

JOINT REGIONAL PLANNING PANEL - SOUTHERN REGION COUNCIL ASSESSMENT REPORT

Panel Reference	2017STH029
DA Number	RA17/1002
Local Government Area	Shoalhaven City Council
Proposed Development	Construction of a residential apartment complex consisting of two buildings containing: four (4) x studios; 16 x one-bedroom; 45 x two-bedroom and 26 x three-bedroom apartments. Total – 91 apartments. A basement car parking area with 140 spaces
Street Address	204, 206 and 208 Kinghorne Street, Nowra - Lot 1 DP 130928, Lot A DP 370205 and Lot 5 DP 542693 19 and 21 Gould Avenue, Nowra - Lot A DP 392035 & Lot B DP 370205
Applicant/Owner	Planning Development Commercial Lawyers Pty Ltd T/as PDC Services as Agents for Tonandua Pty Ltd
Date of Lodgement	1 November 2017
Owner	TONANDUA PTY LTD
Number of Submissions	Nil (0)
Recommendations	Refusal in accordance with the reasons for refusal contained in Section 8 of this Report.
Regional Development Criteria (Schedule 4A of the Act)	At the time of lodgement Schedule 4A of the <i>Environmental Planning and Assessment Act 1979</i> (EPA Act) was operative. The proposed development satisfies clause 3 of Schedule 4A, being a development that has a capital investment value of more than \$20 million (Total Development Cost (Excluding GST) \$25,573,972
List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> i. <i>Environmental Planning and Assessment Act 1979</i> ii. <i>State Environmental Planning Policy (State and Regional Development) 2011;</i> iii. <i>State Environmental Planning Policy (Infrastructure) 2007;</i> iv. <i>State Environmental Planning Policy 55 – Remediation of Land;</i> v. <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i> vi. <i>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</i> vii. <i>State Environmental Planning Policy (Building Sustainability Index: Basix) 2004</i> viii. <i>Shoalhaven Local Environmental Plan 2014;</i>

	ix. Shoalhaven Development Control Plan 2014; and x. Shoalhaven Contribution Plan 2010.
List all documents submitted with this report for the Panel's consideration	Attachment 1 – Draft Reasons for Refusal Attachment 2 – Plans of the proposed development Attachment 3 – Clause 4.6 Variation Report
Report prepared by	Elliott Weston, Senior Planner
Report date	4 April 2019

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

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

Clause 4.6 Exceptions to development standards

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

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **N/A application recommended for refusal**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

1. SUMMARY

DA Number:	RA17/1002
Street Address:	204, 206 and 208 Kinghorne Street - Lot 1 DP 130928, Lot A DP 370205 and Lot 5 DP 542693 19 and 21 Gould Avenue - Lot A DP 392035 & Lot B DP 370205
Proposed development:	Construction of a residential apartment complex consisting of two buildings containing 91 apartments: Four (4) x studios; 16 x one-bedroom; 45 x two-bedroom and 26 x three-bedroom apartments. (Total – 91 apartments). A basement car parking area with 140 spaces
Date of lodgement	1 November 2017
Applicant/Owner	Planning Development Commercial Lawyers Pty Ltd T/as PDC Services as Agents for Tonandua Pty Ltd
Owner	Tonandua Pty Ltd
Property owned by a Council employee or Councillor	The site is not known to be owned by a Council employee or Councillor
Political donations/gifts disclosed:	None disclosed on the application form
Notification period	20 December 2017 to 19 January 2018
Number of submissions	Nil (0)
Recommendations	Refusal in accordance with the reasons for refusal contained in Section 8 of this Report.

2. LEGISLATIVE REQUIREMENTS

List of All Relevant s79C(1)(a) Matters	<ul style="list-style-type: none"> i. <i>Environmental Planning and Assessment Act 1979</i> ii. <i>State Environmental Planning Policy (State and Regional Development) 2011;</i> iii. <i>State Environmental Planning Policy (Infrastructure) 2007;</i> iv. <i>State Environmental Planning Policy 55 – Remediation of Land;</i> v. <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i> vi. <i>State Environmental Planning Policy (Building Sustainability Index: Basix) 2004</i> vii. <i>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</i> viii. <i>Shoalhaven Local Environmental Plan 2014;</i> ix. <i>Shoalhaven Development Control Plan 2014;</i> and x. <i>Shoalhaven Contribution Plan 2010.</i>
Zoning	R3 - Medium Density Residential
Heritage	No
Heritage conservation area	No
Clause 4.6 Variation	Yes – Height of Building (Clause 4.3 of SLEP 2014)
Delegation	JRPP – Southern Region

3. EXECUTIVE SUMMARY

This report has been modified since first submitted to the Panel and published on Council's website.

The modifications follow the receipt (on 27 March 2019 and 1 April 2019) of modified clause 4.6 variation statements. Accordingly, this report has been adjusted concerning the issue of height. Further, opportunity has been taken to correct errors.

The land is located on the corner of Kinghorne and Kalandar Street and Gould Avenue in Nowra. The site comprises 5 separate parcels of land being 204, 206 and 208 Kinghorne Street and 19 & 21 Gould Avenue - Lot 1 DP 130928, Lot A DP 370205 and Lot 5 DP 542693 Lot A DP 392035 & Lot B DP 370205

The proposal seeks approval for the removal of vegetation and construction of a residential apartment complex consisting of 91 apartments across 2 buildings. The apartments are proposed to be a mix of: studios, one, two and three-bedroom units with basement car parking for 140 cars. Demolition of the existing dwellings on the site are proposed to be the subject to a future complying development application and do not form part of this application.

The subject site is zoned R3 Medium Density Residential under the provisions of *Shoalhaven Local Environmental Plan 2014* (SLEP 2104). The proposed development "residential flat building" is permissible with consent in the R3 zone.

At the time of lodgement Schedule 4A of the *Environmental Planning and Assessment Act 1979* (EPA Act) was operative. The proposed development satisfies clause 3 of Schedule 4A, being development that has a capital investment value (CIV) of more than \$20 million (total development cost (excluding GST) \$25,573,972. As such the Regional Planning Panel – Southern Region has the function of determining the application in accordance with section 2.15 of the *EPA Act*.

The proposed development was advertised in the local newspaper and notified for a period of 28 days between 20 December 2017 and 19 January 2018. No submissions were received.

The proposed development is lodged in accordance with *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65). The application is supported by a statement by the qualified designer addressing Schedule 1 design quality principles in SEPP 65 how the objectives of Parts 3 and 4 of the Apartment Design Guide (ADG) have been achieved.

In accordance with Clause 18 of SEPP 65, the Minister has not constituted a design review panel for Shoalhaven City Council or a group of Council to which the Council is a part thereof.

The application is generally compliant with the relevant Environmental Planning Instruments and Shoalhaven Development Control Plan 2014 (SDCP 2014), however, the development exceeds the 11m height limit under Clause 4.3 of SLEP 2014. The entire roof penetrates the height plane. The height is exceeded by 2.32m (at the south east corner) facing Gould Ave. The development does not meet all the recommended standards in the ADG which relate to residential amenity.

The application is supported by a written request to vary the development standard prepared in accordance with Clause 4.6 of SLEP 2014. Due to the variation in the height of building standard and building design elements, in particular, the presentation and setback of the

development to Kalandar Street the proposed development is likely to have a negative impact on the surrounding environment.

The site is not suitable for the proposed development in its present form, taking into consideration the present design before Council.

Taking into consideration the above matters it is not considered that the proposal is in the public interest.

The proposal is therefore not supported. This report recommends that the application be refused in accordance with the reasons for refusal outlined under Section 8, of this report.

4. PROPOSAL

The development application (DA), as amended, proposes the construction of a residential apartment complex consisting of 91 apartments as follows:

Two x four storey residential buildings containing:

- 4 x studio apartments;
- 16 x one-bedroom apartments;
- 45 x two-bedroom apartments;
- 26 x three-bedroom apartments; and
- A basement car parking area with 140 spaces.

Two-way vehicular access to the basement is proposed from Gould Avenue.

Demolition of the existing dwellings on the site – subject to a future Complying Development Certificate (CDC).

Remnant vegetation on all sites is proposed to be removed.

A site plan, ground floor, elevations, landscape plan and photomontages are provided in **Figures 1 – 10.**

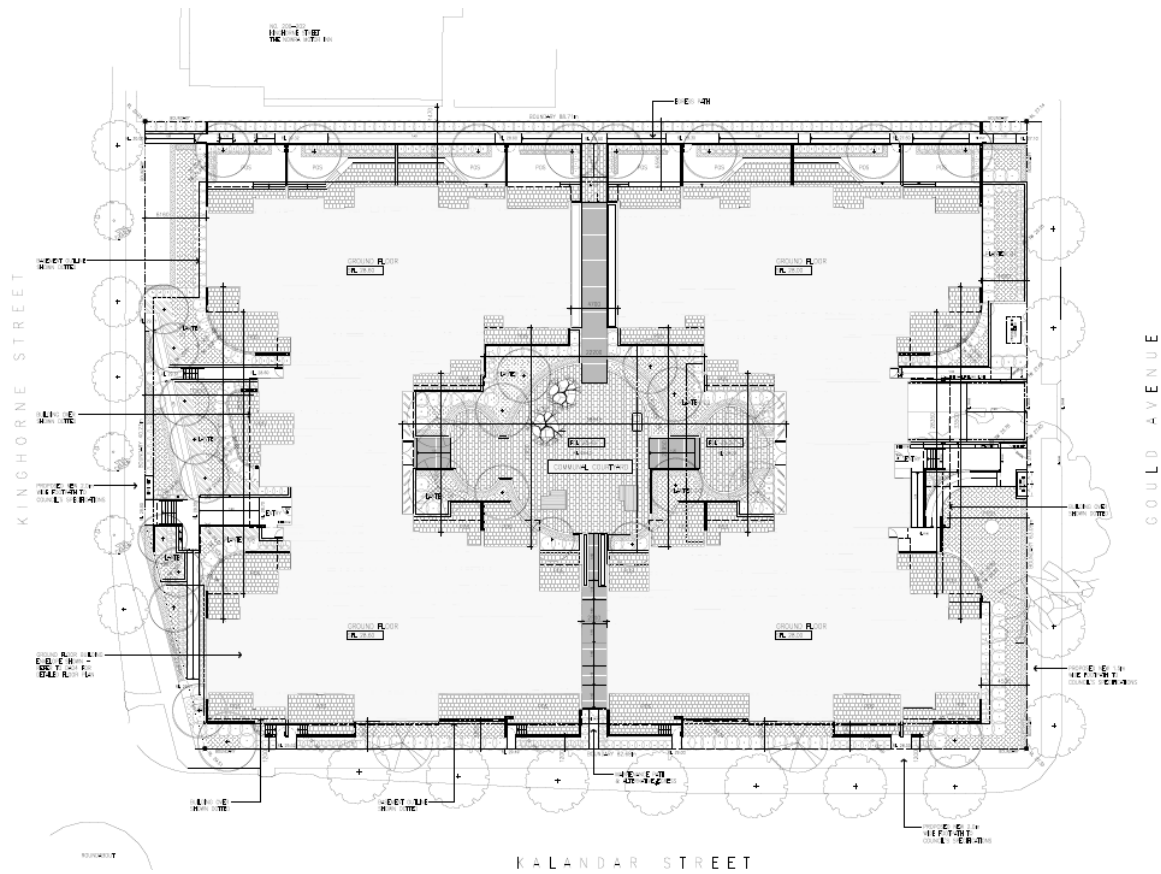


Figure 1 - Site Plan of the proposed development.

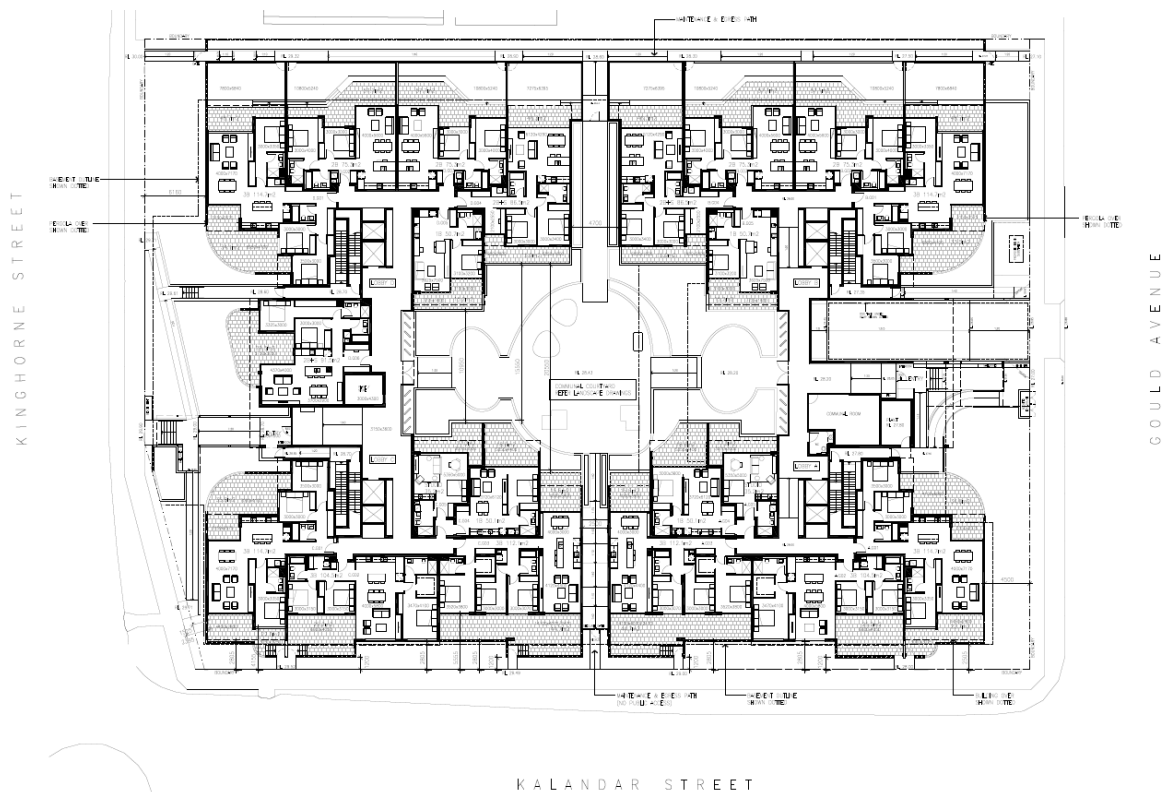


Figure 2 - Ground floor plan of the proposed development.

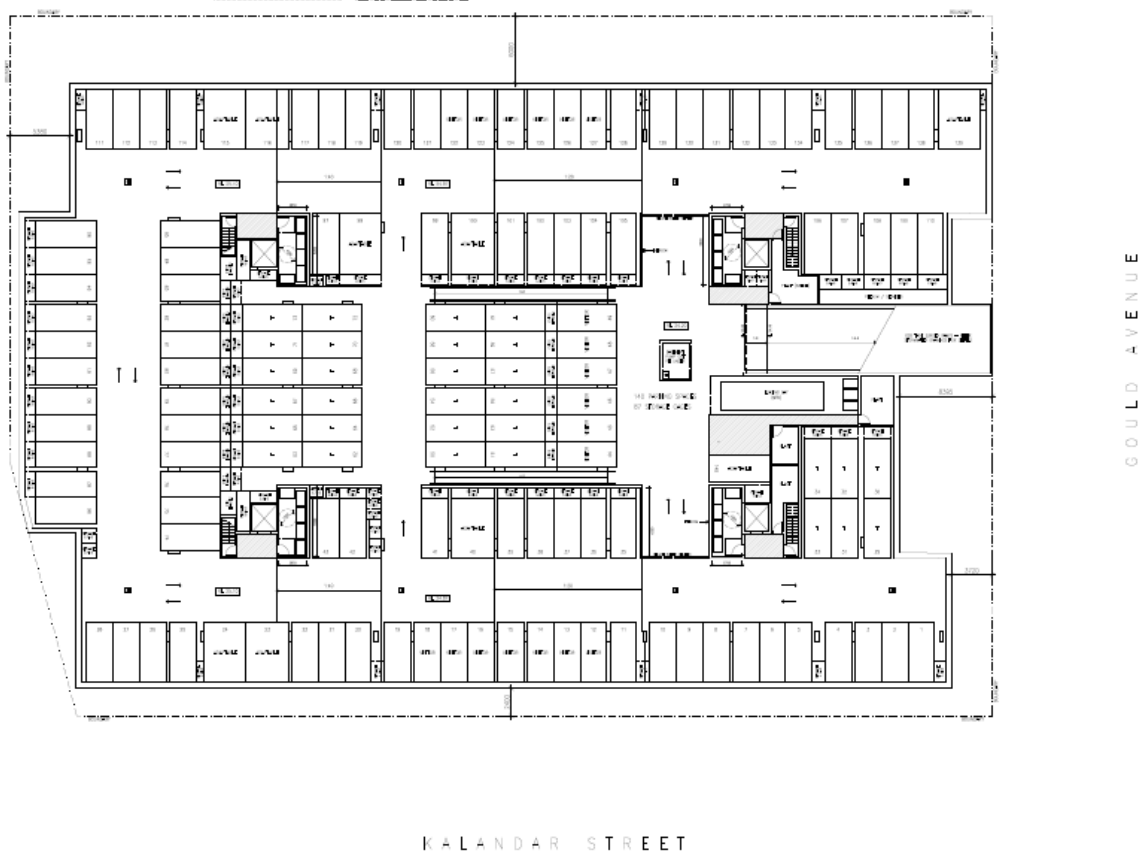


Figure 3 - Basement floor plan of the proposed development.



Figure 4 – Elevation of the proposed development (southern – Kalandar Street).



Figure 5 - Elevations of the proposed development (northern elevation).

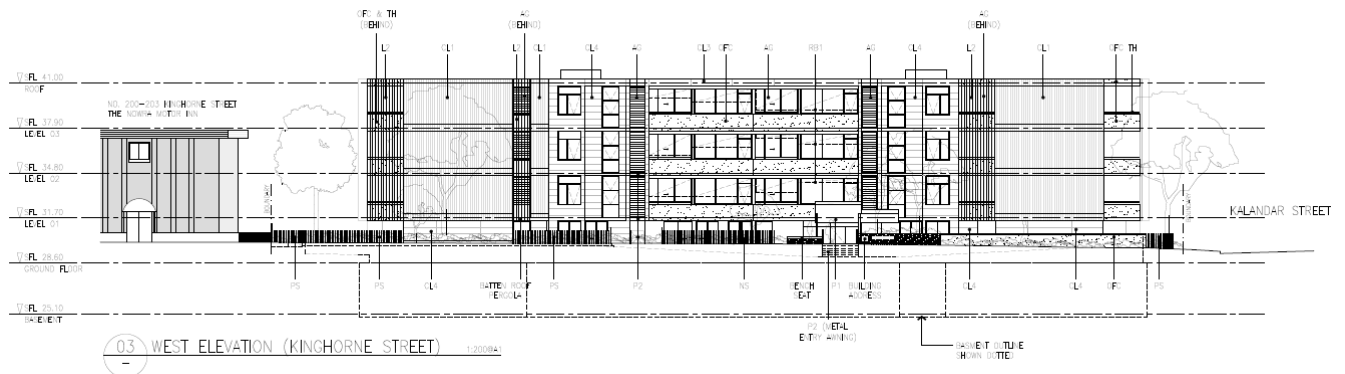


Figure 6 - Elevation of the proposed development (western elevation - Kinghorne Street).

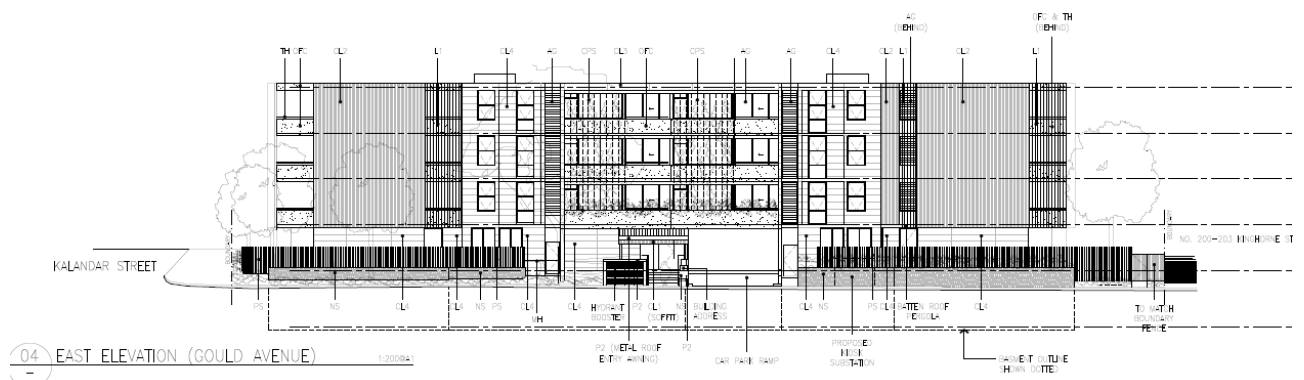


Figure 7 - Elevation of the proposed development (eastern elevation - Gould Avenue).



Figure 8 - Landscape plan of the proposed development.



Figure 9 - Photomontage view from the south-east (Kalandar Street at Gould Avenue).



Figure 10 - Photomontage view from the south-west (Kinghamore Street).

5. SUBJECT SITE AND SURROUNDS

The land is located on the corner of Kinghorn and Kalandar Street and Gould Avenue in Nowra. The site comprises 5 separate parcels of land being 204, 206 and 208 Kinghorn Street and 19 and 21 Gould Avenue - Lot 1 DP 130928, Lot A DP 370205 and Lot 5 DP 542693 Lot A DP 392035 and Lot B DP 370205.

The site is bound by Gould Avenue in the east (63m), Kalandar Street in the South (82.7m), Kinghorn Street in the west (63.8m). The site has a total land area of 5,528m². The site slopes gradually from the west at Kinghorn Avenue to the east at Gould Avenue (RL 29.95 – 27.20).

Four of the lots (excluding 208 Kinghorne Street- Lot 5 DP 542693) have been developed with detached single-storey dwellings on each lot. The land is generally cleared of native vegetation with limited remnant native vegetation and ornate gardens. The remnant vegetation includes a large eucalyptus tree.

Adjoining the site to the north is a motel building (Nowra Motor Inn). Opposite the site to the south (Kalandar St) is a public reserve and cemetery (Nowra General Cemetery – item 361 in Schedule 5 of SLEP 2014). To the east and on the opposite side of Gould Avenue are single storey detached residential dwellings. West of the site and on the opposite side of Kinghorne Street are medium density villas, single dwellings and a car tyre shop. Council is currently assessing an application for a 4-storey mixed-use development consisting of 57 residential units and commercial space on ground level (DA16/1465) on the land at Lots 1, 29 and 30 DP 25114 (173 Kinghorne Street and 2 and 4 Albatross Road). This application was lodged concurrent to a planning proposal which modified the height controls for the site. The land in this location is zoned B4 Mixed use. Refer to Figure 13.

An aerial image of the subject site is provided in **Figures 11 and 12**.

An extract from the *Shoalhaven Local Environmental Plan 2014* (SLEP 2014) Land Use Zoning Map is provided in **Figure 13**.



Figure 11 - Subject site in the local context.



Figure 12 - Aerial image of the subject site.

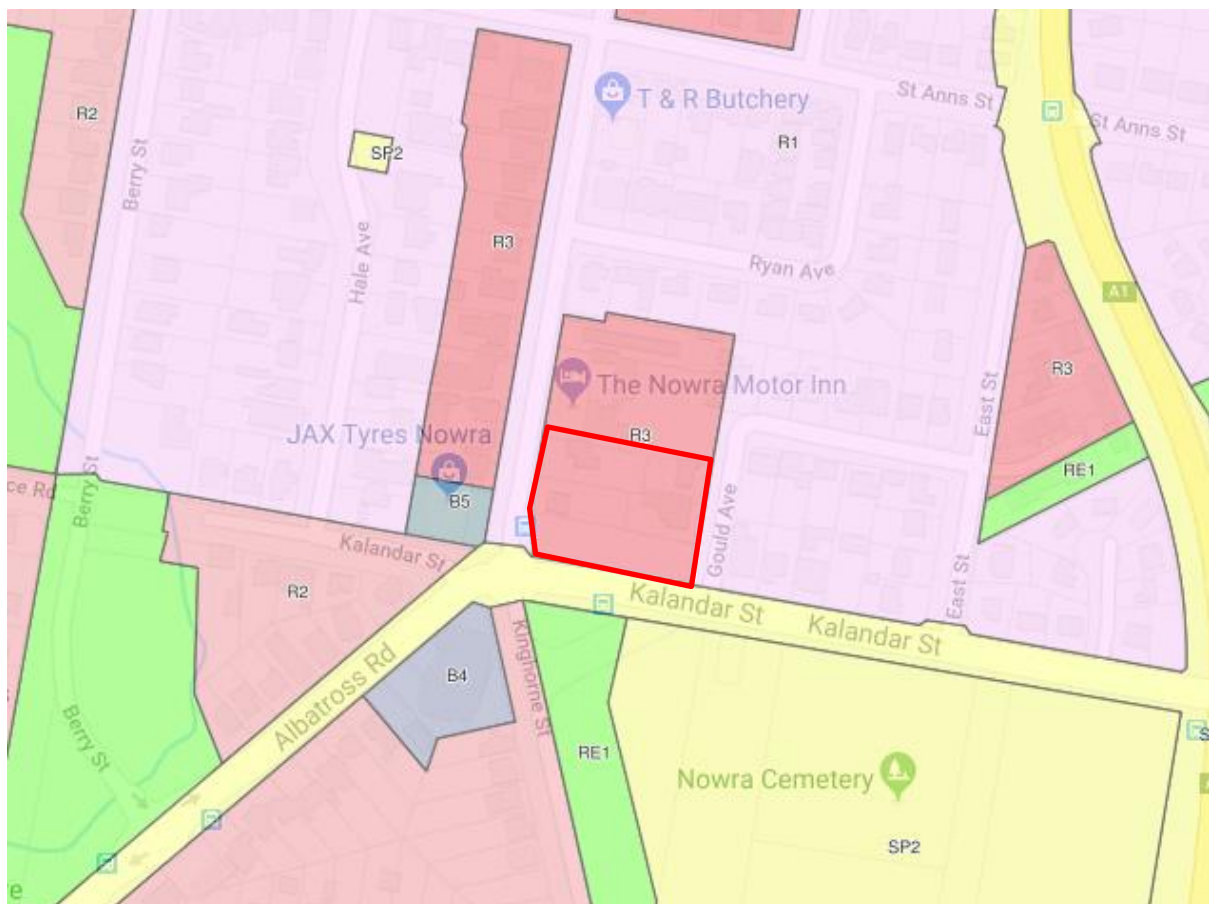


Figure 13- Extract from the SLEP 2014 Land Use Zoning Map. Site outlined in red.

6. BACKGROUND

The following provides details on pre-lodgement discussions, post lodgement actions and general site history:

a) Pre-lodgement: On 21 June 2017, Council conducted a pre-lodgement meeting with the applicant and their consultants.

b) Post Lodgement:

On 1 November 2017, the applicant lodged the DA with Council.

On 7 November 2017, Council requested additional information from the applicant.

On 30 November 2017, the applicant lodged amended plans, statement of environmental effects and acoustic report to partially address the Council's request for additional information. Letter date 7 November 2017.

On 11 December 2017, the DA was notified to all property owners within a 120m radius of the subject site in accordance with Council's Community Consultation Policy and was referred to relevant departments in Council, the NSW Roads and Maritime Services (Roads) and Endeavour Energy for their consideration of the application. The outcomes of the referral process are outlined in **Table 1** below.

On 15 December 2017, the applicant lodged all information to address Council's request for additional information.

On 28 February 2018, Council formally requested additional information to address matters identified by Council and within the Urban Design Report.

On 27 March 2018, the applicant and their architect met with Council to discuss the matters raised in Council's additional information letter dated 28 February 2018.

On 13 May 2018, the applicant submitted additional information to address the matters raised by Council in their request for additional information dated 28 February 2018.

On 22 May 2015, the amended plans and supporting information was referred to the appropriate Council officers for consideration.

On 18 July 2018, Council requested additional information to address matters relating to traffic, drainage and reticulated sewerage network supply.

On 26 July 2018, a RPP briefing meeting was held on-site in relation to the proposed development. The briefing meeting was attended by the following panel members: Pam Allan (Chair), Alison McCabe, Renata Brooks, Cr Greg Watson and Cr Mitchell Pakes. The key issues discussed at the meeting were outlined in the Record of Briefing issued by the RPP as follows:

- *Considerations should be given to redesigning the development to enable the retention of the *Corymbia maculata* (Spotted Gum) located on the boundary of 208 Kinghorne Street and 21 Gould Avenue;*
- *The density of the development is considered to be too great, despite there being no maximum FSR under Shoalhaven Local Environmental Plan 2014 (SLEP 2014);*
- *Consideration should be given to providing increased deep soil landscaping to the development along all road frontages;*

- *Consideration should be given to providing an increased building setback of the development to the boundary - particularly at the Kalandar Street frontage. The setback to the Kalandar Street frontage should respond to the setback of development on the eastern side of Gould Street; and*
- *The exceedance of the maximum height of building control under clause 4.3 of at the Gould Avenue frontage requires further attention and consideration, particularly where the development on the eastern side of Gould Street is of a low-density single storey residential built form.*

On 5 November 2018, the applicant provided their written response to the matters raised in the Record of Briefing. The plans and documents were not further amended.

On 27 March 2019, the applicant provided an amended Clause 4.6 Variation Report to address numerical errors in the variation report not previously identified. The height exceedance at the highest point was indicated as being 2.35m.

On 1 April 2019, the applicant provided a further amended Clause 4.6 Variation Report to provide additional justification to support the request to vary the maximum height of building development standard under clause 4.3 of SLEP 2014, and altering the height exceedance by reducing it to 2.32m (at the highest point).

Table 1 - Outcomes of the Development referral process

Internal Referral	
Roads Assets	Standard conditions proposed for the preparation of a dilapidation report prior to construction.
Asset Strategy	No comments or conditions.
Drainage Engineer	<p><u>First Referral</u> - Assets supports the proponent's proposal, in principle, to connect the site stormwater to the existing system near the corner of East Street and Kalandar Street.</p> <p>Additional information is requested on the design parameters for stormwater design, in accordance with Chapter G2 of the SDCP 14.</p> <p><u>Second Referral</u> – Additional details are required from the applicant on the hydraulic design and on site detention (OSD) proposed.</p> <p><u>Third Referral</u>- No specific conditions or comments.</p>
Traffic Unit	<p><u>First Referral</u> - Initial concerns were raised with the application in relation to the applicant's traffic impact assessment, sight distances, public transport, pedestrian, bicycle and on-street parking issues, left and right turns in Kalandar Street and on-street car parking restrictions and queuing capacity.</p> <p><u>Second Referral</u> – Continued concerns have been raised with the application as follows:</p> <ul style="list-style-type: none"> - The applicant is to reassess the proposed intersection treatment in Kalandar Street at Gould Avenue to take into consideration: current, on opening and 10 years post opening traffic data and analysis; and - No stopping signage may be required to the Kalandar and Kinghorne Street and Gould Avenue frontage. <p><u>Third Referral</u> – No concerns with the proposed development subject to recommended conditions relating to amended plans for channelised turning treatments, signage and line marking, shared</p>

	pathways and final approval by the Shoalhaven Local Traffic Committee.
Building Surveyor	No specific concerns were raised with the application subject to the imposition of standard conditions for construction, fire safety and section 68 approval.
Development Engineer	<p><u>First Referral</u>- Initial concerns were raised in relation to the following matters:</p> <ul style="list-style-type: none"> - Access and manoeuvrability; - Access points and sight distances; - The requirement for sediment and erosion control; and - Drainage. <p><u>Second Referral</u> – Additional information requested to address concerns with: servicing, vertical clearances, swept paths and aisle widths, signs and line marking, stacked parking arrangement and widening of the driveway.</p> <p><u>Third Referral</u> – Following the submission of additional information to address the matters raised in the second referral the matters have been appropriately addressed and conditions of consent are recommended should the application be recommended for approval.</p>
Environmental Health Officer (noise assessment)	The recommendations in section 5 of the <i>Traffic Noise Intrusion Assessment</i> be implemented to reduce internal noise levels in keeping with Clause 102 of <i>SEPP (Infrastructure) 2007</i> , via conditions of consent.
Landscape Architect	The indicative planting schedule is satisfactory.
Shoalhaven Water	<p><u>First Referral</u> - Shoalhaven Water raised significant concerns about the proposed sewer main diversion required for the proposed development. In particular, the alignment and location of the proposed sewer main being partly in private property and partly on the road reserve. Additional information was requested to address these concerns.</p> <p><u>Second Referral</u> - Additional information was required to address the proposed sewer alignment.</p> <p><u>Third Referral</u> – The applicant was requested to provide a water meter cupboard/room(s) at ground floor with unrestricted access for meter readers and future maintenance. Such details were requested to be provided on amended plans.</p> <p><u>Fourth Referral</u> – A Shoalhaven Water Notice has been issued for the proposed development.</p>
Waste Services	<p><u>First referral</u> – Initial concerns were raised with the ongoing waste management on the site. The application should detail the ongoing waste management for the site, including:</p> <ul style="list-style-type: none"> - Storage areas for reusable materials and recyclables during demolition and construction; and - The location of and space allocated to the waste management details for the ongoing use of the premises.

	<ul style="list-style-type: none"> - Details of the arrangements the applicant has with the private contracted waste service provider that will service the development. - Vehicle swept path analysis <p>Second Referral - No further information required at this stage.</p> <p>A Waste Minimisation and Management Plan (WMMP) is to be submitted to and approved by Council prior to the issue of a Construction Certificate.</p>
GIS Unit	Recommended unit numbering has been provided for the proposed development.
Tree Management Officer (TMO)	<p>The existing street trees proposed to be removed are to be replaced with appropriate street tree planting of no less than 75L pot size and of a species selected in accordance with 'Shoalhaven Plant Species List' in relation to South Nowra.</p> <p>Appropriate conditions are recommended to address the TMO's concerns.</p>
External Referral	
Roads and Maritime Services (RMS) (Roads)	<p>RMS has completed an assessment of the development, based on the information provided and focussing on the impact to the State Road Network. For this development, the key state road is the Princes Highway.</p> <p>RMS does not believe the development will have a significant impact on the State Road Network.</p>
Endeavour Energy	<p>Endeavour Energy has identified that the development will likely require the augmentation and upgrading of the existing network to facilitate the additional demand. The fact that provision is being made for the substation is positive. As a condition of the Development Consent Council should request the submission of documentary evidence from Endeavour Energy confirming that satisfactory arrangements have been made for the connection of electricity and the design requirements for the substation, prior to the release of the Construction Certificate.</p>
Urban Design	<p>It is noted that a design review panel has not been constituted for Shoalhaven City Council by the Minister in accordance with SEPP 65.</p> <p>In order to assist Council the services of Kennedy and Associates were sought to consider design elements.</p> <p>Kennedy and Associates have prepared an <i>Urban Design and SEPP 65 Review</i> (Urban Design Report) of the proposed development.</p> <p>ADG Assessment</p> <p>The following comments relate to the suite of plans first assessed. The plans were modified, and comments are made concerning the changes later in the report.</p> <p>The Urban Design Report summary of ADG Assessment is provided on page 5 of the Report, as follows</p> <p><i>The proposed development, in our assessment, generally demonstrates a high level of compliance with the provisions of the Apartment Design Guide.</i></p>

The proposal, as described in the documents outlined above, demonstrates:

- *a thoughtful and well designed response to the site conditions and statutory requirements*
- *a high level of amenity for future residents*
- *an attractive and well considered streetscape*
- *a high quality aesthetic design, including strong contemporary materiality*
- *appropriate bulk and scale, with regard to both the current character of the locality and the desired future character, as described by the relevant planning controls*
- *a lack of negative amenity impacts on existing neighbouring development, particularly in regards to solar access and visual privacy*
- *appropriate consideration of the potential impacts on future neighbouring developments*

Notwithstanding the above, Kennedy Associates' review of the project identified a number of non-compliances with key measures of the Apartment Design Guide..."

The key areas of non-compliance with ADG have been identified in the Urban Design Report and recommendation for addressing the non-compliance provided as follows:

- Solar Access to Communal Open Space

The supplied Shadow Diagrams (DA12-14), as analysed in Appendix C, appear to indicate that this space receives direct solar access to 20-30% of its area for just under 2 hours, between 10:30 and 12:15.

This non-compliance is not supportable for a development of this type and scale, particularly in a regional context where overshadowing from neighbouring buildings is minor.

Recommendation - that the design is amended to achieve compliance.

- Solar Access to Living Rooms and Private Open Space (Other Areas)

The supplied Solar Access Calculations (DA 11) include as compliant four units which receive 3 hours of direct sun between the hours of 12:30 – 3:30 at mid-winter.

This deviation from strict compliance with the design criteria:

- is minor as it has no material effect on the amenity outcome for these units and represents a 'worst case scenario'.
- is supportable so long as the proposed development's non-compliance with regard to the number of apartments receiving no direct sun at mid-winter is addressed

- Apartments Receiving 0 hrs Solar Access at Mid-Winter

The supplied Solar Access Calculations (DA 11) indicate that 19 units, or 20% of the development, receive no direct sunlight at mid-winter. The ADG allows for 15% or 14 units to

receive no direct sunlight at mid-winter. The proposed development exceeds this criteria by 5 units.

The Urban Design Report concludes:

- this non-compliance is not supportable for a development of this type and scale, particularly in a regional context where overshadowing from neighbouring buildings is minor.

- for a development, which has the benefit of three street frontages and only one current or future neighbour, the design criteria should not be overly onerous to achieve.

It is noted that a number of units which receive no direct sunlight, also receive no cross ventilation (13 units). This is a poor amenity outcome for future residents.

Recommendation - that the design be amended to achieve compliance.

- Cross Ventilation

- 16 units identified as achieving cross ventilation in the supplied calculations do not adequately demonstrate effective path for airflow.

- The '05' series for all lobbies and levels – do not demonstrate an adequate balance of inlet and outlet openings, or an effective airflow path through the apartment layout.

Recommendation - that the applicant demonstrates how the project achieves compliance with Objective 4B-3, and/or that the design is amended to achieve compliance.

- Primary Balcony Dimensions

it appears that only 23 units or 25% of the development strictly comply with the requirement for one consolidated area of the balcony, which achieves both the minimum areas and depths outlined above.

It is noted that balcony areas and dimensions given on the plans appear to aggregate total balcony areas rather than reflect the primary balcony area required above.

The Urban Design Report has proposed that “*strict compliance with the above areas and dimensions for primary balconies can be varied where it can be demonstrated that the principal private open space for the unit is both ‘useable’ and supplemented with additional private open space*”.

18 units or 19% of the development do not, in our opinion, appear to achieve adequate private open space provision.

Recommendation - that the applicant demonstrate how the project achieves compliance with Objective 4E-1, and/or that the design be amended to achieve compliance.

- Storage

Only 39 units, or 42% of the development, appear to provide compliant internal storage volumes, as outlined in Appendix A.

	<p>Whilst a number of storage cages (76) are provided in the basement, this provision does not appear to enable all units to achieve compliant total storage volumes.</p> <p>This non-compliance is not supported for a development of this type and scale.</p> <p>A number of units exceed the minimum internal areas required by the ADG, as such, adequate internal storage provision should not be overly onerous to achieve</p> <p><i>Recommendation</i> - the applicant demonstrate how the project achieves compliance with Objective 4G-1 and/or the design be amended to achieve compliance.</p> <p><u>Design Quality Principles</u></p> <p>An evaluation of the proposed development's performance in relationship to the principles is provided in the Urban Design Report. The report largely supports the approach taken by the proposal to the nine principles subject to demonstrate compliance with the key matters in the ADG for which non-compliance was not supportable.</p> <p>Note: <i>the applicant's amended plans received on 13 May 2018 were not referred further to Kennedy and Associates due to the nature of the amendments.</i></p>
Heritage Advisor	<p>The application was referred to Council's Heritage Advisor, due to its proximity to the Nowra General Cemetery, which is identified as an item of local heritage significance (Item 361) under Schedule 5 of SLEP 2014.</p> <p>The Advisor notes the following in relation to the proposed development in the Heritage Referral Response dated 14 December 2017.</p> <p><i>"The development is of considerable bulk and scale and will alter the existing character of the area. However, the development is not opposite the cemetery and is separated from it by Kalandar Street. There will be negligible overshadowing and generally the Cemetery will not be physically impacted by the development. The Cemetery itself will retain its size, landscaping and design elements.</i></p> <p><i>There will be no adverse heritage impact upon the cemetery as a result of the proposed development".</i></p> <p>Recommendation</p> <p><i>Supported. No conditions.</i></p>

7. STATUTORY CONSIDERATIONS

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

- i. *Environmental Planning and Assessment Act 1979;*
- ii. *State Environmental Planning Policy 55 – Remediation of Land;*
- iii. *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*
- iv. *State Environmental Planning Policy (State and Regional Development) 2011;*
- v. *State Environmental Planning Policy (Infrastructure) 2007;*

- vi. *State Environmental Planning Policy (Building Sustainability Index: Basix) 2004*
- vii. *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development;*
- viii. *Shoalhaven Local Environmental Plan 2014;*
- ix. Shoalhaven Development Control Plan 2014; and
- x. Shoalhaven Contribution Plan 2010.

State Environmental Planning Policy 55 – Remediation of Land

The site is not identified in Council's records as being contaminated. The demolition of the existing structures will require further consideration noting potential for asbestos. Demolition has not been applied for with this DA.

For the purposes of clause 7 of SEPP 55 no further investigations are deemed necessary.

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

The SEPP contains the mechanism for the removal of vegetation in a non-rural area, in this instance within a residential area. Council may issue a permit for the clearing of vegetation within the residential zone under Part 3 of the SEPP. In this instance, vegetation to be removed is being considered ancillary to a development application and is subject to the controls contained within Chapter G4 of the SDCP 2014, addressed later in this report.

It is noted that the development application was lodged prior to the making of the SEPP and the Biodiversity Conservation Act 2016, accordingly the development benefits from the transitional arrangements outlined within the Biodiversity Conservation (Savings and Transitional) Regulation 2017.

State Environmental Planning Policy (State and Regional Development)

At the time of lodgment Schedule 4A of the *Environmental Planning and Assessment Act 1979* (EPA Act) was operative.

The proposed development satisfies clause 3 of Schedule 4A, being development that has a capital investment value of more than \$20 million (total development cost (excluding GST) \$25,573,972.

As such the RPP has the function of determining the application in accordance with section 2.15 of the *EPA Act*.

State Environmental Planning Policy (Infrastructure) 2007

The provisions of *State Environmental Planning Policy (Infrastructure) 2007* (ISEPP) have been considered in the assessment of the development application.

In accordance with the requirements of Clause 45(2) of the SEPP, Endeavour Energy was notified of the proposal, as outlined earlier in this report.

Kalandar Street is a classified regional road and provides connectivity with the Princes Highway (State Classified Road).

The objectives and provisions of Clause 101 (Development with frontage to classified road) are satisfactorily addressed. Vehicular access is provided from Gould Avenue and the functioning of Kalandar Street will not be affected by the proposed development.

Regarding Clause 102 (Impact of road noise or vibration on non-road development), the noise criteria have been addressed in the submitted *Traffic Noise Intrusion Assessment* prepared by Harwood Acoustics dated 29 November 2017. The recommendations of the report to ensure internal noise levels comply with those specified in the clause are capable of being addressed by appropriate development consent conditions is recommended for approval.

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

The proposal is BASIX affected development to which this SEPP applies.

In accordance with Schedule 1, Part 1, 2A of the *Environmental Planning and Assessment Regulation 2000*, a BASIX Certificate has been submitted in support of the application demonstrating that the proposed scheme achieves the BASIX targets.

The BASIX certificate was issued no earlier than 3 months before the date on which the development application was lodged.

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

This SEPP applies to development for the purpose of a residential flat building, shop top housing or mixed-use development with a residential accommodation component if:

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

The proposed development consists of a new building, of at least 3 storeys and containing at least 4 or more dwellings.

Council does not have a Design Review Panel constituted by the Minister of Planning.

In accordance with Clause 28(2) of the Policy, *in determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):*

- (a) *the advice (if any) obtained from the design review panel, and*

- (b) the design quality of the development when evaluated in accordance with the design quality principles, and
 (c) the Apartment Design Guide.

A statement has been prepared by a Registered Architect addressing the requirements of SEPP 65 and was submitted with the application accordance with Clauses 50(1A) & 50(1AB) of the Environmental Planning and Environment Regulation 2000.

Schedule 1 of SEPP 65 sets out the design quality principles for residential apartment development. These must be considered in the assessment of the proposal pursuant to Clause 28 (2) of the SEPP and are discussed below.

Schedule 1 Design quality principles	
Design quality principle	Comment
<p>Principle 1: Context and neighbourhood character</p> <p><i>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</i></p> <p><i>Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</i></p> <p><i>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</i></p>	<p>The proposed development does not appropriately respond to the context and neighbourhood character. The design in its present form does not respect the predominately low scale, detached residential housing in the locality, whilst acknowledging the future neighbourhood character that is likely to prevail.</p> <p>Based on the plans and supporting information, the design is not considered to meet the design quality principle due to the presentation of the development to the Kalandar Street frontage and the proposed height of the building in the low scale urban environment.</p> <p>It is considered that the development can comply with the design principle, should the application be amended to provide an increased landscaped setback to Kalandar Street and a reduction in the overall height of the building which results in a general non-compliance with the maximum height of building development standard under Clause 4.3 of SLEP 2014.</p>
<p>Principle 2: Built form and scale</p> <p><i>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</i></p> <p><i>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</i></p>	<p>The scale and bulk of the building is generally appropriate for the locality, however, further consideration needs to be given to the height of the development relative to the surrounding development.</p> <p>Development to the east of the site is likely to remain as low scale residential in the short to immediate term, unless existing lot boundaries are altered through consolidation to facilitate higher density residential built form. Land on the southern side of Kalandar Street will not change noting it's a cemetery and reserve zoning (RE1 and SP2 Cemetery). As previously noted, Council is currently considering an application for a 4 storey mixed-use development consisting of 57 residential units and commercial space (shop top housing (DA16/1465) at Kinghorne Street and 2 - 4 Albatross</p>

<p><i>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</i></p>	<p>Road). Development to the west of the site along Kinghorne Street may see further development for high-density residential, however, this will likely be limited to lots which have not been previously developed for medium density. Any further high-density residential along the western portion of Kalandar Street may require lot consolidation to deliver suitable building sites.</p> <p>The scale of the building is generally reflective of the desired future scale of development in the locality. The design has made appropriate use of articulation of the façade and modulation of the built form. However, further consideration is required as to how the development presents to the Kalandar Street Frontage and the overall height of the building (particularly to the Gould Avenue frontage) observing the interface between the site and adjoining zone.</p> <p>The aesthetics of the building are satisfactory. However, the concern arises having regard to the context of the development.</p> <p>The design does not achieve the minimum requirements for apartments receiving no direct sunlight 9 am and 3 pm at mid-winter (15 of 91 apartments (16%) of apartments receive no sunlight between 9 am and 3 pm in mid-winter).</p>
<p>Principle 3: Density</p> <p><i>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</i></p> <p><i>Appropriate densities are consistent with the area's existing or projected population. Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</i></p>	<p>91 units on a site area of 5,530m², has a dwelling density of approximately 1 dwelling per 60m².</p> <p>Shoalhaven LEP 2014 does not provide a floor space ratio under Clause 4.4 of the Plan.</p> <p>It is likely that the proposed density can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p> <p>The proposed density is consistent with SEPP 65.</p>
<p>Principle 4: Sustainability</p> <p><i>Good design combines positive environmental, social and economic outcomes.</i></p> <p><i>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal</i></p>	<p>The proposed development is supported by a BASIX and NatHERS Certificate.</p> <p>Stormwater is proposed to be reused for gardens in the communal area.</p> <p>Common areas receive natural light and ventilation with a reduction on the need for reliance upon mechanical ventilation.</p>

<p><i>design for ventilation, heating and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.</i></p>	<p>The proposed development's approach to sustainability is supportable.</p>
<p>Principle 5: Landscape</p> <p><i>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well-designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</i></p> <p><i>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</i></p> <p><i>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</i></p>	<p>The proposed landscaping plans address this principle. The landscaping provides a positive image and contextual fit within the broader landscape character.</p> <p>The proposed landscaping meets the minimum deep soil requirements under the ADG. The total area of deep soil area with a minimum dimension of 6m is 424m² (7.6% of the site area). Additionally, the total deep soil area with a minimum dimension between 3m and 6m (considered in the ADG as adequate to support tree planting) is 255m² (4.6% of the site area). The total deep soil area is 679m² (12.3%).</p> <p>It is considered that the approach to landscaping on the site is supportable as it will contribute positively to the streetscape optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long-term management.</p> <p>However, Council does consider that further regard should be had to the landscape setback along Kalandar Street to enable increased deep soil landscaping within this setback design changes to the POS areas of units fronting Kalandar Street</p>
<p>Principle 6: Amenity</p> <p><i>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</i></p> <p><i>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor</i></p>	<p>The proposed development does not achieve compliance with the ADG as it relates the minimum standard for solar access and Private Open Space (POS) areas as detailed in the ADG compliance table below.</p> <p>Ventilation, outlook, visual and acoustic privacy, storage and internal and external spaces are considered to appropriately respond to the site and the surrounding locality and provide an acceptable outcome.</p> <p>Amenity for units facing Kalandar Street is further reduced through the benching of the development and the location of POS areas below ground level.</p>

space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.	
<p>Principle 7: Safety</p> <p><i>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</i></p> <p><i>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</i></p>	<p>The design is considered to appropriately address Crime Prevention through Environmental Design (CPTED) matters and reduces areas of potential concealment/entrapment. Passive surveillance opportunities are available in the development.</p> <p>There are defined secure access points and well-lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>
<p>Principle 8: Housing diversity and social interaction</p> <p><i>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</i></p> <p><i>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</i></p> <p><i>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</i></p>	<p>The proposed development provides additional dwellings, with a range of sizes, in an area where additional housing is needed and is near a variety of services.</p> <p>The development provides both communal open space and a communal room, both capable of accommodating a range of activities.</p>
<p>Principle 9: Aesthetics</p> <p><i>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</i></p> <p><i>The visual appearance of a well designed apartment development responds to the</i></p>	<p>The architectural treatment is satisfactory.</p>

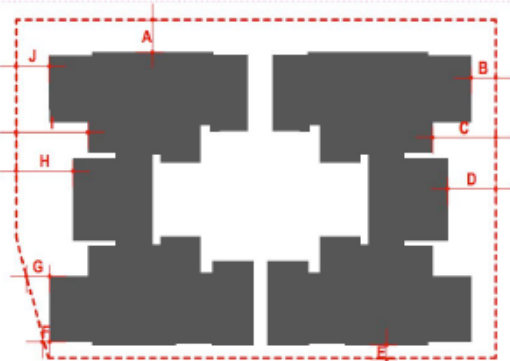
existing or future local context, particularly desirable elements and repetitions of the streetscape

Clause 30(2) of SEPP 65 requires residential apartment development to be designed in accordance with the Apartment Design Guide (ADG). The following table outlines compliance with the ADG.

The Table below provides an assessment of the proposed development against the Apartment Design Guide.

Provision	Comment
PART 3 SITING THE DEVELOPMENT	
3A Site Analysis	
Site analysis illustrates that design decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context	The application is supported by a site analysis plan which complies with the documentary requirements of this part. However, the development is not considered to appropriately respond to the context of the site. The overall height of the development and setbacks to Kalandar Street remain an issue.
3B Orientation	
3B-1. Building types and layouts respond to the streetscape and site while optimising solar access within the development	<p>Complies.</p> <p>The development addresses all frontages, providing pedestrian access from Gould Avenue and Kinghorne Street, with the principal point of entry and driveway off Gould Avenue.</p> <p>The development addresses communal solar access requirements, however, the minimum number of units receiving no solar access from 9 am and 3 pm (16%) is not desirable or supportable given there are no constraints and the potential to deliver a higher level of solar access to all units.</p>
3B-2. Overshadowing of neighbouring properties is minimised during mid-winter	<p>Complies.</p> <p>There is limited potential for overshadowing of neighbouring properties.</p>
3C Public domain interface	
3C-1 Transition between private and public domain is achieved without compromising safety and security	<p>Complies.</p> <p>The development provides pedestrian access/points from Kinghorne Street and Gould Avenue, allowing safe access to the development without crossing driveways. Clearly defined entry points are provided and low planting to the street enables adequate site lines.</p> <p>The potential for passive surveillance and visual privacy for units fronting Kalandar</p>

	Street has been reduced though the benching of the development substantially below finished ground level. The POS areas to these units will not be capable of effectively overlooking the public domain (particularly for units located toward the Kinghorne and Kalandar Street intersection).
3C-2 Amenity of the public domain is retained and enhanced	Complies The public domain will not be significantly impacted by the development.
3D Communal and public open space	
3D-1. An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping 1. Communal open space has a minimum area equal to 25% of the site 2. Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter)	Complies The communal open space area is 1,425m ² or 25.8% of the site area. Communal open space consists of both active open spaces and passive landscaped areas. The Communal spaces are considered to be a positive design element. Sunlight provision is achieved.
3D-2. Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting	Public open space is not provided within this development for the safety of the residents.
3D-3. Communal open space is designed to maximise safety	The clear delineation between the public and private domain and compliance with CPTED principles has been considered.
3D-4. Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood	The development does not provide public open space within the development.
3E Deep soil zones	
3E-1 Site Area Range 650m ² -1500m ² Min. Dimensions 3m Deep soil zone required (% of site area) - 7%	Complies. The total area of deep soil area with a minimum dimension of 6m is 424m ² (7.6% of the site area). Additionally, the total deep soil area with a minimum dimension between 3m and 6m (considered in the ADG as adequate to support tree planting) is 255m ² (4.6% of the site area). The total deep soil area is 679m ² (12.3%)
3F Visual Privacy	
3F-1 Building Separation Requirement to side and rear boundaries:	Complies. The proposed development provides as 6m setback to the neighbouring site to the north.

<table><tr><td>Building Height</td><td>Habitable Rooms /Balconies</td><td>Non Habitable Rooms</td></tr><tr><td>Up to 12m (4 Storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 Storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p>3F-2 Site and building design elements increase privacy without compromising access to light and air and balance outlook and views from habitable rooms and private open space.</p>	Building Height	Habitable Rooms /Balconies	Non Habitable Rooms	Up to 12m (4 Storeys)	6m	3m	Up to 25m (5-8 Storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m	<p>Varying street setbacks are proposed to Kinghorne Street, Kalandar Street and Gould Avenue.</p> <div></div> <table><tr><th colspan="4">Separation to Boundaries</th></tr><tr><th>Location</th><th>Condition</th><th>Separation (m)</th><th>Complies</th></tr><tr><td>A</td><td>Hab – Bd</td><td>6</td><td>Yes.</td></tr><tr><td>B</td><td>Hab – St</td><td>4.5</td><td>N/A</td></tr><tr><td>C</td><td>Hab – St</td><td>11.6</td><td>N/A</td></tr><tr><td>D</td><td>Hab – St</td><td>8.9</td><td>N/A</td></tr><tr><td>E</td><td>Hab – St</td><td>2.8</td><td>N/A</td></tr><tr><td>F</td><td>Hab – St</td><td>1.4</td><td>N/A</td></tr><tr><td>G</td><td>Hab – St</td><td>4.2</td><td>N/A</td></tr><tr><td>H</td><td>Hab – St</td><td>10.5</td><td>N/A</td></tr><tr><td>I</td><td>Hab – St</td><td>13.3</td><td>N/A</td></tr><tr><td>J</td><td>Hab – St</td><td>6.1</td><td>N/A</td></tr></table>	Separation to Boundaries				Location	Condition	Separation (m)	Complies	A	Hab – Bd	6	Yes.	B	Hab – St	4.5	N/A	C	Hab – St	11.6	N/A	D	Hab – St	8.9	N/A	E	Hab – St	2.8	N/A	F	Hab – St	1.4	N/A	G	Hab – St	4.2	N/A	H	Hab – St	10.5	N/A	I	Hab – St	13.3	N/A	J	Hab – St	6.1	N/A
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3G Pedestrian access and entries																																																													
3G-1. Building entries and pedestrian access connects to and addresses the public domain	<p>Complies.</p> <p>The building is accessed off Gould Avenue and Kinghorne Street via an accessible walkway with clearly defined lines of site and letterboxes.</p> <p>A secondary accessible path from the street is provided.</p> <p>The points of entry connect to the existing street footpath. The access provides compliant disabled access from the footpath to the point of entries.</p> <p>No pedestrian access through the site is required or warranted.</p>																																																												
3G-2. Access, entries and pathways are accessible and easy to identify																																																													
3G-3. Large sites provide pedestrian links for access to streets and connection to destinations																																																													
3H Vehicle Access																																																													
Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes	<p>Complies.</p>																																																												
3J Bicycle and Car Parking																																																													
3J-1. Minimum car parking requirement for residents and visitors to comply with Guide to Traffic Generating Developments, or the car parking requirement prescribed by the relevant council, whichever is less.	<p>Complies.</p> <p>Parking exceeds the minimum provision, as required by SEPP 65 and SDGP 2014</p>																																																												
3J-2. Parking and facilities are provided for other modes of transport	<p>The visual and environmental impacts of the underground car parking are minimised</p>																																																												

3J-3. Car park design and access is safe and secure	through the location of the access off Gould Avenue, which is the low point of the site and most visually unobtrusive.
3J-4. Visual and environmental impacts of underground car parking are minimised	
3J-5. Visual and environmental impacts of on-grade car parking are minimised	
3J-6 Visual and environmental impacts of above ground car parking is minimised ground enclosed car parking are minimised	
PART 4 DESIGNING THE BUILDING	
4A Solar and Daylight Access	
<p>1. Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p> <p>2. In all other areas, living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 3 hours direct sunlight between 9 am and 3 pm at mid-winter.</p> <p>3. A maximum of 15% of apartments in a building receives no direct sunlight between 9 am and 3 pm at mid-winter.</p>	<p>N/A.</p> <p>Non-compliance.</p> <p>62 of 91 apartments (68%) receive at least 3 hours direct sunlight between 9.00am and 3.00pm in mid-winter. The number of north-facing apartments has been maximised. All top-level apartments receive 3 hours of solar access with the inclusion of fixed skylights in some apartments.</p> <p>Non-compliance.</p> <p>15 of 91 apartments (16%) of apartments receive no sunlight between 9 am and 3 pm in mid-winter.</p>
4A-2 Daylight access is maximised where sunlight is limited	Complies.
4A-3 Design incorporates shading and glare control, particularly for warmer months	<p>Complies.</p> <p>The design incorporates a variety of shading devices to ensure glare control is achieved and solar access can be managed.</p>
4B Natural Ventilation	
<p>4B-1 All habitable rooms are naturally ventilated to create healthy indoor living environments.</p> <p>1. At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed.</p> <p>2. Overall depth of a cross-over or crossthrough apartment does not exceed 18m, measured glass line to glass line</p>	<p>Complies.</p> <p>56 of 91 apartments (62%) of apartments are naturally cross ventilated in accordance with standard or previously proven design principles:</p> <ul style="list-style-type: none">- corner apartments- through-apartments- single-aspect apartments with modulated facades and shallow floor plans

4B-2 The layout and design of single aspect apartments maximises natural ventilation	Through apartment depths are a maximum of approximately 13.9m from glass line to glass line. The single aspect apartments have been designed with a modulated glazed façade with operable elements to create opportunities for natural ventilation. The apartment depth is also minimised to improve daylighting and ventilation. The development achieves the minimum requirements for cross-ventilation of apartments and is generally supportable in this regard.
4B-3 The number of apartments with natural cross ventilation is maximised	
4C Ceiling Heights	
4B-1 Ceiling height achieves sufficient natural ventilation and daylight access.	Complies.
4B-2 Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	The development proposes a 3.1m floor to floor height. All habitable rooms achieve the min 2.7m required ceiling height.
4B-3 Ceiling heights contribute to the flexibility of building use over the life of the building.	The building is unlikely to be adaptively reused for an alternate use without significant redesign of the floor plats.
4C-1 Ceiling height achieves sufficient natural ventilation and daylight access. Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Minimum ceiling height for apartment and mixed use buildings Habitable Rooms 2.7m Non-Habitable 2.4m If located in mixed use areas 3.3m for ground and first floor	
4C-2 Ceiling height increases the sense of space in apartments and provides for well proportioned rooms.	
4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building	
4D Apartment Size and Layout	
4D-1 The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity 1. Apartments are required to have the following minimum internal areas: <ul style="list-style-type: none">• Studio 35m²• 1 bedroom 50m²• 2 bedroom 70m²• 3 bedroom 90m² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each. A fourth bedroom and further additional bedrooms increase the minimum internal area by 12m² each.	Complies. All apartments achieve the minimum floor area requirements for the mix of units proposed. The proposed apartments comply with the minimum areas and room dimensions. Every habitable room has been provided with a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room.

2. Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	
4D-2 Environmental performance of the apartment is maximised. 1. Habitable room depths are limited to a maximum of 2.5 x the ceiling height Based on ceiling heights of 2.7m, habitable room depths are required to be limited to 6.75m. 2. In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	Complies.
4D-3 Apartment layouts are designed to accommodate a variety of household activities and needs 1. Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space) 2. Bedrooms have a minimum dimension of 3m (excluding wardrobe space) 3. Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> 3.6m for studio and 1 bedroom apartments 4m for 2 and 3 bedroom apartments 4. The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	Complies. All bedrooms comply with the minimum room dimension requirements. The width of the living area in the north-south through apartments on Kalandar Street is 4m. The width of the dining area in through apartments fronting Kalandar Street are 3.5m (6 apartments in total) which is less than the required minimum. These apartments comply with the maximum glazing-glazing depth and have large openings onto a balcony at either end. The minor non-compliance to the minimum width of studio and 1 bedroom apartments on Kalandar Street is unlikely to have a perceived impact on the internal amenity of the units. Apartment layouts incorporate open plan style living and dining areas. 10% of apartments are capable of potential future adaptable requirements, and an additional 14% of apartments are designed to Universal Silver Level requirements.
4E Private Open Space and Balconies	
4E-1 Apartments provide appropriately sized private open space and balconies to enhance the residential amenity 1. All apartments are required to have primary balconies as follows: Dwelling type Minimum Area Minimum Depth	Non-compliance. The east-west through 2 bedroom apartments on levels 1-3 have primary balcony sizes that are less than the minimum requirements (8m ² instead of 10m ²), however, these apartments are provided with a secondary balcony which is deficient with the minimum area requirements. A total of twelve (12)

<p>Studio 4m² 1 bedroom 8m² 2m 2 bedroom 10m² 2m 3+ bedroom 12m² 2.4m 2. For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m² and a minimum depth of 3m.</p>	<p>apartments or 26% of all two-bedroom apartments (or 13% of all apartments) do not meet the minimum area requirements for primary balconies. The primary balconies of these apartments have a minimum dimension of 2m (compliant) and are of regular proportions.</p>
4E-2 Primary private open space and balconies are appropriately located to enhance liveability for residents	<p>All other primary balconies within the development comply with the minimum dimension and area requirements.</p>
4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building	<p>POS for apartments at ground level are provided with a minimum area of 15m² and a minimum depth of 3m</p>
4E-4 Private open space and balcony design maximises safety.	<p>Primary POS and balconies are appropriately located to enhance livability. The design of the POS maximises safety.</p>
4F Common circulation and spaces	
<p>4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments. 1. The maximum number of apartments off a circulation core on a single level is eight. 2. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40</p>	<p>Complies.</p> <p>Common circulation to units does not exceed 8.</p> <p>Safety and social interaction are promoted through common circulation spaces.</p>
4F-2 Common circulation spaces promote safety and provide for social interaction between residents	
4G Storage	
<p>4G-1 Adequate, well-designed storage is provided in each apartment. In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: Dwelling Type Storage volume Studio 4m³ 1 bedroom 6m³ 2 bedroom 8m³ 3+ bedroom 10m³ At least 50% of the required storage is to be located within the apartment.</p>	<p>Complies.</p> <p>Apartment storage is provided within the apartments (greater than 50%) and ground floor storage cupboards. The Storage Schedule provided by the applicant details compliance with the storage requirements.</p> <p>Storage in apartment is located in dedicated built-in cupboards. Additional storage cages are also provided in the basement.</p> <p>The application is supported by a Storage Schedule prepared by Kannfinch, detailing the location and type of storage for each apartment.</p>
4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments	
4H Acoustic Privacy	
4H-1 Noise transfer is minimised through the siting of buildings and building layout	Complies.

4H-2 Noise impacts are mitigated within apartments through layout and acoustic treatments	An acoustic report was submitted.
4J Noise Pollution	
4J-1 In noisy or hostile environments the impacts of external noise and pollution are	N/A.
4J-2 Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission	The acoustic report made recommendations concerning the design.
4K Apartment Mix	
4K-1 A range of apartment types and sizes is provided to cater for different household types now and into the future.	Complies.
4K-2 The apartment mix is distributed to suitable locations within the building	The mix of apartments includes studios, 1, 2, 3 bedroom apartments. The unit mix provides an appropriate level of variety and will suit different domestic requirements.
4L Ground Floor Apartments	
4L-1 Street frontage activity is maximised where ground floor apartments are located	Complies.
4L-2 Design of ground floor apartments delivers amenity and safety for residents	The majority of POS areas to ground floor apartments provide satisfactory levels or interaction with Kinghorne Street and Gould Avenue. It is not considered that the benching of the development and location of private open space areas for units facing Kalandar Street significantly lower than the proposed finished ground level provides adequate amenity and safety for residents or the potential for satisfactory interaction with the public domain.
4M Facades	
4M-1 Building facades provide visual interest along the street while respecting the character of the local area	Complies.
4M-2 Building functions are expressed by the façade	The development provides a satisfactory façade design and building function.
4N Roof Design	
4N-1 Roof treatments are integrated into the building design and positively respond to the street	The roof is flat and not able to be utilized.
4N-2 Opportunities to use roof space for residential accommodation and open space are maximised.	The roof contains lift over runs and skylights.
4N-3 Roof design incorporates sustainability features	
4O Landscape Design	
4O-1 Landscape design is viable and sustainable	Complies.

	Suitable long lasting and low maintenance landscaping is proposed.
4P Planting on Structures	
4P-1 Appropriate soil profiles are provided	Complies.
4P-2 Plant growth is optimised with appropriate selection and maintenance	
4P-3 Planting on structures contributes to the quality and amenity of communal and public open spaces	
4Q Universal Design	
4Q-1 Universal design features are included in apartment design to promote flexible housing for all community members.	Complies. The proposal provides 24% of the total apartments incorporating the Livable Housing Guideline's silver level universal design features. 10% of apartments are capable of adaption to AS4299. It is considered that adaptable apartments have suitable access to common areas (via common corridors and lift), and have appropriate parking as required by AS2890.6 Off-street parking for people with disabilities.
4Q-2 A variety of apartments with adaptable designs are provided.	
4Q-3 Apartment layouts are flexible and accommodate a range of lifestyle needs	
4R Adaptive Reuse	
4R-1 New additions to existing buildings are contemporary and complementary and enhance an area's identity and sense of place.	N/A.
4R-2 Adapted buildings provide residential amenity while not precluding future adaptive reuse.	
4S Mixed Use	
4S-1 Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement	N/A.
4S-2 Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents	
4T Awnings and signage	
4T-1 Awnings are well located and complement and integrate with the building design	Complies.

4T-2 Signage responds to the context and desired streetscape character	Building address / signage will be the limited to a single sign.
4U Energy efficiency	
4U-1 Development incorporates passive environmental design	Complies.
4U-2 Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer	
4U-3 Adequate natural ventilation minimises the need for mechanical ventilation	
4V Water management and conservation	
4V-1 Potable water use is minimised	Complies. Water minimisation and reuse are available through fittings, fixtures and water tank for the garden/community area.
4V-2 Urban stormwater is treated on site before being discharged to receiving waters	
4V-3 Flood management systems are integrated into the site design	
4W Waste management	
4W-1 Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents	Complies. The garbage rooms are located in the basement are for exclusive use of residents. There is capacity for a body corporate to locate a communal composting bin in the communal open space for use by residents or landscape maintenance contractors.
4W-2 Domestic waste is minimised by providing safe and convenient source separation and recycling	
4X Building maintenance	
4X-1 Building design detail provides protection from weathering	Complies. Building materials and maintenance are considered satisfactory.
4X-2 Systems and access enable ease of maintenance	
4X-3 Material selection reduces ongoing maintenance costs	

Shoalhaven LEP 2014**Land Zoning**

The land is zoned R3 Medium Density Residential under the SLEP 2014.

Characterisation and Permissibility

The proposal is best characterised as a “*residential flat building*” under the SLEP 2014. The proposal is permitted within the zone with the consent of Council.

The above terms are defined in the Dictionary to SLEP 2014 as follows:

“Residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

Note. Residential flat buildings are a type of **residential accommodation**—see the definition of that term in this Dictionary.”

Zone objectives

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To provide opportunities for development for the purposes of tourist and visitor accommodation where this does not conflict with the residential environment.

Comment:

The proposed development is not inconsistent with the objectives of the R3 zone.

SLEP 2014 Clauses

Part 2 Permitted or prohibited development

Clause 2.7 Demolition

Comment: The applicant seeks to complete demolition works for the removal of structures from the site in accordance with a separate complying development certificate application.

Part 4 Principal development standards

Clause 4.3 Height of Buildings

The objectives of this clause are stated in subclause (1) as follows:

- (a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality,
- (b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development,
- (c) to ensure that the height of buildings on or in the vicinity of a heritage item or within a heritage conservation area respect heritage significance.

In accordance with subclause (2), the height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The Height of Buildings Map does not show a maximum height for the land (subclause 2A)), and therefore the height of a building on the land is not to exceed 11 metres. An extract from the Height of Building Map is provided in **Figure 14** below.

The development proposed exceeds the 11m height limit. The application seeks a variation to clause 4.3 in accordance with clause 4.6 of SLEP 2014.

The entire roof exceeds the height limit. There are 4 lift over runs that also penetrate the height plane and a portion of the building that exceeds the height by 2.32m (maximum) in the south eastern corner. This is illustrated in **Figure 14** below.

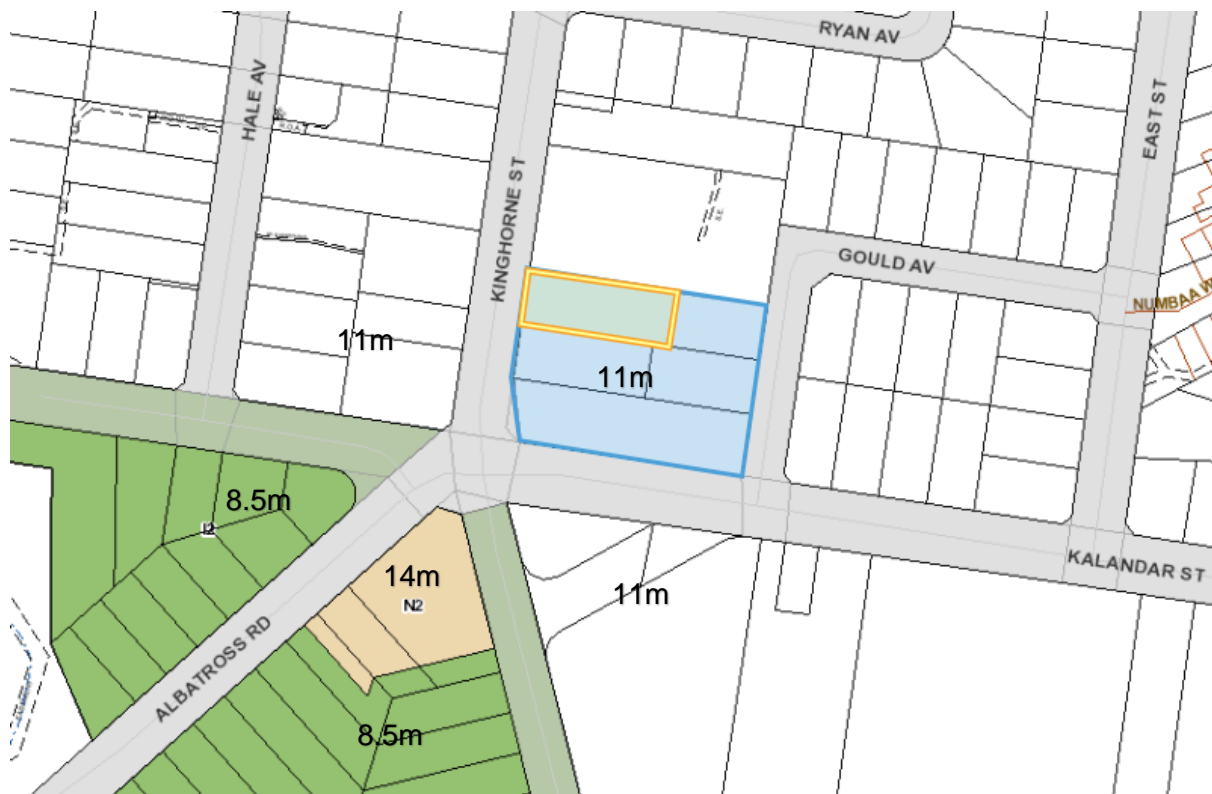


Figure 14 - Extract from the SLEP 2014 Height of Building Map. Subject site highlighted. **Note:** I2 = 8.5m and N2 = 14m.

Clause 4.4 Floor Space Ratio

The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map (subclause (2)). There is no Floor Space Ratio Map that relates to the subject site.

Clause 4.6 Exceptions to development standards

Development consent may, subject to clause 4.6, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

The development standard is not excluded from the operation of clause 4.6 as it is not listed within 4.6(8) of SLEP 2014.

The application seeks a variation to Clause 4.3 in accordance with Clause 4.6 of SLEP 2014.

Development Standard to be Varied

Clause 4.3 stipulates the objective and development standard for the height of buildings in Shoalhaven. Relevantly Clause 4.3(2) & (2A) state as follows:

- (2) *The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.*

(2A) If the Height of Buildings Map does not show a maximum height for any land, the height of a building on the land is not to exceed 11 metres.

Granted that there is no Height of Building Map relating to the subject, in accordance with subclause (2A) of Clause 4.3, the height of a building on the land is not to exceed 11 metres.

Extent of the Variation

The entire roof exceeds the maximum building height plane.

The largest exceedance of the maximum building height occurs along a portion of the eastern elevation to Gould Avenue. The structure has a maximum height of 13.32m at "point L", as identified in **Figure 22 and Table 2**. The extent of the variation to the numerical standard is 2.32m or 21.1% (refer to **Figure 15 - 18**).

Shadow diagrams of the proposed development from 9 am to 3 pm during mid-winter is provided in **Figure 17-19** below.



Figure 15 – South-east perspective of the height plane intrusion associated with the proposed development.



Figure 16 - South-west perspective of the height plane intrusion associated with the proposed development.

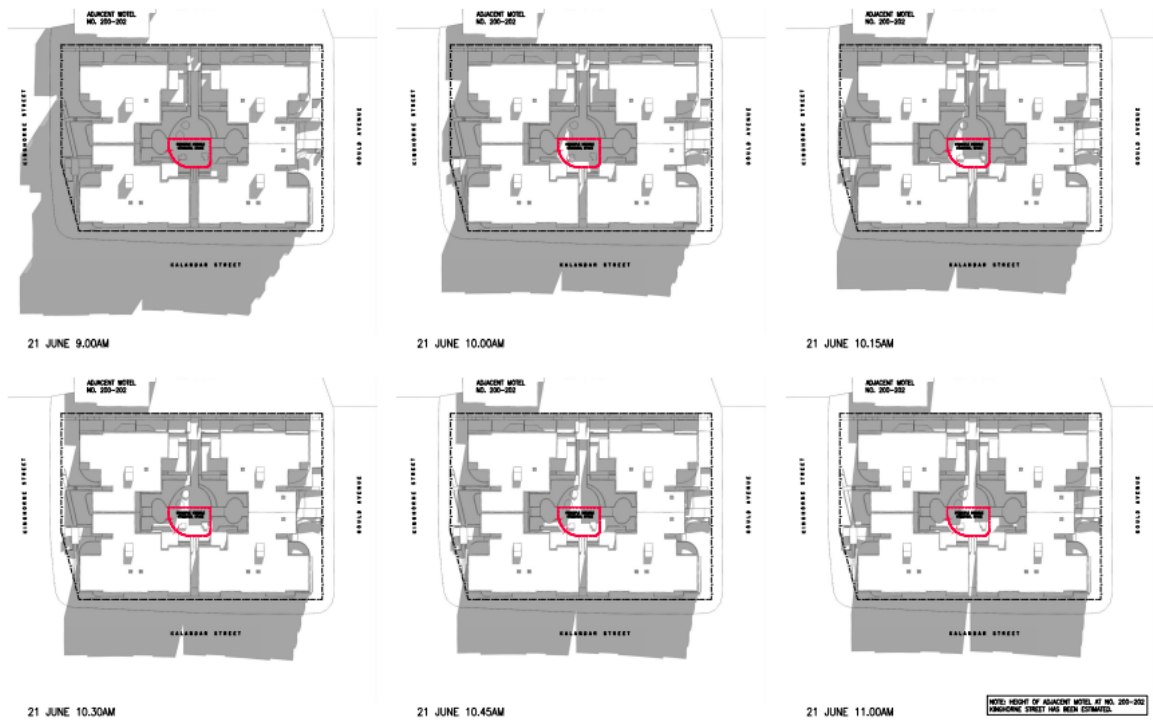


Figure 17 - Shadow diagram of the development (mid-winter) from 9:00 am to 11:00 am. The proposed useable common open space indicated in red.

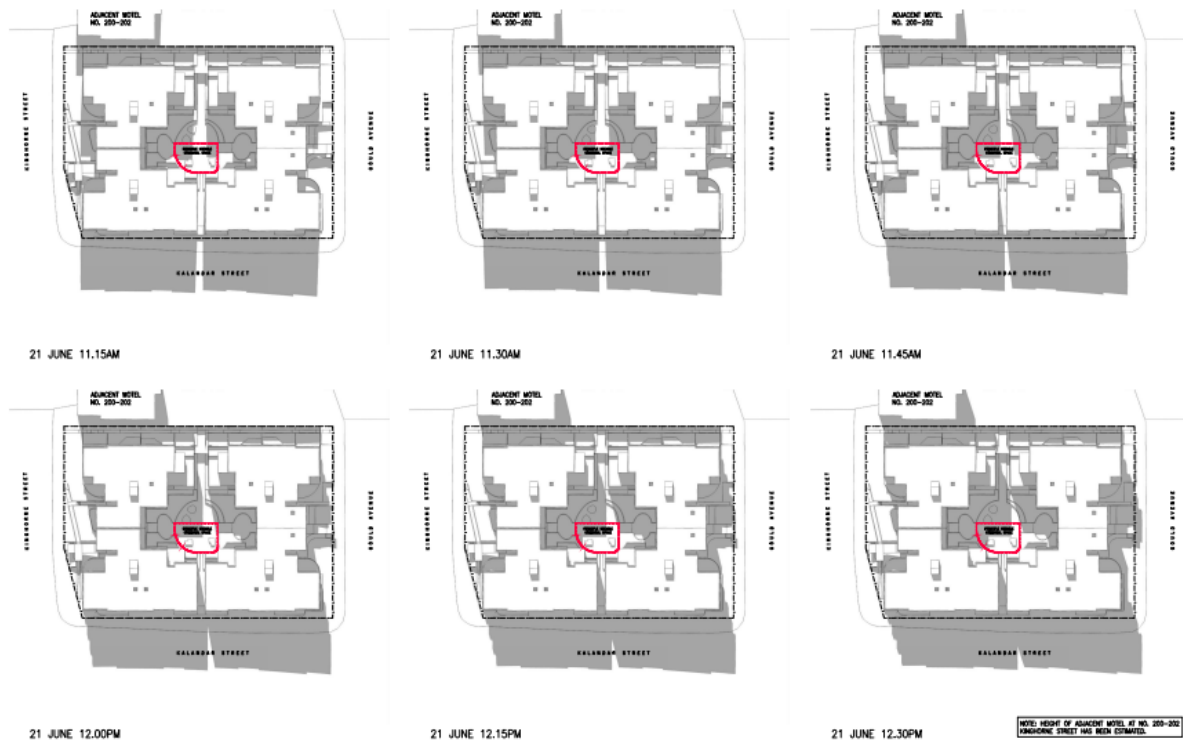


Figure 18 - Shadow diagram of the development (mid-winter) from 11:15 am to 12:30 am. The proposed useable common open space indicated in red.



Figure 19 - Shadow diagram of the development (mid-winter) from 12:45am to 3:00pm. The proposed useable common open space indicated in red.



Figure 20 - Southern elevation (Kalandar Street) of the proposed development. red line indicative of the maximum height of building (11m) and the developments exceedance of the standard.



Figure 21 - Northern elevation (Kalandar Street) of the proposed development. red line indicative of the maximum height of building (11m) and the developments exceedance of the standard.

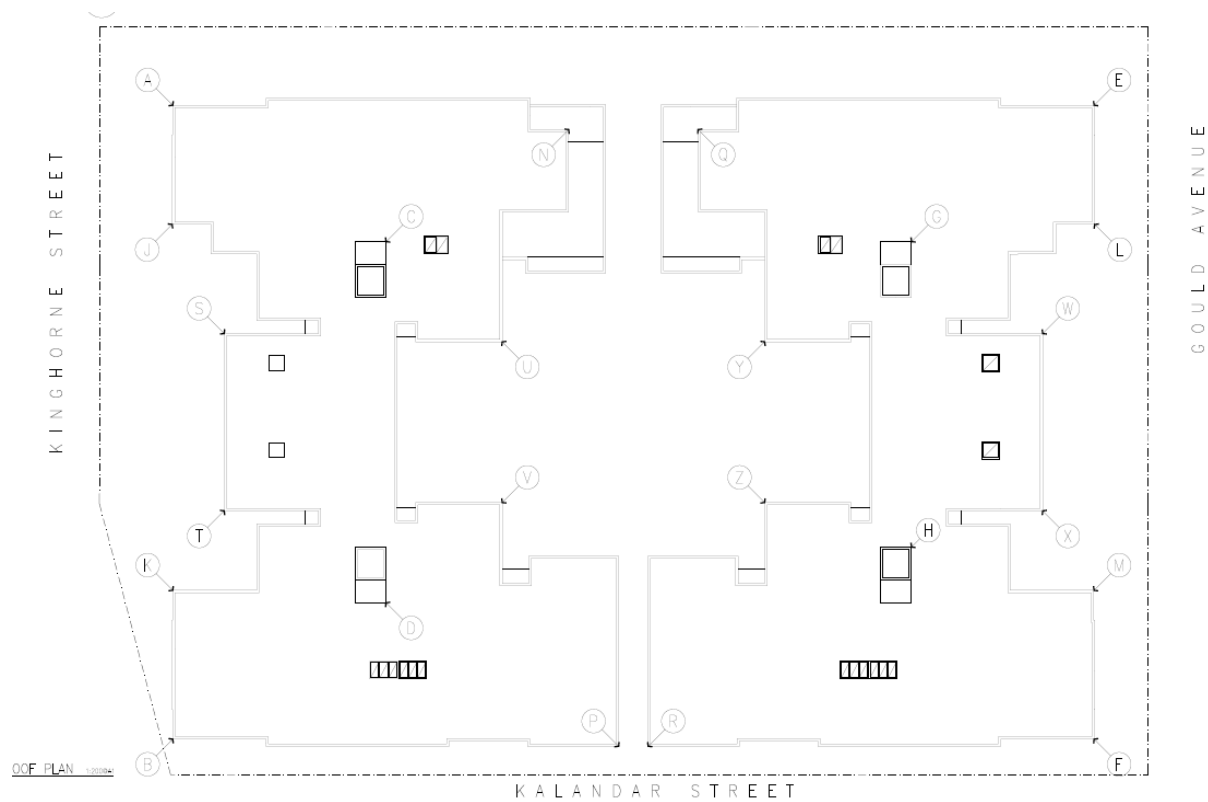


Figure 22 - Roof plan indicating individual points on the roof where the development exceeds the maximum height of buildings development standard. the roof plan relates to the Table 2 below which provides the height exceedance calculations for the individual points identified in the roof plan.

Table 2 – Height exceedance calculations associated the Figure 22 above.

HEIGHT EXCEEDANCE CALCULATIONS

POINT	A	B	C	D	E	F	G	H
NATURAL GROUND RL (m)	30.045	29.675	29.800	29.690	27.420	27.630	28.270	28.350
11M HEIGHT RL (m)	41.045	40.675	40.800	40.690	38.420	38.630	39.270	39.350
PROPOSED RL (m)	41.300	41.300	41.800	41.800	40.700	40.700	41.200	41.200
HEIGHT EXCEEDANCE (m)	0.255	0.625	1.000	1.110	2.280	2.070	1.930	1.850
PERCENTAGE EXCEEDANCE	2.3%	5.7%	9.1%	10.1%	20.7%	18.8%	17.5%	16.8%

POINT	J	K	L	M	N	P	Q	R
NATURAL GROUND RL (m)	30.000	29.860	27.380	27.750	29.470	29.360	29.130	29.300
11M HEIGHT RL (m)	41.000	40.860	38.380	38.750	40.470	40.360	40.130	40.300
PROPOSED RL (m)	41.300	41.300	40.700	40.700	41.300	41.300	40.700	40.700
HEIGHT EXCEEDANCE (m)	0.300	0.440	2.320	1.950	0.830	0.940	0.570	0.400
PERCENTAGE EXCEEDANCE	2.7%	4.0%	21.1%	17.7%	7.5%	8.5%	5.2%	3.6%

POINT	S	T	U	V	W	X	Y	Z
NATURAL GROUND RL (m)	29.930	29.840	29.690	29.670	27.670	27.800	28.930	28.950
11M HEIGHT RL (m)	40.930	40.840	40.690	40.670	38.670	38.800	39.930	39.950
PROPOSED RL (m)	41.300	41.300	41.300	41.300	40.700	40.700	40.700	40.700
HEIGHT EXCEEDANCE (m)	0.370	0.460	0.610	0.630	2.030	1.900	0.770	0.750
PERCENTAGE EXCEEDANCE	3.4%	4.2%	5.5%	5.7%	18.5%	17.3%	7.0%	6.8%

AVERAGE PERCENTAGE EXCEEDANCE	10.0%
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Written Request provided by the Applicant

The applicant has submitted an amended written request to justify the contravention of the development standard pursuant to the requirements of clause 4.6 of SLEP 2014. The third and final version was submitted to Council on 1 April 2019.

Council is required to consider subclauses (3), (4) and (5) of Clause 4.6. Clause 4.6(3) -(5) are extracted from SLEP 2014 below:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (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.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*

- (ii) *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, and*
- (b) *the concurrence of the Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Secretary must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence."*

Council must be satisfied that clause 4.6(4)(a)(i) and (ii) have been addressed prior to the grant of development consent.

The first step in satisfying clause 4.6(4)(a)(i), is to consider whether the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). Subclause (3) requires the following two matters to be addressed:

1. That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)); and
2. That there are sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)). The written request needs to demonstrate both of these matters.

Clause 4.6(3)(a) – Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case

To assess whether compliance with a development standard is unreasonable or unnecessary the Courts have provided guidance in the required assessment, with particular reference to the accepted "5 Part Test" for the assessment established by the NSW Land and Environment Court (L&EC) in *Wehbe v Pittwater Council* [2007] NSWLEC 827 the principles outlined in *Winten Developments Pty Ltd v North Sydney Council* [2001] NSWLEC 46 and further clarified by *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. The "5-part Test" is outlined as follows:

1. The objectives of the development standard are achieved notwithstanding noncompliance with the standard.
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.
4. The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.
5. The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.

The "5-part Test" and the applicants response the separate tests is provided below:

Test 1. *The objectives of the development standard are achieved notwithstanding noncompliance with the standard.*

This single test relied upon by the applicant to demonstrate that the that compliance with the standard in the circumstances of the case would be unreasonable or unnecessary. The applicant's position is extracted from their Clause 4.6 Variation Report below:

1. *The submitted urban design assessment report verifies that the building proposed is compatible with the height bulk and scale of the existing and desired future of the locality. The information provided with the development application verifies that;*
 - *The arrangement of the development on the site, occupying the full block width, together with the site orientation, ensures that no overshadowing, significant view loss, or other amenity impacts arise out of the proposed height exceedance. In addition, the absence of nearby development on Kalendar [sic] Street at a comparable height, together with its generous street width, means that the additional height will be imperceptible to most people using Kalendar [sic] Street (where the exceedance is at its highest).*
 - *The proposed development addresses this emerging neighbourhood character and desired future character by:*
 - *Providing a greater number of dwellings in order to address housing growth and in recognition of the site's location west of the Princes Highway and approximately 800m south of the CBD within the existing urban area providing access to a wide range of services, community facilities and shopping*
 - *Responding to the site's location at the edge of the identified urban consolidation areas (particularly Nowra CBD South) and at one of the area's more significant intersections by accentuating this significant corner with a larger and appropriately scaled development in keeping with the scale of development anticipated by the planning controls and by recent planning proposals lodged with Council.*
 - *Providing larger building form reflecting the likely future increasing urban character of the area and helping include a greater diversity of housing types and housing choice in Nowra.*

One of the most significant aspects of the proposed development's fit with its context, and its desired future character arises out of the consolidation of sites so that the development occupies the entire width of the block between Kinghorne and Gould Avenue. This allows for scale relationships and appropriate transitions to lower intensity uses to be effectively managed across the interface of the public streets. These provide a highly effective buffer between different development types, and the result is considered to be a high quality interface.

2. *Further to the above, it is noted that the Shoalhaven Council commissioned the preparation of an 'urban design and SEPP 65 review report' prepared by Kennedy Associates Architects in response to the proposal and to assist with its assessment of the same. The report is dated February 2018. With respect to context and neighbourhood character the report states:*

"In our opinion, the proposed development responds appropriately to both its current and future context and neighbourhood character.

In particular it:

- *provides additional housing, of differing sizes, to fulfil a need identified by several strategic plans*
- *provides the above in close proximity to Nowra CBD and the employment, health and education opportunities it presents*
- *is of an appropriate bulk, scale and design to provide adequate transition between neighbouring developments and zones, both now and in the future (see principle 2 below)*

- *is of a high quality, visually appealing contemporary design, which will set a benchmark for new development in the area"*
3. *The additional height to select portions of the building within site will not result in any additional density. Therefore, the height variation is not attributed to any additional density on the site but rather a direct response to the specific topography and to achieve a better outcome for end users of the development – that is a building with a logical arrangement and finished level at the ground floor. To explain this point further, it would have been possible to arrange the same number of apartments within the development in a different way, or, excavate a deeper basement towards the eastern end of the site to ensure compliance with the 11m height limit. This however would have created more problems than it solved as:*
 - *With the basement being deeper this would have led to increased excavation, likely uneven basement floors and longer more intrusive vehicle access ramps – all of which would have resulted in a loss of car parking.*
 - *Uneven floor levels between buildings would create issues and complications with respect to producing a logical and user-friendly ground floor and communal area – particularly with respect to disabled access and considering movement requirements for families with young children, aged, and older persons.*
 - *It would result in the building having an inconsistent built form with no clear benefit.*
 4. *Photomontages have been prepared and submitted with the development application. The photomontages illustrate how the new building will sit within the street and the extent to which it enhances the built environment.*
 5. *The building will not obstruct any important views. Privacy impacts associated with the development have been managed through ensuring compliance with SEPP 65 and the associated ADG. Further to this, the development will not overshadow any adjoining development.*
 6. *Overshadowing studies have been undertaken the results of which have been depicted on shadow diagrams which form part of the architectural plan set. The shadow diagrams demonstrate that the proposal is acceptable with respect to how it impacts on the adjoining residential properties. The diagrams demonstrate that the proposal does not unduly impact on solar access to adjoining properties.*
 7. *The proposal will have no adverse impacts on any heritage items.*

For these reasons is it considered that the proposal meets the objectives of Clause 4.3 of the SLEP 2014.

Test 2. *The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary.*

Not relied upon by the applicant.

Test 3. *The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.*

Not relied upon by the applicant.

Test 4. *The development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable.*

Not relied upon by the applicant.

Test 5. *The zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary.*

Not relied upon by the applicant.

Council's Consideration of the Written request relating to Clause 4.6(3)(a)

The consent authority, must form the positive opinion of satisfaction that the applicant's written request has adequately addressed those matters required to be demonstrated by clause 4.6(3)(a).

The applicant has provided an assessment of the proposed development in accordance with the "5 Part Test" established in the L&EC case of *Wehbe v Pittwater Council* [2007] NSWLEC 827, to argue that the development standard is unreasonable or unnecessary in the circumstances of the case.

The applicant has principally sought to argue that the 'the objectives of the standard are achieved notwithstanding non-compliance with the standard'. The justification that the application meets the objectives of the development standard has been provided and includes the following justifications:

- The urban design assessment report verifies that the building proposed is compatible with the height bulk and scale of the existing and desired future of the locality.
- Extract from urban design and SEPP 65 review report prepared by Kennedy Associates Architects in response to the proposal
- The additional height to select portions of the building within site will not result in any additional density. Therefore, the height variation is not attributed to any additional density on the site.
- The submitted photomontages illustrate how the new building will sit within the street and the extent to which it enhances the built environment.
- The building will not obstruct any important views.
- Privacy impacts associated with the development have been managed.
- Limited overshadowing or restriction of solar access to adjoining developments.
- The proposal will have no adverse impacts on any heritage items.

The applicant has sought to rely upon the urban design advice, Council's SEPP 65 Urban Design Report prepared by Kennedy and Associates, photomontages and architectural plans to justify compliance with the objectives of clause 4.3. However, the argument has not been satisfactorily made out.

No compelling argument has been provided as to the how the proposed development meets objective 1(a) of clause 4.3 and how the buildings are compatible with the height, bulk and scale of the existing and desired future character of a locality. Most importantly the existing and desired future building heights of development to the south, west and east of the site is likely to remain at 11m in the near term.

Furthermore, the existing height of development in the locality is predominately low scale one and two-storey built forms. The proposed four-storey built form will occupy a predominate corner location which is not considered to represent the existing and desired future height of buildings in the locality.

The identification of the public street (Gould Avenue) as the transitional zone between the development and the lower scale development on the eastern side of Gould Avenue is not a valid argument to justify that the development provides an appropriate transition between the lower scale adjoining development. Gould Avenue should not be considered as representing a buffer between the proposed and existing low scale development.

The development will occupy a prominent location at a key intersection at the southern entry to the Nowra CBD, this prominent location should require a considered approach to the height, bulk and scale of the development to ensure that the existing and desired future character is met. The desired future character of development (particularly to the east of the development) is likely to remain lower in scale and therefore the development should reflect a transition to the lower scale and not an increase in the overall building height, particularly to Gould Avenue frontage.

The applicant's argument that the additional height will not result in additional density is false and misleading. The extent of the non-compliance to the eastern elevation of the development would if compliance was required, remove all apartments on the 3rd level with frontage to Gould Avenue. The removal of these apartments would reduce the overall density of the development and thus the bulk, particularly as the development presents to the Gould Avenue and Kalandar Street frontage.

The applicant's justification that compliance with the height control "*would have created more problems than it solved*" does not take into consideration the potential for the deletion of apartments from the design or other means of achieving compliance with the control whilst maintaining site amenity.

The non-compliance with the height of building development standard is not merely numerical at the eastern elevation (2.32m) and would require a redesign of the development to ensure compliance. Such a redesign would likely result in a reduction in the height, density, bulk and scale of the eastern building.

Furthermore, the applicant's argument as to how the development satisfactorily addresses objective 1(b) of Clause 4.3 has not been explored. In particular, there does not appear to be any justification provided as to how the development will minimise visual impact. The visual impacts of the development have not been considered as part of clause 4.6.

The development will not disrupt views, result in unacceptable privacy or solar impacts.

The development will not conflict with objective (c) of clause 4.3 in relation to the height of the building having regard to the heritage significance of heritage items in the vicinity of the development, that is, the cemetery opposite the development site.

Clause 4.6(3)(b) - Are there Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard?

The consent authority, must form the positive opinion that the applicant's written request has adequately addressed those matters required to be demonstrated by clause 4.6(3)(b).

To demonstrate that there sufficient environmental planning grounds to justify contravening the development standard, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, held that the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. The adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act.

The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient" (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [24]). In [24] of the judgment, Preston CJ outlined the two methods for demonstrating that a Clause 4.6 is "sufficient at paragraph [24] of case as follows:

First, the environmental planning grounds advanced in the written request must be sufficient “to justify contravening the development standard”. The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 at [31].

The applicant’s clause 4.6 variation report provides a written request that seeks to justify that there sufficient environmental planning grounds to justify contravening the development standard. It states:

- a. Careful revision of the submitted plans and diagrams attached to this submission will reveal that the extent of the encroachment is reasonable and limited to only a small portion of the building near Gould Ave.*
- b. The physical form of the building is well articulated and a variety of building materials are proposed to be used in construction. The proposal will enhance the streetscape qualities of the area despite the encroachment made to the 11m height limit.*
- c. The structure will not be visually prominent from any important public places. The height of the structure will be compatible with the existing built environment.*
- d. The origins of the 11m height limit are such that it is a default height limit applied to sites across the City of the Shoalhaven which have no allocated height limit on the SLEP 2014 height of buildings Map. The 11m height limit is therefore not in place for this site as a result of any area specific urban design studies or assessments undertaken by the Council. In this regard, there are no documented urban design or planning reasons for the strict imposition of an 11m height limit for the subject land.*
- e. Considering d) above, Urbanac (urban design experts) were engaged to provide advice to the design team and prepare an urban design report to assess the appropriateness of the proposal and the potential for the building to be granted consent despite the encroachment to the applicable 11m height limit. The Report prepared by Urbanac supports the proposed height of the new building in urban design terms for reasons including:*
 - It allows the building to maintain a consistent built form, with accessible internal circulation (strict compliance would result in a stepped building interior circulation with associated equitable accessibility issues for no clear benefit)*
 - The scale of the building has been well managed through the deep articulation of the building frontages on the east and west elevations and the proposed perimeter landscape design*
 - There are no overshadowing, or significant view loss or other amenity impacts arising out of the proposed height exceedance*
 - The Kalandar Street environment has no nearby buildings at a comparable height, and a generous street width, which means that the additional height will be imperceptible to most people using Kalandar Street.*
- f. One way of achieving compliance would be to have the offending building / part of the development cut into the site further. The benefits of this (i.e. achieving full compliance with the height limit) are outweighed by the disadvantages which would include increased excavation, a deeper basement, and uneven building floor levels. Further to*

this, no neighbouring properties would benefit in terms of noticeable reduced impacts with respect to overshadowing / solar access.

- g. The structure will not be visually prominent from any important public places. The height of the structure will be compatible with the existing built environment.*
- h. The extent to which to the building is expected to overshadow adjoining properties as a result of the encroachment is minimal. Detailed shadow diagrams have been submitted in this regard which show the building does not impact on adjoining dwellings in terms of overshadowing.*
- i. The site of the development adjoins only a motel building which is of commercial scale at the northern boundary of the development site. All other property boundaries are road / street frontage boundaries. The development therefore does not immediately adjoin any low density residential development and roads separate the site from nearby residential areas. Kinghorne St is characterised by commercial development and the opposite side of Kalendar St is undeveloped land and a cemetery. The point to be made here is that the site is well separated from low density residential development and as such, ordinary sensitivities to increased building heights in a low density residential context do not impact as significantly on the redevelopment of the subject land.*
- j. Land in the immediate locality has recently been the subject of a Planning Proposal to, in part, increase the height of buildings provisions to 14m. The supporting material for this proposal included a development application for the construction of a 4 storey residential apartment building. This land is located on the corner of Albatross Road and Kinghorne St, diagonally opposite the site.*
- k. The proposal if approved will not set an undesirable precedence. Further it is assessed that the Council ought to be satisfied that the proposal is within the public interest because it has been demonstrated that it is consistent with the objectives of Clause 4.3 and the objectives of the R3 zone.*
- l. The proposal if approved, will not result in any inconsistencies with other environmental planning instruments or the objectives of the R3 zone as outlined within the SLEP 2014.*
- m. The proposal remains consistent with the objectives of Clause 4.3 as outlined above;*

The applicant's written request does not adequately address those matters required to be demonstrated by clause 4.6(3)(b). The applicant's written request fails to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard for the following reasons:

- The justifications provided do not go toward grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s 1.3 of the EPA Act as outlined by Preston CJ in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118;
- The applicant has provided no assessment of the proposed contravention against the objects in s 1.3 of the EPA Act;
- The "environmental planning grounds" identified go largely toward the development as a whole and not the contravening elements of the development; and
- The proposal fails to promote the objects of the EPA Act, namely: the orderly and economic use and development of land (Section 1.3(c)), and good design and amenity of the built environment (Section 1.3(g)).

Council cannot be satisfied that the written request has adequately addressed those matters required to be demonstrated by clause 4.6(3)(b). The requirement to demonstrate that there

are sufficient environmental planning grounds to justify contravention has not been thoroughly explored by the applicant.

Clause 4.6(4)(a)(ii) – Will the Proposed Development be in the Public Interest Because it is Consistent with the Objectives of the Particular Standard and Objectives for Development within the Zone in Which the Development is Proposed to be Carried Out?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless 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.

Pursuant to the provisions of the SLEP 2014, the land is zoned R3 – Medium Density. The objectives of this zone are as follows:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To provide opportunities for development for the purposes of tourist and visitor accommodation where this does not conflict with the residential environment.*

The proposal is not inconsistent with the relevant objectives of the R3 – Medium Density zone and will provide:

- *...for the housing needs of the community within a medium density residential environment; and*
- *...a variety of housing types within a medium density residential environment.*

The proposal is not in the public interest as the development is inconsistent with the objectives of the development standard, despite the development being consistent with the land use objectives of the R3 zone.

The identified departures proposed within the development to SLEP 2014 demonstrate the development has not been properly considered for the site, given the site constraints and opportunities. The written request fails to demonstrate that there are sufficient environmental planning grounds to justify contravention of the development standard. The proposal fails to promote key objects of the EPA Act as follows

- the orderly and economic use and development of land (Section 1.3(c)), and
- good design and amenity of the built environment (Section 1.3(g)).

Consequently, the applicant's written submission under clause 4.6 is not in the public interest under clause 4.6(4)(a)(ii) and is not supported.

Clause 4.6 (b) – Concurrence of the Secretary has been obtained

Sydney district and regional planning panels may also assume the Secretary's concurrence. (PS18-003.)

Clause 4.6 (5) – Decision to grant concurrent

Specific clauses must be considered. See below.

Clause 4.6(5)(a) - Would Non-Compliance Raise any Matter of Significance for State or Regional Planning?

The non-compliance with the maximum building height development standard will not raise any matter of significance for State or regional environmental planning.

Clause 4.6(5)(b) - Is There a Public Benefit of Maintaining the Planning Control Standard?

In the judgement of *Ex Gratia P/L v Dungog Council* [2015] (NSWLEC 148), Commissioner Brown of the NSW LEC outlined that the question that needs to be answered in relation to the application of clause 4.6(5)(b) is “*whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development*”.

The applicant has failed to demonstrate that there will be better planning outcomes achieved through variation to the height standard as opposed to strict compliance with the development standard or amending the application to reduce the extent of the variation.

Clause 4.6(5)(c) - Are there any other matters required to be taken into consideration by the Secretary before granting concurrence?

There no other matters required to be taken into consideration by the Secretary before granting concurrence.

Summary and conclusion with regard to clause 4.6

The Clause 4.6 variation request does not adequately explore the issues. It is problematic for the follow reasons:

- It does not demonstrate that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;
- Does not demonstrate there are sufficient environmental planning grounds to justify the contravention, which results in a better planning outcome than a strictly compliant development in the circumstances of this particular case;
- Does not demonstrate the development meets the objectives of the development standard; and
- Does not demonstrate that the proposed development is in the public interest and there is no public benefit in maintaining the standard.

Part 5 Miscellaneous provisions*Clause 5.9 Preservation of trees and vegetation*

The objective of this clause is to preserve the amenity of the area, including biodiversity values, through the preservation of trees and other vegetation.

The Biodiversity Conservation Act 2016 (BC Act), the Local Land Services Act 2013 (LLS Act) and State Environmental Planning Policy – Vegetation in Non-Rural Areas (Vegetation SEPP) commenced on 25 August 2017. The Vegetation SEPP repealed clauses 5.9 and 5.9AA of the Standard Instrument.

Granted that the application was lodged prior to the coming into force of the above legislation Clause 5.9 still applies to the application in accordance with Clause 26(2) of the Vegetation SEPP.

Clause 5.10 Heritage Conservation

The objectives of this clause are as follows:

- (a) to conserve the environmental heritage of Shoalhaven,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,*
- (c) to conserve archaeological sites,*
- (d) to conserve Aboriginal objects and Aboriginal places of heritage significance.*

The subject site is not identified as a heritage item or within a heritage conservation area under Schedule 3 of SLEP 2014. It is noted that the development site is opposite and nearby an item of local heritage significance under Schedule 3 of SLEP 2014, the item is listed as Item 361 - Nowra General Cemetery.

The development is consistent with the objectives of the heritage provisions in that does not directly or indirectly adversely impact on the cemetery.

The application was referred to Council's Heritage Adviser –, for comment on the application. No concerns were raised in relation to the potential for the development to impact upon the local item.

Part 7 Additional local provision*Clause 7.1 Acid Sulfate Soils*

It is unlikely that the proposed works would disturb, drain or expose acid sulfate soils to the atmosphere to cause environmental damage.

The subject works are proposed to be undertaken on Class 5 acid sulphate soil. The works would not involve disturbing the earth at a depth of 5 metres or the lowering of the watertable.

Clause 7.2 Earthworks

Given that limited preparatory earthworks may be undertaken to achieve a level development area, the proposed development would not result in any additional earthworks requiring separate consent.

Clause 7.11 Essential Services

The subject site has access to all essential services. All services are to be augmented as required. Endeavour Energy has raised no concerns with the application and Shoalhaven Water have issued their Notice of Approval to the application.

i) Draft Environmental Planning Instrument

The following draft EPIs are relevant to the subject site:

- Draft State Environmental Planning Policy (Environment) 2017
- Draft State Environmental Planning Policy (Remediation of Land)
- Draft State Environmental Planning Policy (Primary Production and Rural Development).

There are no additional matters for consideration raised as a result of the above draft EPIs.

ii) Any Development Control PlanShoalhaven DCP 2014

Generic Chapters
G1: Site Analysis, Sustainable Design and Building Materials in Rural and Coastal Areas
<p>5.1 Stormwater</p> <p>5.1.1 Minor and Major Systems Design</p> <p>Proposed: Stormwater design is provided by Jones Nicholson Pty Ltd in accordance with the requirements in this chapter. The development has been design to cater for a 10 year ARI. Runoff from impervious areas must not be directed onto neighbouring properties. Runoff from roof gutters and downpipes can be directed to an existing stormwater system with some provision to store 5,000 litres.</p> <p><u>Comment:</u> Subject to Council's Development Engineer recommended conditions of consent, as amended.</p> <p>5.1.2 Climate Change Controls</p> <p><u>Comment:</u> Noted. No concerns raised by Council's Development Engineer.</p> <p>5.1.3 Onsite Stormwater Detention (OSD)</p> <p>Proposed: OSD has been sized to match pre-development peak rates for the 5, 20 and 100 yr ARI events. Pre and post-development peak flow calculation must be based on the impervious percentage. Detention storage is located above the 5 year ARI.</p>

Comment: Council's Development Engineer recommended conditions of consent to address OSD for the development and management of systems to ensure capacity is maintained. Details have been provided for the basement pump out tank.

5.2 Stormwater Reuse

Proposed: Subject to Council's Development Engineer recommended conditions of consent.

5.3.1 Erosion and Sediment Control

Proposed: The application is supported by Environmental Site Management Plan prepared by Jones Nicholson Pty Ltd (D18/391133 and D18/391135).

Comment: Council's Development Engineer recommended conditions of consent for a detailed erosion and sediment control plans and soil and water management plan prepared in accordance with Managing Urban Stormwater: Soils and Construction, Volume 1, 4th Edition (Landcom 2004) (Blue Book).

5.3.2 Stormwater Retention – General

Comment: Complies, subject to Council's Development Engineer recommended conditions of consent.

5.3.3 large scale development – Site Discharge Index

Comment: Complies, subject to Council's Development Engineer recommended conditions of consent.

G3: Landscaping Design Guidelines

5 Controls

A1.1 Existing trees and landscape elements which make a positive contribution to the character of the area should be retained and integrated into the redevelopment of the land. Proposals to remove existing trees and landscape elements must propose suitable landscaping to retain streetscape character.

Comment:

The application includes a request for the removal of five (5) trees in accordance with the submitted landscape plans. The applicant has addressed the objectives under this Chapter and the species proposed to be removed are not a listed threatened species.

Suitable landscaping is proposed and subject to recommended conditions of consent.

A2.1 For development other than a new dwelling house, alterations and additions to a dwelling house or a dual occupancy, landscaping must be in accordance with an approved landscape plan for the site, prepared by a qualified landscape architect or designer. The plans should meet the performance criteria and show:

- The street reserve, carriageway, parking bays, footpaths, cycleway systems, street lighting and driveways;
- Existing vegetation and proposed general character of tree planting and landscape treatment (including proposed species);
- Existing trees and significant vegetation on the site and identify those to be retained and those proposed to be removed;

- General arrangement of hard landscaping elements and major earth cuts, fills and mounding;
- Indicative treatment of any floodway and drainage lines; and
- General information on fencing, access points furniture, pavement materials and on-going maintenance requirements.

Comment: The submitted plan is satisfactory in this regard.

A3.1 A landscape plan must be submitted with the development application illustrating the following landscape principles:

- The location, height and species of all existing and proposed vegetation;
- Methods employed to minimise soil erosion; and
- Cross section through entire site indicating major level changes, existing retained and proposed landscaping that demonstrates the proposed finished landscape (hard and soft).

Comment: The submitted plan is satisfactory in this regard. There are no major level changes.

G4: Removal and Amenity of Trees

The application includes a request for the removal of five (5) trees in accordance with the submitted landscape plans. The applicant has addressed the objectives under this Chapter and the species proposed to be removed are not a listed threatened species.

The trees to be removed are to be replaced by compensatory landscaping to all boundaries.

G7: Waste Minimisation and Management Controls

5 Controls

A.1.1 A waste minimisation and management plan are submitted with the development application in accordance with Council's Waste Minimisation and Management Guidelines 2009.

Comment: The applicant proposes to demolish the existing dwellings on the site via a complying development certificate application prior to construction works commencing.

Should the application be approved a requirement for the preparation of a WMMP could be conditioned to be provided prior to the issue of a Construction Certificate for the development.

On-going waste management is proposed to be managed through the provision of 4 dedicated garbage rooms located within the basement. These rooms can be serviced by local waste contractors and the access arrangements proposed to enable this is suitable. In this regard, the location of the waste rooms and the design of the basement is such that trucks can enter and safely maneuver on site to collect rubbish.

Each garbage room can accommodate approx. 5 x 1100 litre bins. The frequency of servicing of the building will be negotiated with the contractor.

Council's Waste Services Section has considered the proposed on-going waste management arrangements and determined them to be acceptable subject to recommended conditions.

G13 Medium Density and Other Residential Development

This Chapter applies to land where dual occupancy, multi-dwelling housing, multi-dwelling housing (terraces), attached dwellings, semi-detached dwellings, manor houses, integrated

housing development, residential flat buildings, shop top housing, seniors housing, boarding houses, group homes and hostels are permissible with development consent

6 Residential Flat Buildings and Shop Top Housing

A32.1 The development is designed in accordance with *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guide.

A33.1 Only one telecommunications/TV antenna will be permitted per building. Where possible, common antennas shall be utilised.

Comment:

TV Antenna design and location can be imposed as a condition of consent if the application were recommended for approval.

G21: Car Parking and Traffic

5.1 Car Parking Schedule

Part 3J of the Apartment Design Guide applies to the subject site.

Nowra is a Regional Centre under Part 3J of the Apartment Design Guide. SEPP 65 developments within Regional Centres on land zoned and sites within 400m of land zoned B3, B4 or equivalent in a nominated regional centre are to comply with the parking requirements as set out in the RTA Guide to Traffic Generating Developments, or the car parking requirements of the Council, whichever is less.

In this instance, the RTA Guide to Traffic Generating Developments requires less parking than the parking requirements prescribed by the Council. The RTA Guide therefore sets the applicable minimum parking requirements for the development.

The RTA Guide to Traffic Generating Development indicates that for residential flat buildings containing more than 20 units, a total of:

- 0.6 spaces are required per 1 bedroom unit,
- 0.9 spaces are required per 2 bedroom unit and
- 1.4 spaces are required per 3 bedroom unit.
- Visitor parking is required at a rate of 1 space per 5 apartments.

The applicant proposes the following unit mix within the two apartment buildings:

- 4 x studio apartments;
- 16 x one-bedroom apartments;
- 45 x two-bedroom apartments; and
- 26 x three-bedroom apartments.

On this basis the following car parking is required as a minimum:

Studio and 1 bedroom	$20 \times 0.6 = 12$ spaces
2 bedroom	$45 \times 0.9 = 40.5$ spaces
3 bedroom	$26 \times 1.4 = 36.4$ spaces
Visitors	$91 \times 0.2 = 18.2$ spaces

TOTAL REQUIRED 107 spaces

A total of 140 car parking spaces have been provided under the proposed development. This is 33 more car parking spaces than required under current policy settings.

The design of the basement proposes the use of stacked parking. The stacked parking will be allocated to the 3-bedroom apartments that are allocated two car parking spaces.

Chapter G21 allows for stacked parking as detailed in Section 5.2. Section 5.2 specifies that stack parking of vehicles is acceptable if part of a mixed-use, commercial, managed residential development or a mix of these uses with a management plan in place. The stacked parking will be allocated to certain 3-bedroom units that will be occupied by related persons.

The Traffic Impact Assessment prepared by Jones Nicholson dated 27 April 2018 outlines the management arrangements as follows:

Management of the stacked parking arrangements is therefore summarised as follows:

- *Residential parking within the basement will be allocated to individual residential units;*
- *Stacked parking spaces will be allocated to 15 of larger units;*
- *As the stacked parking spaces will be occupied by related persons sharing a dwelling, management of these spaces will be a private matter.*

5.2 Traffic

P1 To ensure new development:

- *can be accommodated without adverse impact on the surrounding road network.*
- *Does not jeopardise the provision of future network requirements.*

P2 To provide safe and efficient circulation, manoeuvring and parking of vehicles

P3 To minimise potential for pedestrian conflict.

P4 To ensure that a vehicle can enter and leave the parking space in no more than two manoeuvres.

Comment: The development application has been assessed by council's development engineer and traffic unit who have recommended conditions of consent to address traffic movements to and from the site and the intersection of Kalandar and Gould Avenue. The development is considered to meet the objectives and acceptable solutions.

5.3 Parking Layout and Dimensions

Comment: Subject to Council's Development Engineer recommended conditions of consent the parking layout (including staked parking) and dimension are consistent with Chapter G21 and parking spaces shall be designed in accordance with Australian Standard 2890.1 and 2890.2

5.4 Access

Comment: The proposed site entry and exit have been designed to ensure the safe movement of vehicles into and out of the site with minimal impact on Kalandar and Gould Avenue. This has been achieved by rationalising ingress and egress points to only one entry/exit off Gould Street.

Subject to Council's Development Engineer recommended conditions of consent, access to the site is considered to be appropriate.

5.5 Manoeuvrability

Comment: Internal roadways are designed to relevant standards and provide sufficient room for the maneuvering of a vehicle.

Subject to Council's Development Engineer recommended conditions of consent the development is capable of achieving internal maneuverability for B99 vehicle and waste service vehicles entering the basement.

5.6 Service Areas

Comment: A loading bay is considered necessary for the proposed development and has been provided for site maintenance and service, with sufficient space on site for loading and loading of delivered goods.

5.7 Landscape Design

A9.1 The application must include detailed landscape plans indicating dimensions, levels and drainage, existing vegetation as well as location, type and character of proposed plantings.

Comment: Satisfied. Plans included.

A10.1 Perimeter planting to screen the proposed car park is to be defined in your landscape plan. The minimum width of perimeter planting is 3m and 1m for driveways.

Note: Council may consider a reduction in the minimum width of perimeter planting around car parks on smaller sites from 3m to 1m where it can be justified by the applicant that the reduction in landscaping will not create any adverse impacts on surrounding development/amenity.

Comment: the proposed landscaping is considered to be generally consistent with this acceptable solution.

A10.2 Internal plantings of car parking areas are to be of a nature to shade cars and soften the impact of hard paved surfaces without obscuring visibility.

Comment: Satisfied.

A10.3 Consideration should also be given to the types of trees planted within car parks. Plants which have a short life, tend to drop branches, gum or fruit or plants which interfere with underground pipes are not suitable for car parks.

Comment: Noted.

A10.4 Car parks should be located to complement existing streetscape qualities. Consideration should be given to the streetscape qualities of the locality and the possibility of locating a car park to the rear of a site, or the provision of suitable landscaping to minimise any visual intrusion.

Comment: Satisfied. Suitable landscaping is to be provided.

A10.5 Consideration should be given to incorporating stormwater control measures in the design of landscaped areas, to control and reduce the level of stormwater which enters Council's stormwater drainage systems.

Comment: Stormwater control measures are proposed to be incorporated.

A11.1 Planting is to be designed appropriately so as not to impact upon minimum sight distance requirements (at access points, intersections, and around curves), clearance requirements (horizontal and vertical), and clear zone requirements.

Comment: Satisfied.

5.8 Drivers with a disability

Comment: Adaptable car parking spaces are provided in accordance with Chapter G21 and AS/NZS 2890.6-2009 Off-street parking for people with disabilities.

5.9 Construction Requirements

Comment: Subject to Council's Development Engineer recommended conditions of consent, as amended.

5.10 Design of Driveways

Comment: Subject to Council's Development Engineer recommended conditions of consent, as amended.

iiia) Any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4

There is no planning agreement that relates to the subject site.

iii) Environmental Planning and Assessment Regulation 2000

There are no relevant considerations.

iv) Any coastal zone management plan

There is no relevant coastal management plan that relates to the subject site.

Shoalhaven Contribution Plan 2010

In accordance with the Shoalhaven Contribution Plan 2010 (the Plan) *authorises the imposition of contributions on development at the subdivision or consolidation of the land stage where subsequent development demands the provision of community infrastructure. The total development contribution imposed will depend on:*

- *whether the development type generates a need for community infrastructure items (refer to Schedule 5);*
- *size of the development (i.e. how many Equivalent Tenement (ETs) is generated) (refer to Section 3.11);*
- *the location of the development site and whether the site is included in a contribution project catchment (refer Schedule 1 and Schedule 2);*
- *the monetary contribution rate pertaining to contribution projects that relates to the development and the development site (refer to Schedule 4).*

A contribution is payable in relation to the residential flat building unless otherwise exempt by Section 2.7 of the Plan.

The proposed development is considered to increase the demand for community facilities in accordance with the Shoalhaven Contributions Plan 2010 (the Plan). The development is most aptly characterised as a residential flat building for the purposes of calculating contributions under the Plan.

Were the application recommended for approval development contributions for the development are to be in accordance with the table and calculations provided below:

Section 94 ET Calculations - RA17/1002 (UPN: 0)

Close Reset Print Return Calc

☒ Residential ☐ Non-Residential

Calculation Type: Medium Density/Dual Occupancy

Medium Density/Dual Occupancy

Proposed:

20	1 Bedroom Units
45	2 Bedroom Units
26	3 Bedroom Units
0	4 Bedroom Units

Existing:

5	Lots/Dwellings
0	1 Bedroom Units
0	2 Bedroom Units
0	3 Bedroom Units
0	4 Bedroom Units

Total ETs: 50.8

Project	Description	Rate	Qty	Total	GST	GST Incl
CW AREC 2004	Synthetic Hockey Field Facility	\$81.98	50.8	\$4,164.58	\$0.00	\$4,164.58
CW CFAC 0003	Shoalhaven City Arts Centre	\$36.89	50.8	\$1,874.01	\$0.00	\$1,874.01
CW CFAC 0004	Shoalhaven Mobile Childrens Services	\$12.21	50.8	\$620.27	\$0.00	\$620.27
CW CFAC 0005	Shoalhaven Multimedia & Music Centre	\$12.13	50.8	\$616.20	\$0.00	\$616.20
CW CFAC 0006	Shoalhaven City Library Extensions	\$321.54	50.8	\$16,334.23	\$0.00	\$16,334.23
CW FIRE 2001	Citywide Fire & Emergency services	\$133.68	50.8	\$6,790.94	\$0.00	\$6,790.94
CW FIRE 2002	Shoalhaven Fire Control Centre	\$195.57	50.8	\$9,934.96	\$0.00	\$9,934.96
CW MGMT 3001	Contributions Management & Administration	\$555.90	50.8	\$5,247.08	\$0.00	\$5,247.08
CW OREC 2001	Embellishment of Icon and District Parks and Walking Tracks	\$238.89	50.8	\$12,135.61	\$0.00	\$12,135.61

Sub Total: \$57,717.89
 GST Total: \$0.00
 Estimate Total: \$57,717.89

Nowra Bomaderry Structure Plan 2008

The site is located within the existing 'living areas' under the Structure Plan with the potential for the consolidating residential development within the Nowra CBD fringe. Residential land within 800m south of the Nowra CBD has been identified as having the potential to increase population living in close proximity to Nowra centre.

The Structure Plan does highlight the importance of transition between areas. Page 8 of the structure plan identified that *"it is important to achieve transition between areas, such that intensive built form within the central Nowra steps down in building size and scale to detached housing and eventually to the non-urban edge of the town"*.

While the application is broadly consistent with the Structure Plan as it relates to the consolidation of residential development in close proximity to the Nowra CBD it is not considered that the development provides an appropriate transition in the built form between the intensive built form of the residential flat building and low density detached housing that adjoins the development.

(b) The Likely impacts of that development, including environmental impacts on the natural and built environments, and social and economic impacts in the locality

Head of Consideration	Comment
Natural Environment	The development is unlikely to have any significant adverse impacts. Trees are to be removed however landscaping is to be included in the new development.
Built Environment	<p>The site benefits from 3 street frontages.</p> <p>The development takes advantage of these frontages by reducing the setbacks to these frontages to the minimum having regard to access and landscaping on the eastern portion of the site. In addition, the height is maximised.</p> <p>The entire development protrudes above the 11m maximum, albeit that the protrusion is relatively minor at the western portion with a maximum of 2.32m on the eastern side of the development.</p> <p>The site also departs from the ADG requirements. These departures are minor.</p> <p>Cumulatively, and having regard to the site characteristics and regional context of the development, it is concluded that there are no substantive planning reasons which prevent compliance.</p> <p>The aesthetics of the building are satisfactory however the building could be modified having regard to the regional context and desired future character which includes a 11m height which is equivalent to 3 storeys.</p>
Social Impacts	The development has the potential to have a positive contribution through the provision of a mix of unit types within walking distance (800m) of the Nowra CBD.
Economic Impacts	Construction jobs will potentially be 'created'.

(c) Suitability of the site for the development

The site is zoned R3 Medium Density zone which permits residential flat buildings among a range of other uses. The site is considered to be suitably located, proximate to the public transport, and linked to shopping and services.

The site is located within an existing residential area developed with single dwellings. The site is not identified as being encumbered by any potential constraints or natural hazards.

Whilst the site is suitable to this *type* of development, the scale of the development is of concern, notably height. Having regard to this specific proposal, the site is unsuitable.

(d) Submissions made in accordance with the Act or the regulations

As mentioned previously, this DA has been exhibited in accordance with Council's *Community Consultation Policy for Development Applications (including subdivision) and the Formulation of Development Guidelines and Policies*.

No submissions were received by Council.

(Note: due to the minor nature of the applicant's amended plans received on 13 May 2015, it was not deemed that the application required re-notification.)

(e) The Public Interest

The development has been assessed against state and local environmental planning instruments, and the development control plan and related guidelines for the Shoalhaven City Council.

The assessment identified the development does not comply with the height control or ADGs. Whilst the numeric departures appear minor, noting the regional context, nature of the site and opportunities available (3 street frontages), the proposal could be adjusted to achieve compliance and therefore initiate the foreshadowed character of the area, being effectively 3 storey developments.

Accordingly, the proposal is not considered to be in the public interest.

8. RECOMMENDATION

This application has been assessed having regard for Section 4.15 (Matters for consideration) under the EPA Act. As such, it is recommended that Development Application No. RA17/1002 be refused.

Accordingly, Shoalhaven City Council as the assessment authority recommends development application RA17/1002 be refused for the following reasons:

- (i) Non-compliance with SEPP 65 in relation to the Apartment Design Guide (s4.15(1)(a)(i) of the EPA Act);
- (ii) The applicant's written request to vary the height of building development standard under clause 4.3 of SLEP 2014 has not adequately addressed both of the matters required to be demonstrated by cl 4.6(3)(a) and (b) of SLEP 2014 (s4.15(1)(a)(i) of the EPA Act);
- (iii) The development is likely to have adverse impacts on the built environment (s4.15(1)(b) of the EPA Act); and
- (iv) The site is not suitable for the development as proposed (s4.15(1)(c) of the EPA Act).
- (v) The development is not in the public interest (s4.15(1)(e) of the EPA Act).