail developments should be sited on outskirts of CBD where there is good traffic access not in the centre of existing town centres.
- h. A development of such scale that does not comply with a range of development controls will set an undesirable precedent for future development.

Comment

- Issues pertaining to the design, external materials and colours, bulk and scale of the development are addressed in Sections 5.1.10.3, 5.6.1 and 5.6.2 of this report.
- The breach of the building height limit and floor space ratio have been discussed in Section 5.1.10.3 of this report with respect to the Kiama LEP 2011. As discussed, the extent to which the revised proposal departs these requirements is considered reasonable.
- Issues pertaining to compliance with the Apartment Design Guide, Kiama LEP 2011 and the Kiama DCP are discussed in Sections 5.1.10.3 and 5.6.1, and **Annexure 3** respectively. As discussed, the extent to which the revised proposal departs these requirements is considered justified.
- Tree removal is discussed in Section 5.6.5.1 of this report. Consistent with the Panel's deferral of the original application, the revised proposal has been amended and now proposes the retention of 12 significant trees along the Akuna Street frontage of the site.

- Issues pertaining to private open space and solar access are discussed in Sections 5.6.4.3 and 5.6.1 of this report.
- The mixture of commercial and retail and residential development is discussed in Section 5.6.8 of this report.

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 public car parking which will be lost, and on-street parking will also be lost. There is no plan to replace these lost public parking spaces. The Proposal does not replace these parking spaces. The proposal will significantly reduce parking in the town.
- c. Traffic Management.
 - i. The local street network will be unable to accommodate the additional traffic generated by this development.
 - ii. The traffic study that supports the application was undertaken during holiday periods and therefore did not take into consideration traffic associated with Kiama Primary School.
 - iii. With majority of trips entering and exiting into Shoalhaven Street, it may be necessary for a dedicated left-hand lane heading north and dedicated right hand lane south at the entrance to the car park. This would result in loss of further street parking.
 - iv. The proposed “No Right Turn” preventing vehicles entering Shoalhaven Street from Terralong Street will result in vehicles from the north and west using Collin and Akuna Streets. Akuna Street is too narrow for service delivery vehicles.
 - v. Service vehicle egress to Collins Street will be difficult which is steep, and located within vicinity of a primary school.
- d. Lack of pedestrian footpath in Akuna Street will raise concerns as this road is used by school children and parents.
- e. Trolleys from supermarket will be not be returned and will be left in streets clogging up pedestrian pathways.

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 revised proposal provides sufficient off-street car parking that complies with Council's requirements for a development of this scale and nature.
- 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 5.6.5.3 of this report.
- The development application is supported by a Traffic and Car Parking Impact Assessment, which has been peer reviewed by Council's own traffic consultant as well as 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.
- A condition of consent is included in the recommended conditions of consent included **Annexure 6** requiring the implementation of a Trolley Management Plan to ensure trolleys are returned after use.

3. *Environmental Issues*

- a. The development will result in the loss of 73% of trees on site. Loss of flora and fauna habitat.
- b. The steeply constrained nature of the site is unsuitable for development.
- c. The development does not provide satisfactory deep soil zones.

Comment

- Tree removal is discussed in Section 5.6.6.1 of this report. Consistent with the Panel's deferral of the original application, the revised proposal has been amended and now proposes the retention of 12 significant trees along the Akuna Street frontage of the site. Given the urban context of the site, it is not considered the trees and vegetation on the site have significant habitat qualities worth preserving.
- Whilst the site does contain topographical challenges, these challenges do not prevent the development of the site. The application is supported by a

geotechnical assessment that confirms the development of the site is suitable subject to conditions.

4. Heritage

- a. The site is within the vicinity of a number of heritage items, however the application is not supported by a Statement of Heritage Impact.
- b. It is important that heritage be conserved and protected from inappropriate architecture within the vicinity. The development should be designed with heritage context taken into account. The development however is modern contemporary in appearance which does not take into consideration the heritage context.

Comment

- Heritage issues are discussed in Section 5.6.3 of the report. Council's Heritage Adviser has reviewed the revised proposal and finds it acceptable.

5. 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).
- 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.
- f. Construction traffic management difficulties, such as those associated with the "Bathers" development along Manning Street. Akuna Street is narrow with residential and commercial. Uses that will require to retain access. Loss of street parking caused by work vehicles and construction equipment.

- g. Concern as to how access to residents and shop owners who use laneway to rear of Terralong Street will be able to retain their access during construction process.
- h. Cumulative construction traffic impacts with other projects being developed in the town centre at the same time.

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 has been included in the recommended conditions of consent with respect to this issue (**Annexure 6**).
- 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 the preparation of 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.

6. Waste Management

- a. There is unsatisfactory waste storage and disposal plans. Insufficient waste storage provision for residential units.

Comment

- The development application has been reviewed by Council's Waste Management Officer, who does not raise objection in relation to the proposed measures for on-site waste management and includes recommended conditions that have been included in the recommended conditions of consent included in **Annexure 6**.

7. 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 5.6.4.4 of this report.
- The issue of privacy impacts associated with this development is addressed in Section 5.6.4.3 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.

8. Flawed Public Exhibition Process

- a. Experienced many difficulties in gaining access to on-line information. Council's web-site was down regularly and access to DA documentation was denied. A hard copy of the DA documentation should have been made available at Council's counter for review.

Comment

The following is an extract from Council's General Manager's response to the local State Member for Kiama who made representations on a constituent's behalf in connection with this matter (with the personal details of the constituent redacted for privacy reasons):

I write in response to your representations on behalf of xxx, in relation to the public exhibition process for Development Application 10.2016.304.1 for the construction of a mixed use development at 100 Terralong, 3 Akuna and 55/61 Shoalhaven Streets Kiama.

Council is aware of its obligations in the public exhibition of development applications where required and is satisfied that the exhibition process for the above development application was consistent with those obligations.

Having said that, Council is always open to feedback about potential system and process improvements that may enhance opportunities for the community to participate as appropriate in planning processes. The content of xxx email will be considered within this context. In responding to the specific matters raised by xxx, I provide the following comments:

Council is required to make relevant documentation publically available and free of charge through one form of access. All required information was available on-line in compliance with this requirement. In addition, hard copies of the plans and documents were also held behind the front counter and were available to be viewed. The Director Environmental Services has advised me that she observed members of the community being shown how to access documents on-line by customer services staff and was also present at the Central Precinct Committee meeting when a member of the community confirmed to all present that he was able to access all of the documents on-line.

The Council experienced some problems with its DA Tracker system for a few days during the public exhibition process which prevented on-line viewing of the plans and associated documents for the development application during that event. As provided for by Council's Development Control Plan, a number of individuals verbally sought an extension of time to make a submission. In response to these requests, and to ensure compliance with the regulated requirement for a 14 day exhibition period, Council extended the deadline for submissions by four days and immediately issued a press release and uploaded notification to Council's website advising of that decision. There are no requirements under the Environmental Planning and Assessment Regulation 2000 or Council's Development Control Plan for this extension to have been formally re-notified.

There were approximately 60 pages of detailed A1 plans on public exhibition for the proposed development. The specific plan to which xxx refers, shows the northern elevation of the development for the Terralong Streetscape. There are two drawings provided on this plan, one which shows details of the built form proposed behind the Terralong Street shops (without the shops shown in front). A second drawing shows details of the development proposed at 100 Terralong Street as a part of a broader streetscape elevation and with the development behind shown ghosted. Together, the two drawings provide the detailed northern elevation information. The ghosting is clearly visible on the originals of the plans that were on public exhibition.

In compliance with copyright legislation the development plans and associated documents were removed from the Council's DA Tracker following the completion of the public exhibition period. The plans continue to be available for viewing at Council's administration centre.

As stated earlier, I am satisfied that the statutory requirements associated with the public exhibition of Development Application 10.2016.304.1 have been met.

I trust this information will be of assistance to you in your preparation of a response to your constituent's correspondence.

5.8.2 External Referrals

Roads & Maritime Services

The original development application was referred to the RMS. The RMS note that the development is located on and accessed via the local road network, with minimal immediate impacts to the State Road network. Given these circumstances, the RMS advised 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

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

- Landscape Design Officer

No objection has been raised in relation to the proposal and recommends conditions on any consent – refer to Section 5.6.6.1 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 5.6.3 of this report. Conditions of development consent have been recommended should the application be approved.

- Waste Management Officer

Council's Waste Management Officer raises no concerns about the adequacy of the proposed service lane egress to Collins Street to accommodate waste collection services provided the egress lane to Collins Street is widened. The WMO also identified the level of residential and commercial garbage bin storage is insufficient. The Applicant has subsequently submitted revised plans addressing this shortfall of garbage storage areas to meet Council's requirements. This referral also provided recommended conditions for on-site waste management which have been included in the recommended conditions of consent included in **Annexure 6**.

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 m² 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 original proposal however raised serious concerns in terms of its building height, its relationship and treatment to Akuna Street, and servicing. In accordance with the Panel's reasons for deferral of the application, Council's urban design consultant, BHI has had an opportunity to liaise with the Applicant's Architect with the view of improving the urban design response of the project. The revised proposal now provides an urban design response which is now considered acceptable by BHI.

Whilst the revised proposal still exceeds the statutory building height and floor space ratio requirement (for part of the site), the extent to which the revised proposal exceeds these requirements is considered more acceptable compared to the original proposal. In particular, the departures will not result in any significant impacts on the amenity of the locality.

Public submissions have raised concerns about the relationship of the height, bulk and scale of the development particularly in relation to the character of the township and in particular when viewed from Terralong Street and Hindmarsh Park. Council's Heritage Adviser is of the view that the revised proposal will not be dominant from these vantage points and this position is supported by photomontages that have been supplied by the Applicant's Architects taken from these vantage points.

The revised proposal now provides an appropriate relationship to Akuna Street which is supported by Council's urban design consultant. The revised proposal also provides improved sunlight access to apartments; as well as improved communal open space provision when compared to the original proposal. The revised proposal also provides improved landscaping including the provision of larger canopy trees most notably to the western boundary of the site. Service vehicle ingress and egress to the site is now considered acceptable.

Under the above circumstances, it is considered the revised proposal has satisfactorily addressed issues raised by the Panel in its Record of Deferral.

It is inevitable that a project of this scale has the potential to impact the amenity of the surrounding locality in terms of traffic and during the construction stage. The Applicant's traffic assessment has been independently peer reviewed and found to be satisfactory.

Conditions of consent are recommended to be imposed addressing the need to upgrade local infrastructure to accommodate the traffic impacts of the development.

It is also considered prudent that a revised Construction Environmental Management Plan be prepared for the development, and prior to issue of Construction Certificate, with the view of mitigating the impacts of the construction process on the amenity of the locality. Conditions of consent have also been recommended to address this issue as well.

On balance, it is considered the revised proposal is an improvement on the original proposal and will not now be contrary to the public interest.

6.0 CONCLUSION

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

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 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 original proposal raised serious concerns. The Panel deferred determination of the original proposal requiring the Applicant to better resolve these concerns.

In particular the Panel sought:

5. *The Panel resolved to defer the development application as described in Schedule 1 for amended plans to address:*
 - a. *The appropriate relationship of the building to Akuna Street. Significant trees on Akuna Street should be preserved. To accommodate some trees, it may be appropriate to provide a more residential presentation to Akuna Street subject to resolving privacy for dwellings. A pedestrian pathway within the site should also be explored. There would be scope to address this more in a revised Clause 4.6.*
 - b. *Resolution of the issues raised in the assessment report including:*
 - i. *Measures requiring retention of trees on adjoining properties.*
 - ii. *Details of the easement for service arrangements.*
 - iii. *SEPP 55 contamination*
 - iv. *Location of communal open space on western boundary*
 - v. *Capacity for improved landscape and provision of canopy trees on site.*
6. *That the current and amended plans be reviewed by Council's external architecture / urban design consultants to improve the urban design response.*
7. *That any amended plans be readvertised and notified.*

8. That a further report be prepared assessing the amended proposal in accordance with Section 79C of the EPA Act.

Following an independent urban design assessment carried out by BHI on behalf of Council, which has included consultation between the Council's urban design consultant and the Applicant's Architect during the design process, it is considered the revised proposal has been sufficiently improved and satisfactorily addresses the issues of concern previously raised by the Panel:

- The revised proposal now provides an appropriate relationship to Akuna Street and is supported by Council's urban design consultant.
- Significant trees along the Akuna Street frontage are now proposed to be preserved and the development footprint has been modified to reflect this. The revised proposal incorporates a more residential presentation to Akuna Street to accommodate the protection of these trees.
- The revised proposal makes provision for additional tree and screen planting along the western boundary of the site and is supported by landscape plans that provides canopy trees across the site.
- The revised proposal now proposes a residential pathway along the Akuna Street frontage that better relates to this street frontage and overcomes the safety and surveillance issues raised by the original proposal.
- The revised proposal has improved the provision of and access to communal open space and solar access to individual apartments within the development.
- The revised proposal has also improved provision for service vehicle ingress and egress from the site to what is now considered a suitable standard. In this regard, the improvement to the service vehicle egress to Collins Street is subject to an easement of 300 mm width being created over the adjoining Lot 4 DP 555589. The registration of this easement should form a 'deferred' requirement to be addressed before an operational consent is able to be issued for this project.
- The site contamination assessment for the revised proposal has been modified to be more explicit that the site will be suitable for the intended purpose for which consent is sought subject to specific measures being undertaken.

The revised proposal still does not comply with numerical and non-numerical development standards outlined in Council's LEP in terms of building height, FSR and the need to provide an active street frontage. After consideration, it is my view that there is sufficient justification to support the extent to which the revised proposal exceeds these requirements.

This Assessment Report has considered the heads of consideration pursuant to Section 4.15 of the Environmental Planning & Assessment Act. The revised proposal is considered satisfactory having regard to all relevant matters for consideration as prescribed by Section 4.15 of the Environmental Planning & Assessment Act. Under these circumstances the revised proposal is now considered reasonable and approval is recommended.

7.0 RECOMMENDATION

That the Joint Regional Planning Panel grant deferred commencement approval to Development Application DA 2016.304.1 pursuant to Section 4.16(3) of the Environmental Planning and Assessment Act subject to the recommended conditions detailed in **Annexure 6** of this report.

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ANNEXURE 1

Architectural Drawing Set

**prepared by
ADM Architects**

**Various Allotments
Terralong, Akuna and Shoalhaven Streets
Kiama**

ANNEXURE 2

Urban Design Assessment

**prepared by
BHI Architects**

**Various Allotments
Terralong, Akuna and Shoalhaven Streets
Kiama**

ANNEXURE 3

NSW Apartment Design Guide Compliance Checklist

prepared by
Cowman Stoddart Pty Ltd

Various Allotments
Terralong, Akuna and Shoalhaven Streets
Kiama

ANNEXURE 4

Reviews of Traffic Impact Assessment

**prepared by
Traffic Impact Services**

**Various Allotments
Terralong, Akuna and Shoalhaven Streets
Kiama**

ANNEXURE 5

**Correspondence in connection
with Service Vehicle Ingress and Egress**

**Various Allotments
Terralong, Akuna and Shoalhaven Streets
Kiama**

ANNEXURE 6

Recommended Conditions of Consent

Various Allotments
Terralong, Akuna and Shoalhaven Streets
Kiama