

17NEW0161

Wednesday, 19 December 2018

Salli Pendergast
Principal Development Planner
Central Coast Council
P.O. Box 20
Wyang NSW 2259

Dear Salli,

**Re: DA 44/2018 (JRPP reference 2018HCC004) - Response to Request for Further Information
6-10 Dunleigh Street, Toukley (Lots 4, 5 & 6 Deposited Plan 22986)**

I refer to the outcomes of the Hunter and Central Coast Regional Planning Panel meeting held on Wednesday 21 November, 2018. The determination of the application for 34 affordable housing units at 6-10 Dunleigh Street, Toukley, was deferred subject to the resolution of two matters.

Responses to the two matters are discussed in Enclosure 1, following. This Enclosure and accompanying plans are believed to address the matters of concern to the Panel. We submit this information for Council's consideration, and to allow the final determination of the application by the Panel. We request that Council forward this for the Panel's consideration and determination at the earliest opportunity.

Should you have any queries relating to these matters, please do not hesitate to contact the undersigned.

Yours sincerely,



Kirsty Tepper
Principal Planner – Social and Economic
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Enclosures



1 Amendment to Plans

The Panel requested that the applicant provide revised plans to address the pedestrian link to communal open space, relocation of storage cages from the western wall of the car park, and allocation of storage to within the building footprint. The plans have been revised accordingly, and are contained within Attachment 1 for the Panel's consideration. The Panel's requests, and the applicant's response, are outlined below.

Revised plans that:

(a) provide a direct and safe pedestrian link between the development and the communal open space and community garden;

The Ground Floor Plan (SK-101, issue G, refer to Attachment A) has been revised to provide a raised pedestrian access walkway to the common open space area. This pedestrian crossing will be a marked crossing as shown on the revised plan. It provides access from the ground floor lobby, through the car park, directly to the open space via a doorway in the western wall of the ground floor car park. This is believed to satisfy the concerns of the Panel, providing a direct and safe pedestrian link to the communal open space and community garden.

(b) remove the storage cages adjacent to the western-most car parking spaces to allow for access and also to enable passive surveillance for the full length of the communal open space and community garden; and

As requested, the storage cages previously located to the rear of each parking space have been removed. The western wall of the ground floor parking area has been modified to provide permeable construction and an additional two access points (total of three) to the common area and community garden. Retaining pedestrian access from the driveway, additional access points have been provided:

- via the waste collection area, to /from Tamar Avenue, and
- through the centre of the car park, via a raised and marked pedestrian walkway as described above.

The construction of the western car park wall will comprise timber / timber look batten screens, as pictured in Figure 1, below. This material provides the ability for passive surveillance for the common open space and community garden, and for the car park. The walkway traversing the common open space area has been relocated adjacent to the western car park wall and will assist in increasing passive surveillance of the car park from the open space. Bicycle lockers are still provided, and have been moved back from the western car park wall to enable greater permeability.





Figure 1 Timber batten screen

(c) revise the ground floor plan layout to provide the required storage within the footprint of the building as proposed.

As requested, plans have been revised to relocate the additional storage to within the building footprint. Page 52 of Council's assessment report also noted that the storage provided within the car park was not allocated to units, and would be difficult to access if the parking space was occupied.

The revised design of ground and subsequent floors, contained in Attachment A, has relocated the storage to the nominated areas on the ground and subsequent floors, shown hatched on the revised plans. External storage is contained within foyer areas on each floor, and can be easily accessed. Storage areas will be designated to each unit, to comply with the Apartment Design Guidelines (requiring a total of 8m³ for two-bedroom units and 6m³ for one-bedroom units). At least 50% of the storage for each unit is provided within the unit.

It is considered that the revised plans have addressed each of the matters raised by the Panel in Item 1.

2 Isolated Lot

Concern was raised by the Panel in relation to the proposed development potentially 'isolating' 14 Tamar Avenue. The Panel requested at 2:

Further information to address the isolation of the adjoining site at 14 Tamar Avenue, including demonstration of a reasonable development outcome in accordance with the Council's planning controls, or alternatively to address the Land and Environment Court planning principle on the isolation of sites (Karavellas v Sutherland Shire Council [2004] NSWLEC 251 at 17-19)

This concern had been previously raised by Council in correspondence dated 23 March 2018. An extensive response was provided by Barr Property and Planning by letter dated 20 April 2018. This determined that 14 Tamar Avenue would not be isolated as a result of the proposed development (refer to Section 12 of Barr Property and Planning response provided to Council, dated 20 April 2018, pg. 10ff.). The assessment below is intended to supplement that response, providing assessment of a concept design for the adjoining site at 14 Tamar Avenue and a review of the applicable planning principle.

2.1 Land and Environment Court Planning Principle

In our earlier response, the planning principle established by Commissioner Tuor in her judgement on *Karavellas v Sutherland Shire Council [2004] NSWLEC251* was reviewed and applied to the present development application. The application of the earlier findings of Commissioner Brown in *Melissa Grech v Auburn Council [2004] NSWLEC 40* was also considered. In summary:

- Amalgamation of the sites is not required by the LEP, unlike the case considered by Commissioner Tuor;
- There is no minimum lot size applicable to the site under the LEP, unlike the cases considered by Commissioners Brown and Tuor;
- The applicant is not required to negotiate with the owner of 14 Tamar Avenue to purchase the property, removing the first of Commissioner Tuor's questions from consideration (at 17, "is amalgamation of the sites feasible?");
- The orderly and economic use and development of the separate sites can be achieved in a manner consistent with the planning controls, per Commissioner Tuor (at paragraph 17-19, "can orderly and economic use and development of the separate sites be achieved if amalgamation is not feasible?").

In addition to the summary of previous correspondence above, it is relevant to note that the subject application was lodged on 19 January 2018, following a pre-Development Application meeting with Council on 19 September 2017. This was prior to the approval of the application for an aged care facility at 149-57 Main Road, Toukley (DA 1283/2016). The aged care facility was approved by the Panel on 2 May 2018, and amalgamates 13 lots immediately adjoining 14 Tamar Avenue to the west. Both DA 1283/2016 and the present application were under consideration by Council concurrently. The question of isolation of 14 Tamar Avenue is as relevant to the present application as it was to DA 1283/2016.



The question of isolation of 14 Tamar Avenue must be considered in the context of development within the larger residential block. The property at 161-163 Main Road, consists of existing villas. Subsequent to the approval of the aged care facility and this application, the property at 159 Main Road, Toukley and that at 14 Tamar Avenue will be two smaller holdings located between the existing villas, the approved aged care facility, and the proposed residential flat building. There is also a remaining undeveloped parcel of land located at 165 Main Road with an area of approximately 700m². These properties are shown mapped in Figure 2, below.

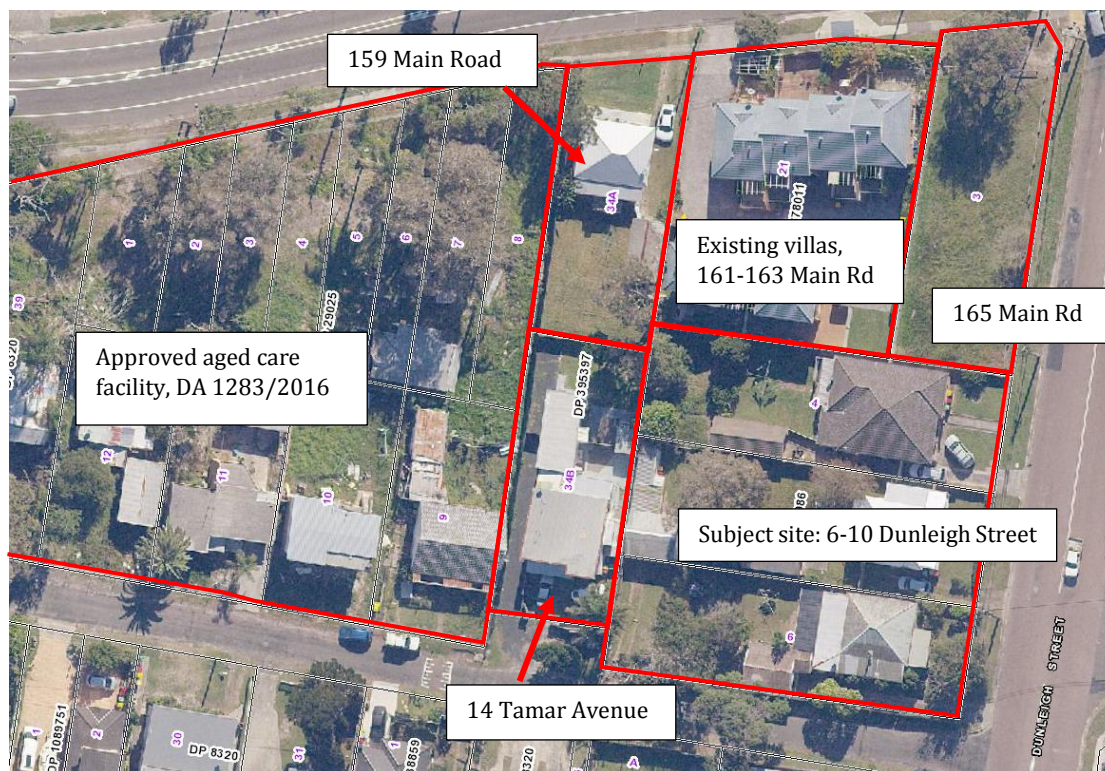


Figure 2 Site and surrounding development

2.2 Development Concept Plans

Subsequent to the points made on 20 April 2018, and further to the deferral by the Panel, consideration has been made of a concept plan for the development of 14 Tamar Avenue. Two options for the development have been considered, both of which are shown on concept plans within Attachment B and outlined below:

- Option 1: 14 Tamar Avenue only (Lot 34B DP 395397), with an area of 599m². Three townhouses of 120m² floor area (60m² footprint), garaging for three cars, two visitor parking spaces.
- Option 2: 14 Tamar Avenue and 159 Main Road (Lot 34A DP 395397), amalgamated, with a combined area of 1175m². Five townhouses of 120m² floor area (60m² footprint), garaging for five cars, four visitor parking spaces.

The concepts contained within Attachment B have been assessed against the relevant planning controls as follows. Both options are believed to provide a “reasonable

development outcome” for the site, and are considered to prevent it being classified as an “isolated lot” under the relevant Land and Environment Court planning principle, as discussed below.

2.3 Wyong Local Environmental Plan 2013

2.3.1 Zoning and Objectives

The site is zoned R3 Medium Density Residential under the LEP. The objectives of the zone are:

- (a) To provide for the housing needs of the community within a medium density residential environment.*
- (b) To provide a variety of housing types within a medium density residential environment.*
- (c) To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- (d) To maintain and enhance the residential amenity of the surrounding area.*
- (e) To encourage amalgamation of existing lots to facilitate well designed medium density development and to avoid unnecessary isolation of lots.*

Objective (e) has greatest relevance to the proposed development and the question of isolation of 14 Tamar Avenue. It is an objective of the R3 zone to encourage amalgamation, for the joint purposes of:

- facilitating well designed medium density development, and
- avoiding unnecessary isolation of lots.

As outlined in the Statement of Environmental Effects and the response to Council dated 20 April 2018, this objective is considered to be satisfied by the application. The application results in the amalgamation of three lots to create the allotment for the proposed residential flat building, which is of a high standard of architectural design. The proposed development is also considered to avoid the unnecessary isolation of lots, as is demonstrated by the architectural concept plans and planning analysis below.

2.3.2 Permitted land uses

The R3 zone aims to provide medium density housing opportunities, as evidenced by the zone objectives. Among the uses permissible within the R3 zone with consent are multi-dwelling housing. This land use is defined by the LEP as:

multi dwelling housing means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building

Whilst a range of other land uses are permissible with development consent, multi-dwelling housing is considered to be the most favourable and achievable outcome for the site. A residential flat building, while permissible with consent in the zone, is considered unlikely to be able to be accommodated on the site along with necessary side setbacks, due to the width of the property (16 metres). With reference to *Melissa Grech v Auburn Council* [2004] NSWLEC 40 (at 44), multi-dwelling housing is characteristic of other existing and approved development in the locality and is considered the development



most likely to occupy the site. Multi-dwelling housing has therefore been considered as the preferred land use, for the purposes of identifying whether the lot is an “isolated lot” in the terms of *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251.

2.3.3 Hazards

The site is not mapped as flood prone and is not located within the level of the Probable Maximum Flood (LEP Map Sheet FLD_019). The site is also not mapped as bush fire prone. Toukley and surrounds, including the site, is located within the Coastal Environment Area and Coastal Use Area as mapped by the Coastal Management SEPP, and future development on the site will be required to consider the relevant provisions of the SEPP.

2.3.4 Local Environmental Plan: Key provisions

Relevant additional controls established by the LEP, including height and floor-to-space ratio, are considered below.

LEP Clause	Control	Can be achieved
4.3 Height	12m maximum height	Yes. The concept is for a two-storey development, likely maximum height 8m.
4.4 Floor-to-Space Ratio	0.9:1	Yes. Option 1: Site area = 599m ² Gross Floor Area = 360m ² FSR = 0.6:1 Option 2: Site Area = 1175m ² Gross Floor Area = 600m ² FSR = 0.5:1
7.11	Key Site Provisions	N/A: The site is identified as a Key Site on the relevant LEP Map. Key site provisions offer bonus height, up to 25m on this site, for development applications lodged prior to 23 December 2018.

Table 1 Wyong LEP 2013: Key provisions

2.4 Wyong Development Control Plan 2013

The relevant chapters of the Wyong Development Control Plan 2013 (DCP) include:

- (1) Chapter 2.4 – Multi Dwelling Residential,
- (2) Chapter 3.1 – Site Waste Management, and
- (3) Chapter 6.1 – Key Sites.

It is noted that the application of the Key Sites provisions under the LEP was limited to development applications lodged 5 years after the making of the plan (23 December 2013). As outlined above, these provisions have therefore not been considered in this submission. Part 6.1 of the DCP, relating to Key Sites, aims:



to provide an overall land use structure and policy framework for the preparation of a site specific DCP Chapter and Masterplan for each of the Key Sites to which the LEP applies.

Therefore, with the impending expiry of Key Sites provisions, these parts of the DCP have also not been considered in the assessment of concept plans for 14 Tamar Avenue. It is noted that Part 6.1, clause 3.13 of the DCP relating to development in the key site “Toukley Caravan Park” aims to “facilitate quality medium density residential housing that contributes positively to the streetscape, taking advantage of lake views, and addresses housing choice”. It is considered that a development of 14 Tamar Avenue in accordance with the attached concept plans would be consistent with this general aim for development on the key site.

Chapter 2.4 of the DCP applies to multi dwelling residential development throughout the (former) Wyong LGA. This DCP chapter aims to protect and enhance the amenity of new and existing residential areas by:

- encouraging the provision of a variety of dwelling types and allowing for innovation in individual design.
- promoting standards of design which achieve functional and aesthetic quality in development,
- encouraging designs of high architectural quality,
- encouraging residential development appropriate to the local area context, and
- promoting sustainable development which is energy and water efficient and offers sufficient protection for the environment.

The development concepts prepared for 14 Tamar Avenue are considered to be generally in accordance with these aims. The table below illustrates the relevant planning controls, associated relevant objectives and the indicative compliance of the development concept.

This assessment is indicative only and is limited to the elements of design that can be assessed at a conceptual level. Any development application for the site would be subject to further detailed assessment against the relevant provisions of the LEP and DCP.

DCP Reference	Development Controls	Compliance
<p>2.4.1.1 Scale</p> <p><i>Good design provides an appropriate scale in terms of the bulk and height that is compatible with the scale of the street and the surrounding buildings. Establishing an appropriate scale requires a considered response to the scale of existing development. In precincts undergoing a transition, proposed bulk and height needs to achieve the scale identified for the desired future character of the area, whilst maintaining the amenity of existing and future residents.</i></p>		
<u>3.2 Site Coverage</u>	25% of ground area to be soft landscaping	<p>Option 1:</p> <p>29% landscaped area including: Unit 1 & 3, each 49.5m² private open space Unit 2, 45m² private open space Side setback 32m Total 176m² soft landscaping Site area 599m²</p> <p>Option 2:</p> <p>32% landscaped area including: Unit 1 & 2, each 45m² Private open space; Unit 3 & 4, each 50m² Private open space Unit 5, private open space plus front setback 70m² Side setbacks 65m² & 62m². Total 386m² soft landscaping Site area 1175 m²</p>

DCP Reference	Development Controls	Compliance
2.4.1.2 Built Form <i>Good design achieves an appropriate built form for a site and the building's purpose, in terms of building alignments, proportions, building type and the manipulation of building elements. Appropriate built form defines and contributes to the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</i>		
<u>4.1 Construction and Appearance of Development</u>	<u>4.1.1 Building Design</u> Developments proposed within Wyong Shire will need to respond sensitively to their context in term of their scale, functionality and sustainability. The development needs to relate well to the public domain and contribute to the local community.	The concept design can achieve good separation from neighbouring proposed and approved buildings, and is unlikely to result in detrimental amenity impacts.
	<u>4.1.2 Roof Design</u>	Roofing may be pitched or skillion, with a range of acceptable pitch due to 12m height provisions and two-storey scale of concept design.
<u>4.3.2 Setbacks for multi-dwelling housing no greater than 2 storeys</u>	Front Setback – 7.5 metres to Main Road; 4.5 metres to Tamar Avenue Side Setback - 0.9 metres Rear Setbacks – 4.5 metres to adjoining Lot 34A (159 Main Road)	Yes. Applicable setbacks shown on concept plans.
<u>4.4 Transport Needs</u>	<u>Resident Parking:</u> <ul style="list-style-type: none"> • 1 Bedroom – 1 Car Space, • 2 Bedrooms – 1.2 Spaces, • 3 Bedrooms – 1.5 Spaces. <u>Visitor Parking:</u> One space per 5 units	Option 1: 4 resident spaces and one visitor space required. Assumed two bedroom units. Compliance achieved. Option 2: 6 resident spaces and one visitor space – 7 required; 9 shown. Assumed two bedroom units. Compliance achieved. Potential to decrease parking by two spaces to allow for circulation and landscaping – subject to detailed assessment.

DCP Reference	Development Controls	Compliance
<u>4.5 Vehicular Access and Design</u>	<p>Objectives:</p> <ul style="list-style-type: none"> To position street vehicular crossings and driveways to minimise adverse visual impact, To use existing rear lanes for vehicular access, To ensure safe entry and exit from the site. 	Yes: Car parking is not located within setbacks, and will be screened from view. One parking space per unit is provided in an enclosed garage. Access can be obtained from a rear lane (Tamar Avenue) rather than Main Road.
<p>2.4.1.3 Amenity</p> <p><i>Good design provides amenity through the physical, spatial and environmental quality of a development. Optimising amenity requires appropriate room dimensions and shapes, access to sunlight, natural ventilation, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, outlook and ease of access for all age groups and degrees of mobility.</i></p>		
<u>6.1.2 Private Open Space</u>	45m ² to be provided per dwelling, at ground level	<p>Yes.</p> <p>Option 1 – Private Open Space for Units 1 and 3 exceeds minimum requirements at 50m².</p> <p>Option 2 – Private Open Space for units 3, 4 and 5 exceeds minimum requirements at 50m², 50m² and 70m², respectively.</p>
<p><u>6.3 Solar Access</u></p> <p>Objectives:</p> <ul style="list-style-type: none"> To provide adequate natural lighting and minimise the need for artificial lighting during daylight hours. To ensure that a minimum standard of solar access is available to private open space areas and internal living areas during the winter solstice to provide 	75% of each required Private Open Space to receive a minimum of 3 hours unobstructed sunlight between 9am and 3pm on 21 June.	<p>Cannot be fully assessed with conceptual plans. Northerly aspect of proposal, and separation of buildings from northern boundary, create potential for good solar access to private open space, particularly if spaced or visually permeable fencing solutions are used.</p> <p>As demonstrated by the solar access plans for the proposed adjacent residential flat building, the site at 14 Tamar Avenue is only overshadowed by the adjacent proposal at 9am on 21 June. By 2pm, development on 14</p>

DCP Reference	Development Controls	Compliance
for a reasonable standard of residential amenity.		Tamar Avenue will cause some overshadowing to the adjoining proposed private open space of the residential flat building. However, both sites can preserve good solar access to private open space in mid winter, due to the north-south orientation of allotments.
<u>6.4 Privacy</u> Objectives: <ul style="list-style-type: none"> To provide and maintain reasonable levels of visual privacy both internally and externally, during day and night. To maximise outlook and views from living rooms and private open space without compromising visual privacy. To ensure a high level of amenity by protecting the privacy of residents both within the apartments and in private open space areas. 	Direct overlooking of internal living areas and private open space to surrounding dwellings shall be minimised by building layout, location and design of windows and balconies and screening devices.	Two storey height will avoid creating any privacy impacts on adjoining residents. Overlooking from proposed residential flat building at 6-10 Dunleigh Street addressed by privacy screening on that site and adequate separation between buildings (10m setback from boundary), as assessed for that development.
<u>6.5 Views</u>	N/A	No views are obstructed by the conceptual design. No visual analysis would be required for the development.
<u>7.0 Services</u> Objective: <ul style="list-style-type: none"> To ensure that all development sites have adequate services to cater for future occupants. 		Access to services has not been investigated for the site.
<u>8.0 Stormwater Management</u> Objective: <ul style="list-style-type: none"> To ensure that land can be adequately drained for the health and convenience 	A stormwater management plan would be required.	Stormwater flows across the site have not been investigated for the concept plan. It is envisaged that the site would connect to existing stormwater systems in

DCP Reference	Development Controls	Compliance
of residents, and that the development does not contribute to drainage or flooding problems elsewhere.		Main Road or Tamar Avenue, through a pit and pipe network.
<u>9.1 Landscape Design</u>	<u>Deep Soil Zone</u> (a) A minimum 50% of the required soft landscaped area of the site at ground level shall be a deep soil zone.	Yes. A landscape plan would be required. The site can accommodate deep soil planting for 50% of the landscaped area.
<u>10.1 Waste Management</u>		A Waste Management Plan would be required. It is likely that the development would make use of Council's kerbside waste collection system, with garbage bins to be collected from Tamar Avenue or Main Road. Further analysis of waste management options has not been undertaken due to the conceptual nature of plans.
<u>11.1 Crime Prevention</u>		The buildings and landscaping would be required to be designed in accordance with Crime Prevention through Environmental Design principles.

2.5 Conclusion: Isolated lot

Assessment of the concept plans provided in Attachment B has been undertaken for the relevant clauses of the LEP and DCP. While this assessment is limited by the conceptual nature of the design, it is evident that the site can be developed for multi-dwelling housing in a variety of forms, either singularly or amalgamated with 159 Main Road.

As stated by Commissioner Tuor in *Karavellas v Sutherland Shire Council* [2004] NSWLEC 251 (paragraph 19), quoting her previous findings in *Cornerstone Property Group Pty Ltd v Warringah Council* [2004] NSWLEC 189:

The key principle is whether both sites can achieve a development that is consistent with the planning controls. If variations to the planning controls would be required, such as non compliance with a minimum allotment size, will both sites be able to achieve a development of appropriate urban form and with acceptable level of amenity.

To assist in this assessment, an envelope for the isolated site may be prepared which indicates height, setbacks, resultant site coverage (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts the developments will have on each other, particularly solar access and privacy impacts for residential development and the traffic impacts of separate driveways if the development is on a main road.

The subject application may need to be amended, such as by a further setback than the minimum in the planning controls, or the development potential of both sites reduced to enable reasonable development of the isolated site to occur while maintaining the amenity of both developments.

In accordance with the findings of Commissioner Tuor, development of the sites can be undertaken so as to achieve compliance with key LEP and DCP provisions. The preliminary analysis of shadowing and privacy indicates that this can be achieved with an acceptable level of amenity.

The concept plans in Attachment B demonstrate a building envelope which indicates height, setbacks and site coverage, of sufficient detail to demonstrate the relationship between the subject application and the potential development of the site at 14 Tamar Avenue. The proposed residential flat building responds to the need for shared amenity with an increased setback from the property boundary shared with 14 Tamar Avenue, creating visual separation between the sites. This is supplemented by appropriate privacy screening to the proposed units to prevent overlooking. Further, shadow diagrams demonstrate that there will be no adverse impact on solar access to 14 Tamar Avenue as a result of the proposal.

Conclusions are drawn as follows:

- 14 Tamar Avenue is not “isolated” by the proposed development, in view of the capacity of the property at 159 Main Road, adjoining 14 Tamar Avenue to the rear.
- A development outcome can be achieved on the site for the purpose of multi-dwelling housing, that is in accordance with the relevant planning controls in both Wyong LEP 2013 and Wyong DCP 2013.
- Unlike the cases considered by C. Tuor and C. Brown, amalgamation is not required by the LEP, although it is encouraged within the relevant zone objectives. The proposal is in accordance with this zone objective, having achieved the amalgamation of three lots.



- Unlike the cases considered by C. Tuor and C. Brown, no minimum lot size applies to the site under the LEP, and the proposed development at 6-10 Dunleigh Street does not prevent the adjoining allotment from being developed in accordance with the existing planning controls.
- Development outcomes for 14 Tamar Avenue have not been altered by the proposed residential flat building. From our assessment, the lot was capable of accommodating three multi-dwelling units and will continue to be capable of such development, with or without the proposed adjacent development.
- Any amalgamation of the applicant's site at 6-10 Dunleigh Street with 14 Tamar Avenue would leave the remaining property, 159 Main Road Toukley, isolated. 159 Main Road does not adjoin the applicant's site and there is no requirement to consider it in the context of this development application. However, a development of 14 Tamar Avenue would need to consider it in light of the planning principles established by the Land and Environment Court.

It has been demonstrated that orderly and economic use and development of 14 Tamar Avenue can be achieved, through the presentation of two conceptual designs. The above planning analysis and concept plans at Attachment B are considered to satisfy the Panel's request and the considerations established by Commissioner Tuor in her presentation of the planning principle on isolated lots.



3 Attachment A – Ground Floor Plan & Typical Floor Plan, CKDS 2018

Drawing SK-101 Issue G

Drawing SK-102 Issue G



4 Attachment B – Concept Plans, 14 Tamar Avenue, Toukley

Drawings SK-012, Issue A

