

NORTHERN REGIONAL PLANNING PANEL

COUNCIL ASSESSMENT REPORT

Panel Reference	2018NTH010
DA Number	2018/DA-00025
LGA	Bellingen Shire Council
Proposed Development	Demolition, Remediation and Construction of Shop Top Housing
Street Address	Lots 1 & 2 DP 900116 (and adjoining road reserve), 84 Hyde Street, BELLINGEN NSW 2454
Applicant/Owner	Geo LINK (Simon Waterworth) / Shaul Rubinstein Pty Ltd and Bellingen Shire Council
Date of DA lodgement	16 March 2018
Number of Submissions	Eighteen (18)
Recommendation	The granting of consent to the application, subject to conditions
Regional Development Criteria (Schedule 7 of <i>State Environmental Planning Policy (State and Regional Development) 2011</i>)	<p>3 Council related development over \$5 million</p> <p>Development that has a capital investment value of more than \$5 million if:</p> <p>(b) the council is the owner of any land on which the development is to be carried out</p>
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>Environmental Planning and Assessment Act 1979</i> • <i>Environmental Planning and Assessment Regulation 2000</i> • <i>State Environmental Planning Policy No 55–Remediation of Land</i> • <i>State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development</i> • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004</i> • <i>State Environmental Planning Policy (Infrastructure) 2007</i> • <i>State Environmental Planning Policy (State and Regional Development) 2011</i> • <i>Bellingen Local Environmental Plan 2010</i> • <i>Bellingen Shire Development Control Plan 2017</i> • <i>Draft planning agreement that the developer has offered to enter into under Section 7.4</i>
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Statement of Environmental Effects • Addendum to Statement of Environmental Effects (including updated Draft Planning Agreement) • Plans of the development • Heritage Advisor Referral

	<ul style="list-style-type: none"> • Clause 4.6 Variation Written Request • Proposed Conditions • Submissions
Report prepared by	Daniel Bennett – Senior Strategic Planner
Report date	6 March 2019

Summary of Section 4.15 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 (S94EF)? **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? **Yes**

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

EXECUTIVE SUMMARY

Development Application Number 2018/DA-00025 (DA) seeks consent to redevelop Lots 1 and 2 in Deposited Plan 900116 and the adjoining Hyde Street (the land) for the purposes of Demolition, Remediation & Shop Top Housing. Ancillary components include the installation of a solar energy system and electric car charging stations. The four-storey building (inclusive of basement car parking) is proposed to replace an existing mixed use single-storey building containing a café and vehicle repair station.

The development proposes to construct 15 residential units above a ground floor retail premises. 36 car parking spaces are proposed within a basement level, of which 15 will be allocated to residents, 5 to employees of the proposed retail premises and 16 to customers.

There is a shortfall of 24 on-site spaces for the proposed retail premises, which is proposed to be compensated for by the applicant entering into a Planning Agreement with Council to construct an additional 36 parking spaces within the road reserve of Oak Street. The Planning Agreement will also cover additional matters such as proportional responsibilities for the upgrading of Halpins Lane.

The application has been publicly advertised in accordance with relevant legislative requirements and there were a total of 18 public submissions received by Council over two separate advertising timeframes.

This report provides an assessment of the DA and makes a recommendation for the Northern Regional Planning Panel to approve the development subject to the imposition of conditions and advisory notes.

Section 4.15 of the *Environmental Planning and Assessment Act 1979* (EPAA) requires a consent authority to take into consideration various matters when assessing a development application, including the likely impacts of the proposed development on the natural, built and social environments and the provisions of any environmental planning instruments that apply to the land.

The following pieces of legislation have been considered in the assessment report.

RELEVANT PLANNING LEGISLATION

Environmental Planning and Assessment Act 1979

Environmental Planning and Assessment Regulation 2000

State Environmental Planning Policy No. 55 – Remediation of Land

State Environmental Planning Policy No 65 - Design Quality of Residential Flat Development

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

State Environmental Planning Policy (Infrastructure) 2007

State Environmental Planning Policy (State and Regional Development) 2011

Bellingen Local Environmental Plan 2010

Bellingen Development Control Plan 2017

Draft planning agreement that the applicant has offered to enter into under Section 7.4 of the EPAA

REPORT DETAIL

Application Information

<i>Panel Reference:</i>	2018NTH010
<i>Type of Matter:</i>	Development Application
<i>Region:</i>	Northern Regional Planning Panel
<i>LGA:</i>	Bellingen Shire Council
<i>DA Number:</i>	2018/DA-00025
<i>Project Title:</i>	Demolition, Remediation and Construction of Shop Top Housing
<i>Address/Location:</i>	Lots 1 & 2 DP 900116 and Hyde Street; 84 Hyde Street, Bellingen
<i>DA Lodgement Date:</i>	16 March 2018
<i>Type of Development:</i>	Demolition, Remediation and Construction of Shop Top Housing
<i>Date DA Registered with Secretariat:</i>	22 March 2018
<i>Capital Investment Value:</i>	\$8,985,000
<i>Applicant:</i>	GeoLINK (Simon Waterworth)
<i>Consent Authority:</i>	Bellingen Shire Council with the Northern Joint Regional Planning

Application Category:
Approval Bodies:
Approvals Required:
Land Use Zones:

Panel having the determining function
Regional Development
Nil
Nil
Zone B2 Local Centre under the provisions of *Bellingen Local Environmental Plan 2010 (BLEP)*

Locality Plan



Figure 1 – Site Plan (Source: BSC Mapping)

BACKGROUND

Prior to the submission of this DA, an onsite meeting was held on 19 August 2016 with the owner, architects and Council staff concerning broad concepts for the future development of the land as a mixed use commercial and townhouse development. Subsequent to that meeting, heritage recommendations to guide the redevelopment of the land were provided by Council to the applicant. These recommendations and consequent heritage commentary to the various iterations of the development prior to the lodgement of the DA are contained at Appendix D of the Statement of Environmental Effects (SEE).

Pre-lodgement meetings with Council's Development Control Unit were sought by the applicant and held on 19 August 2016, 24 February 2017, 12 May 2017 and 13 October 2017. These meetings provided an opportunity for the applicant and Council officers to informally discuss key issues relevant to the assessment of the proposal prior to the lodging of the DA. The points raised during the meetings assisted the applicant in determining various issues that should be addressed and contributed to an evolution of the design to the appropriate urban form the subject of the application.

The DA registered by Council on 16 March 2018 seeks the right to redevelop and remediate the land for the purposes of shop top housing. It is categorised as regional development under the *State Environmental Planning Policy (State and Regional Development) 2011* as

the capital investment value exceeds \$5 million and Council is the owner of land on which part of the development is to be carried out. The DA is consequently captured by Schedule 7 of the Policy and constitutes one which the Joint Regional Planning Panel (Northern) is authorised to exercise the consent authority function of Council.

The DA was originally advertised and notified pursuant to Chapter 11 of the *Bellinghen Shire Development Control Plan 2017* (DCP) and Part 6 Division 7 of the *Environmental Planning and Assessment Regulation 2000* from 4 April 2018 to 24 April 2018 inclusive. A total of fourteen (14) submissions were made in relation to the proposal as a result of this exhibition period.

The DA was then re-advertised and notified for a minimum period of 30 days between 17 January 2019 and 18 February 2019 upon Council becoming aware that Clause 13 of State Environmental Planning Policy 55 – Remediation of Land required that Category 1 Remediation Works were required to be advertised for a minimum period of 30 days. A total of four (4) additional submissions were received as a result of the re-exhibition period.

Referrals were made to the Roads and Maritime Services and Essential Energy under the provisions of *State Environmental Planning Policy (Infrastructure) 2007*; to Council's legal firm with regard to encroachments on Hyde Street; and to specific Council officers to address matters relevant to their expertise: Development Engineer, Heritage Advisor, Land Information Officer, Senior Strategic Planner, Team Leader Building and Regulation and Waste Management Coordinator.

Several requests for additional information were made of the Applicant during the course of assessment. Prior to the re-advertising of the Development Application, an addendum to the original Statement of Environmental Effects was received that documented a number of minor changes to the proposal that had occurred during the assessment process. This was subsequently included in the re-exhibition documentation.

THE DEVELOPMENT SITE

The core of the land comprises two lots, being Lots 1 and 2 in Deposited Plan number 900116. These lots are located on the southern side of the north-western end of Hyde Street and have an area of 132.0 m² and 1,657 m² respectively (refer to Figure 2 below). The lots present a large frontage in an otherwise fine-grained commercial precinct within Bellinghen's local heritage conservation area.

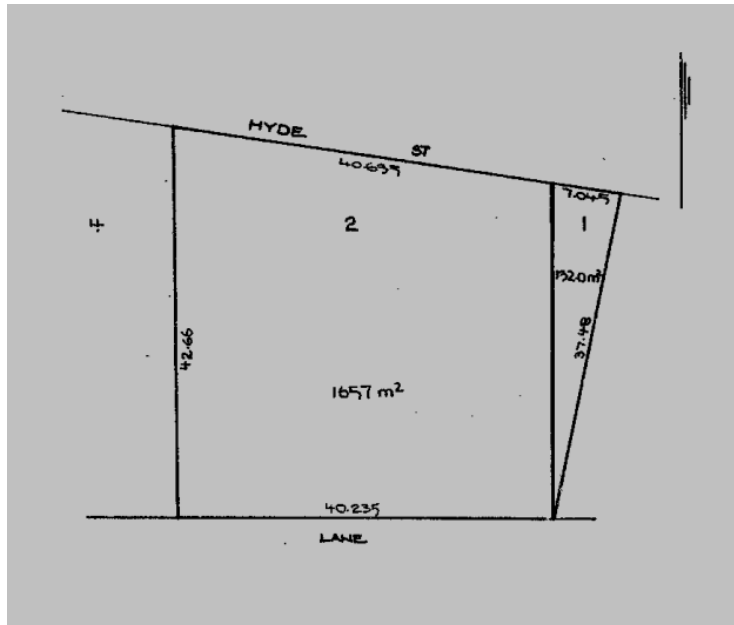


Figure 2 – Excerpt from Plan of Land (Source: NSW Land Registry Services)

The development site additionally includes Hyde Street for the frontage of Lots 1 and 2 DP90011 to that Street, with verandahs, awnings, pavement and an electric car charging station being proposed in this area. This land is the subject of programmed Council main street upgrade works that are being incrementally delivered across the central business district.

An offer to enter into a planning agreement accompanied the development application as contained at Appendix F of the SEE. This offer includes voluntary work within Halpins Lane and Oak Street (between Williams Street and South Street) and extends the range of development works into these road reservations. Oak Street is heritage listed under the BLEP as Item 170: Street Trees and part of Oak Street and Halpins Lane are within the Bellingen Conservation Area.

The final form of the planning agreement has been slightly refined during the course of assessment with the most recent iteration of the Planning Agreement being included in documentation exhibited as part of the re-exhibition of the Development Application. The key refinements included a revised provision to ensure that 33% of the total cost of upgrading Halpins Lane was to be met by the developer, and revisions to the schedule of public works to ensure appropriate connections between parking spaces in Oak Street and the development site.

Lots 1 and 2 DP90011 are bound by Hyde Street in the north, Halpins Lane in the south, mixed use development (business premises and shop top housing) in the west and commercial premises in the east. The land is developed with a single-storey brick and steel building with a hipped roof and awning. The building is girt by open hardstand areas and is currently operating as a café and vehicle repair station. Formerly the building operated as both a service station and garage.

Historically the land was developed with single-storey weatherboard residences, a wine shop and a two-storey weatherboard building which served as Black's Exchange Hotel from 1884 and then Hillier's Exchange Hotel. The buildings were subject to complete demolition and redevelopment as a service station and garage in the 1960s (Bellingen NSW Main Street Study: 6).

Adjoining land to the west is developed with a garage and landmark two-storey brick and granite-faced mixed-use building serving as a bank on the ground floor and dwelling on the first floor. The two-storey building extends to a height of 11.0 m above existing ground level (refer to Drawing 6/8 at Appendix A of the SEE) and encroaches onto Hyde Street for the extent of the frontispiece. This land has been strata subdivided to accommodate the respective land uses and is heritage listed under the BLEP as Item I50: Commonwealth Bank (former Rural Bank).

A post war two-storey brick building with parapet and double verandahs over the footpath adjoins the development site to the east. This building is assessed as being a non-contributory structure within Bellinghen's Heritage Conservation Area and is recommended for possible rendering and painting to compliment the historic precinct (Bellinghen Heritage Conservation Area Main Street Building Audit: 29).

Beyond Halpins Lane to the south of the development site are a series of dwellings fronting William Street which have been predominately adapted for health and commercial purposes including an accountants and health consulting rooms. The rear yards of these premises contain a two-storey dwelling house at 17 William Street (2007/DA-00066), sheds, garages, carports and car parking bays with Lane frontage. These sites are within the Bellinghen Conservation Area and comprise local heritage items I109: William Street Streetscape Group (1-37 William Street) and I111: House (17 William Street).

To the north of Hyde Street is a mixture of two-storey weatherboard buildings featuring parapets and double verandahs over the footpath and single storey infill brick buildings from the Inter-war period with awnings over the footpath. These sites are within the Bellinghen Conservation Area and contain local heritage items I47: Federal Hotel, I48: Newsagency and I49: Video store, real estate agency, hairdresser's salon. Next to the east is developed the State significant Hammond and Wheatley Emporium, being the pre-eminent commercial building in the Bellinghen Shire.

Lots 1 and 2 DP 900116 and Hyde Street and Halpins Lane for the extent of the development footprint are subject to Zone B2 Local Centre under the BLEP 2010, with the proposed works the subject of the planning agreement located within Oak Street being subject to Zone R1 General Residential.

Council's reticulated sewer mains traverse the length of Halpins Lane and reticulated water services span both Halpins Lane and the near-side of Hyde Street. Overhead electricity conductors extend the near-side of Hyde Street.

THE PROPOSAL

The application proposes a four-storey mixed use building, defined as shop top housing under the *Bellinghen Local Environmental Plan 2010*, including:

- the demolition of existing buildings;
- the removal of underground petroleum storage systems and remediation of any contaminated land;
- the development of basement car parking (one level of 36 car spaces in total) to be accessed off Halpins Lane and contain 15 secure car parking spaces for residents, 5 secure car parking spaces for retail staff, 16 retail car parking spaces including one accessible space, 4 motorcycle spaces, 12 bicycle spaces (for residents of six units), and additional secure storage for nine units;
- ground floor retail premises (c. 1,265m² gross floor area);
- fifteen residential apartments on the first and second levels, being a mix of 1 x 1 bedroom unit, 8 x 2 bedroom units and 6 x 3 bedroom units;

- Solar (roof = 226 photovoltaic panels at 300w each = 67.8kWh capacity
- Charging stations (2x basement; 1 x Hyde Street); and
- a planning agreement concerning the reconstruction of Halpins Lane with the developer meeting 33% of the total cost, the construction of 36 on-street car spaces in Oak Street and connections to the development site, and one half the cost of the reconstruction of the Hyde Street footpath for the frontage of the land.

STATUTORY ASSESSMENT

Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

This section requires an assessment of the biodiversity impacts attributable to a proposed development and provides pathways for consistent assessment.

Instances of ornamental plantings occur in parts of the perimeter of the land and against buildings in the east. The removal of vegetation from the site will not have any adverse biodiversity impacts in accordance with the relevant criteria within these Acts.

Section 4.15 Evaluation

In determining a development application, a consent authority is required to take into consideration the following matters under the EPAA as relevant to the development application.

Section 4.15 (1) (a) (i) - Any Environmental Planning Instrument

State Environmental Planning Policy No 55-Remediation of Land (SEPP 55)

The Development Application was accompanied by a detailed investigation of contamination (refer to Site Contamination Assessment prepared by Regional Geotechnical Solutions dated 15/02/2017) on the subject site that considered its historic use as a service station. Having regard to the findings of this investigation, remediation works are proposed to render the site suitable for its intended use for shop-top housing. Because the land is within a heritage conservation area, the remediation works are classified as Category 1 Remediation Works, which are required to be advertised for comment for a period of 30 days. Although the original advertising of the Development Application did not meet this criteria, the subsequent re-exhibition occurred for a minimum period of 30 days in accordance with Clause 13 of SEPP 55.

The detailed investigation undertook soil sampling at the site in the vicinity of the previous fuel storage tanks in ten separate locations, which revealed that concentrations of contaminants were either below the laboratory detection limits and/or below the adopted assessment criteria in all instances. This re-affirmed the results of previous sampling undertaken on the site.

The assessment of contamination provides recommendations and requirements with respect to the future use of the site for the proposed development. The recommendations include the preparation of a remediation action plan. The plan must document all measures proposed to be observed in removing the previous service station infrastructure, including precautionary measures to be observed in respect of minor parts of the site that were inaccessible when conducting the sampling regime.

A condition of development consent is subsequently recommended that will require the submission of a Remedial Action Plan prepared by a suitably qualified practitioner prior to

the commencement of works. To ensure additional rigour with respect to this matter, it is also recommended that the Plan is accompanied by advice from a suitably accredited Site Auditor that the Plan is adequate and will result in the site being made suitable for the intended use.

Additional conditions are then recommended to require observation of the Remedial Action Plan during works, and to require the submission to Council of a notice of completion for the remediation work that will confirm that the site has been remediated and made suitable for its intended use, within 30 days of completion of the remediation works, pursuant to the provisions of Clauses 17 & 18 of SEPP 55.

Upon inclusion of the recommended conditions of consent, it is considered that the land will be suitable for its intended use for shop top housing pursuant to the provisions of Clause 7 of SEPP 55, in accordance with a Plan of Remediation to be approved prior to the commencement of works, and that the proposed development is acceptable having regards to the provisions of SEPP 55.

State Environmental Planning Policy No 64—Advertising and Signage

This Policy aims to regulate signage, including advertisements, such that the desired amenity and visual character of an area is not degraded by ineffective communication, poor quality design, placement, or otherwise.

The DA does not make application for signage or address the environmental impacts of signage within the SEE. Accordingly, signage does not form part of the application to Council. Irrespective, the north elevation plans (Drawing 6/8 at Appendix A of the SEE) include four (4) panels marked with the text “Shopping” affixed to the Hyde Street verandah fascia. The plans indicate that appropriate opportunities for advertising structures and signs may be achieved which retain the prominent architectural details of the building.

A future development application will enable the environmental consideration of external advertising and an assessment of the plans against the provisions of *State Environmental Planning Policy No 64—Advertising and Signage* is not undertaken accordingly.

State Environmental Planning Policy No 65- Design Quality of Residential Apartment Development

This Policy recognises that the design quality of residential apartment development is of significance due to the economic, environmental, cultural and social benefits of high quality design and aims to improve their planning across the State. It applies to the DA in accordance with clause 4 (1) of the Policy:

- (1) *This Policy applies to development for the purpose of a residential flat building, shop top housing or mixed use development with a residential accommodation component if:*
 - (a) *the development consists of any of the following:*
 - (i) *the erection of a new building,*
 - (ii) *the substantial redevelopment or the substantial refurbishment of an existing building,*
 - (iii) *the conversion of an existing building, and*
 - (b) *the building concerned is at least 3 or more storeys (not including levels below ground level (existing) or levels that are less than 1.2 metres above ground level (existing) that provide for car parking), and*
 - (c) *the building concerned contains at least 4 or more dwellings.*

The Policy enables the establishment of design review panels under delegation. Where established, the consent authority is to refer applications to that panel for advice concerning the design quality of the development and consider that advice in its determination. Council has not appointed a design review panel for the Shire and consequently an examination has

not been received from a panel on whether the apartment development meets the design principles and, if not, recommendations on ways to comply.

As required by clause 50 of the *Environmental Planning and Assessment Regulation 2000*, the application is accompanied by a statement by a qualified designer (Ian Bassett, NSW Registered Architect No. 6987 from Ian Bassett & Partners) verifying that the qualified designer directed the design and that the development achieves both the relevant design quality principles contained at Schedule 1 of the Policy and the objectives contained in Parts 3 and 4 of the Apartment Design Guide. The relevant statement and explanation of compliance is contained at Appendix J of the SEE.

Clause 28 (2) of the *State Environmental Planning Policy No 65- Design Quality of Residential Apartment Development* provides that, in determining the DA, the consent authority is to take into consideration:

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

The qualified designer's explanation of the proposed development with regard to the nine design quality principles under the Policy and the Apartment Design Guide is broadly supported by Council's assessing officers. The following commentary does not reproduce, in verbatim, the arguments offered by the applicant in support of the proposal, however serves to provide additional commentary or clarification of key issues from the perspective of Council.

The 9 Design Quality Principles

Principle 1: Context & Neighbourhood Character

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.

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.

Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.

Comment:

The proposed development is acceptable in context and character. It represents a mixed use development, with ground floor retail floorspace addressing the primary street frontage of Hyde St, upper storey residential opportunities and vehicular access and servicing functions provided by the secondary rear lane access. In this respect, it replicates development patterns provided throughout the CBD area of Bellingen and is consistent with the neighbourhood context.

The development incorporates a mix of materials and design approaches that take their cue from the prevailing streetscapes on the respective frontages. The development does not attempt to mimic heritage character however responds appropriately to this character through the use of appropriate setbacks to listed buildings, the use of similar materials such as masonry and timber verandah posts, verandah awnings across the Hyde St frontage and the use of vertical elements on the Hyde St frontage to respond to the prevailing character of the street.

Although there is an identifiable heritage character to the CBD area of Bellingen, it is important to note that it is not uniformly characterised by buildings with individual heritage value. Bellingen has historically incorporated infill development without significantly impacting upon this character and the proposed development provides an opportunity to replace a building that presently interrupts the rhythm of the streetscape and offers no significant aesthetic value.

The development incorporates a range of sustainability features including solar arrays and electric charging stations and this responds to contemporary matters of concern to the community and Council. The development is infill in nature and includes a mix of housing types with high levels of adaptability in close proximity to a wide range of services. Recent community consultation undertaken by Council in respect of a new Growth Management Strategy for the Shire has highlighted a preference for infill development over other forms of development, and the desire for a greater variety of housing stock within the Shire to meet the changing demographic needs of the community. The proposal represents a timely and proportionate response to these concerns.

The proposal also provides a significant opportunity for an anchor retail use such as an enlarged supermarket. Providing a viable opportunity for such a use within the centre of Bellingen will help “*preserve the dominance of Hyde Street as the retail centre of Bellingen*” which is a key objective of the B2 zone within which the site is located.

Principle 2 – Built form and scale

Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.

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.

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.

Comment:

The building is relatively large in scale when compared to some other buildings within the CBD area of Bellingen, however large buildings have been a longstanding element of the local streetscape and are capable of being effectively assimilated into the local fabric.

The *Bellingen NSW Main Street Study* contains the recommendation that “heights of new development should be compatible with significant building heights” (Shellshear: 65). Significant buildings include the adjoining Commonwealth Bank (Former Rural Bank) which is a heritage item of local significance and the State significant Hammond and Wheatley Emporium. These buildings have heights of 11 metres and 15 metres respectively. The proposed development has a maximum height of 11.6 metres and this is compatible with significant building heights and respectfully subservient to the height of the Hammond and Wheatley Emporium. Additional deference has been provided to the Commonwealth Bank building by providing an increased setback to this boundary that will assist with retaining views of this important building in the streetscape.

The maximum height limit is reached at the south east corner of the development, with the main frontage to Hyde St presenting as a two storey development to integrate with the prevailing character. Although there are no three storey elements fronting Halpins Lane at

present, this is nonetheless considered acceptable given that it is a secondary frontage and there is less of a need to carefully preserve a prevailing heritage character.

The building form provides desirable opportunities for access to a communal open space area for residents as well as opportunities to view the heritage streetscape from private balconies on the Hyde St frontage, and views beyond the urban area of South Bellinghen to the forested slopes beyond from balconies on the Halpins Lane frontage.

Principle 3 – Density

Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.

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.

Comment:

The 15 apartments that are proposed by the development all have access to two outdoor living areas, a large area of communal open space, natural light, cross ventilation, onsite parking and storage opportunities. The developments central location within Bellinghen provides high levels of access to recreational and employment opportunities, and the range of unit configurations will be accessible to a range of different potential purchasers.

The development site is a scarce commodity within the CBD area of Bellinghen and the proposal reasonably seeks to ensure that the site is not under-utilised, whilst still being respectful to the local context and streetscape.

Principle 4 – Sustainability

Good design combines positive environmental, social and economic outcomes.

Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal 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.

Comment:

The design features of the development, in addition to the sites central location within the Bellinghen CBD and access to public transport and other services, provide ample opportunities for residents to live an environmentally sustainable lifestyle. For example, the development utilises available roof space to provide a significant array of solar panels with the aim of the development being self-sufficient in power generation. It also provides private opportunities for electric car charging within the basement level, and public opportunities for electric car charging on the main street frontage of Hyde St.

All units have access to natural light and sunlight, two outdoor areas and cross ventilation. Building materials are used that provide good thermal mass and appropriate levels of shading are provided to balcony areas. Provision has been made for bicycle storage for all units and recycling opportunities are clearly provided for by virtue of the waste facilities provided.

Principle 5 –Landscape

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.

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.

Good landscape design optimises usability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity, provides for practical establishment and long-term management.

Comment:

The development site is a highly modified hardstand site with no existing landscape features of any significance that warrant retention. The traditional development pattern within the Bellingen Heritage Conservation Area does not provide for landscaping opportunities on the Hyde St frontage, or to the typically zero side setbacks of buildings.

Accordingly, the development instead focuses on the provision of a high amenity landscape area within the communal open space area, and at the front of private open space at the entry to the units. The landscaping plan (refer to Landscaping Plan Drawings L01 – L05) prepared by Darren Mansfield (Mansfield & Mack) dated October 2017) includes a central turfed area, a mounded lawn area with tree plantings, timber seating, barbecue facilities and timber decked courtyards. Private Open Space areas at the entry to each of the units will be defined by planter boxes with a hedge style overstorey and grass or shrub understorey. The landscaped area will drain to the stormwater retention and treatment facilities that will be installed within the ground floor.

Additional landscaping, in the form of a small strip of hedge plantings along the pedestrian access that runs along the western boundary of the development site, is proposed beyond the 1st floor communal open space area..

In view of the site factors, the landscaping approach is a suitable design response that will assist with providing opportunities for social engagement between residents within the unit complex.

Principle 6 – Amenity

Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident wellbeing.

Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas, and ease of access for all age groups and degrees of mobility

Comment:

The development incorporates a range of features that will provide high levels of amenity for occupants. 3 out of the 15 units incorporate gold level universal design features, pursuant to the Liveable Housing Guidelines, and all of the remaining units meet the silver level requirements. Each of the units have access to two outdoor areas of private open space and 10 of the units provide an additional study area to provide flexibility in terms of future needs and requirements.

All habitable rooms have access to natural light and natural cross ventilation opportunities exist for all apartments. A range of design features are utilised to minimise the potential adverse impacts of external noise sources and an acoustic assessment has been submitted that indicates noise levels within bedrooms can be adequately managed through relatively simple design measures.

Impacts on the residential amenity of adjoining properties are acceptable in view of the sites location within the CBD area in Bellingen and the objectives of The B2 Local Centre zone.

Principle 7 – Safety

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.

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.

Comment:

The development incorporates balcony areas on both street frontages that overlook the public domain and will assist with passive surveillance. The pedestrian entry to the building on the western ground floor is clearly differentiated from the Hyde St entry to the retail premises and the entry point is overlooked by residential windows on the first floor of the adjoining building. Views along the pedestrian pathway are unobstructed when viewed from either Halpins Lane or Hyde St, thereby reducing opportunities for concealment.

The narrow access provided along the western boundary of the site does include a change in step and a potential opportunity for concealment; however this is not the principle pedestrian access between Hyde St and Halpins Lane and is not the point of entry to the residential premises. A condition of consent will be imposed to require an appropriate lighting strategy for both pedestrian access points along the eastern and western boundaries that will assist with minimising opportunities for concealment, whilst also preserving the amenity of any adjoining residential occupancy.

The first floor communal open space area is overlooked by habitable room windows on both the first and second floors of the northern and southern unit blocks and this will assist with monitoring of this area.

Principle 8 - Housing diversity and social interaction

Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.

Well-designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix. Good design involves practical and flexible

features, including different types of communal spaces for a broad range of people, providing opportunities for social interaction amongst residents.

Comment:

The development includes a desirable mix of apartment sizes that will assist with providing greater choice for a range of different demographics. Recent strategic planning work and public consultation undertaken by Council (see the "Homes for our Future" Discussion Paper and "Homes for our Future" Community Engagement Report) has confirmed that average occupancy rates are decreasing, the population is ageing and that there is a predominance of detached 3-4 bedroom housing stock in the Shire that is not meeting the changing demands of the population. The proposed development will provide an alternative style of housing to help meet these demands and potentially act to stimulate further investment in this style of housing if approved.

The development provides excellent opportunities for social interaction between residents as they enter their own dwellings through, and utilise, the communal open space area provided on the first floor. The development is also located within the CBD of Bellingin, which has a rich variety of recreational opportunities on offer and opportunities for social interaction.

Principle 9 - Aesthetics

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.

The visual appearance of well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.

Comment:

The aesthetics of the development are considered acceptable having regard to the degree to which it integrates with, or does not detract from, other desirable elements of the local streetscape.

The Hyde St frontage exhibits a higher level of visual interest and deliberate incorporation of building elements and materials that are appropriate to the heritage conservation area. This includes the use of a masonry façade, timber verandah posts, vertical elements and awnings across the street frontage, all of which have been identified as desirable and repeated elements within the heritage streetscape.

The mosaic murals that are proposed across the retail frontage, and at the point of pedestrian entry to the buildings, also reflect the beauty of the natural environment and the artistic creativity of the community.

The concrete blockwork utilised for the ground floor component of the Halpins Lane frontage is consistent with the use of simple blockwork and brick for the rear portion of buildings that front Hyde St, and utilise Halpins Lane for service related functions. The first and second floor residential components of the Halpins Lane façade incorporate a range of lightweight materials that are consistent with materials used for recent residential developments along the lane and materials used for the construction of rear yard parking structures associated with properties whose principle frontage is William St.

Overall, the development is considered aesthetically acceptable having regard to the existing and future character of the Bellingin CBD.

Part 3 Controls – Siting the development

Section 3A - Site Analysis

Objective 3A - decisions have been based on opportunities and constraints of the site conditions and their relationship to the surrounding context

Comment:

The development has responded to local site conditions and context, in particular the heritage character and constraints posed by the locality. The building is appropriately located on the site having regard to the site conditions and its relationship to surrounding development.

Section 3B - Orientation

Objective3B-1 Building types and layouts respond to the streetscape and site while optimising solar access within the development

Comment:

The development site is within the CBD area of Bellinghen, which is characterised by zero setback developments to front and side boundaries, and functional relationships to rear laneways established as a result of historic subdivision patterns. The site has an optimal north facing frontage which has been utilised to provide good solar access to the north facing units in the northern block of units, and the design of the development also allows for solar reach into the communal open space area of the first floor and the north facing private open space and habitable rooms in the southern block.

Direct pedestrian access is obtained to the retail section on the ground floor from Hyde St and the design materials, scale and articulation of the front façade respond to the streetscape.

Objective3B-2 Overshadowing of neighbouring properties is minimised during mid-winter

Comment:

An element of overshadowing will inevitably occur to east facing windows on the adjoining development to the west, however no north facing windows will be overshadowed. The achievement of unfettered solar access to adjoining properties is not possible or appropriate on a development site that is zoned B2 Local Centre and in a locality where zero side setbacks often prevail.

Shadow diagrams submitted with the application illustrate the extent of overshadowing of properties to the south of the development site and confirm that the impact is greatest at 9.00am, with limited impact as the sun moves further to the west on 21 June. The principle area of land that is overshadowed on lots to the south of the lane is land that is used for vehicular related functions including carparking or carports and this extent of overshadowing is not considered unreasonable.

Overshadowing of properties to the east and west will occur, however in the context of expected development patterns within a CBD area, this is not considered unreasonable.

Section 3C Public Domain Interface

Objective 3C-1 Transition between private and public domain is achieved without

compromising safety and security

Comment:

The pedestrian access to the residential component of the development is via the western pedestrian corridor that will run from Hyde St to the lane. As is typical of the Conservation Area, street level access to the retail premises is provided along the Hyde St frontage, and the transition from the footpath area into the retail development will include a mosaic mural depicting plants that will assist with definition of this principle point of entry from the street. Balconies on both the Hyde St, and lane frontage, overlook the public domain and casual surveillance of these areas could contribute to positive outcomes.

The carpark area in the basement is accessible via the laneway and this point of entry is also clearly defined.

Objective 3C-2 Amenity of the public domain is retained and enhanced

Comment:

The proposed development will have a high level of interaction with the public domain by virtue of the ground floor retail premises which will activate the street frontage along the Hyde Street elevation of the development site. Proposed balcony areas along both the Hyde St, and Halpins Lane frontages, will also assist with casual surveillance, which may positively impact on anti-social behaviour within the public domain. The proposed mural works along the ground floor frontage to Hyde St, in addition to the proposed electric charging station to be provided along the Hyde St frontage, will improve the amenity of the public domain in this locality.

Section 3D Communal and public open space

Objective 3D1 An adequate area of communal open space is provided to enhance residential amenity and to provide opportunities for landscaping

Design guidelines:

Communal open space has a minimum area equal to 25% of the site (see figure 3D.3).

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).

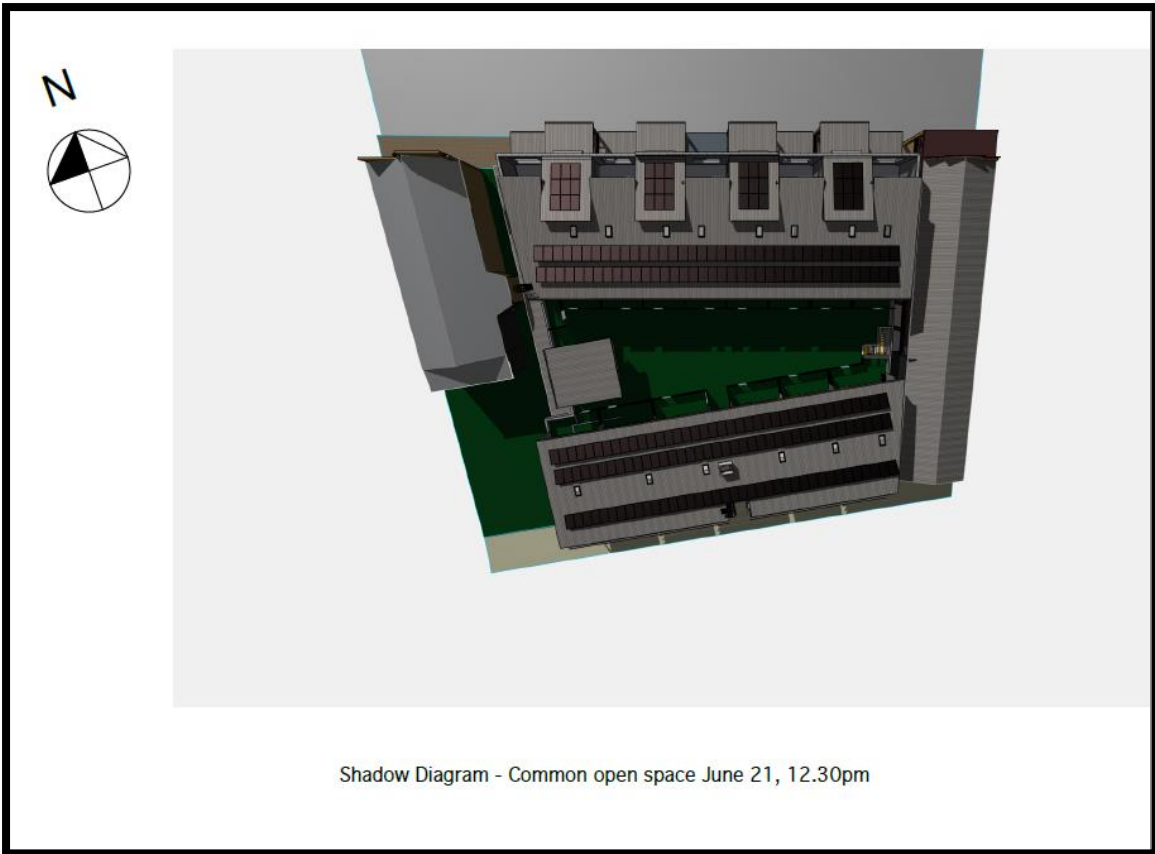
Comment:

The area of the site is 1789m². The area of the communal open space area is 363m², which amounts to an area that is 20.3% of the total site area.

This is considered acceptable in the circumstances, noting that each apartment has access to an additional private landscaped area at the entry to their premises and the site is within the centre of Bellingham, with high levels of access to public land and opportunities for communal interactions.

Shadow diagrams requested by Council have confirmed the area of communal open space that is shaded at 12.30pm and 2.30pm on 21 June and these confirm that the principle area of communal open space will receive an appropriate level of sunlight in accordance with the design guidelines.

This is shown in the following plans.



Objective3D-2 Communal open space is designed to allow for a range of activities, respond to site conditions and be attractive and inviting.

Comment:

The first floor communal open space is to be extensively landscaped and an appropriate Landscaping Plan has been submitted to Councils that depicts the proposed works and confirms compliance with the provisions of Chapter 9 of Bellingen Shire Development Control Plan 2017. The landscaping area is a mix of grassed areas, plantings and other facilities such as BBQ areas for the amenity of the residents.

Objective 3D-3 Communal open space is designed to maximise safety.

Comment:

There is no provision for public access to the communal open space area and the inclusion of additional private open space areas in front of all units, and adjoining the communal area, will also result in further causal surveillance of this area.

Objective 3D-4 Public open space, where provided, is responsive to the existing pattern and uses of the neighbourhood

Comment:

No public open space is provided or required. This is not out of character with other developments in Hyde St which do not include public open space.

Section 3E Deep Soil Zones

Objective 3E-1 Deep soil zones provide areas on the site that allow for and support healthy plant and tree growth. They improve residential amenity and promote management of water and air quality.

Design Guidelines:

Deep soil zones are to meet the following minimum requirements.

Site area	Minimum dimensions	Deep soil zone (% of area)
Less than 650m ²	-	7%
650-1500m ²	3m	
Greater than 1500m ²	6m	
Greater than 1500m ² with significant tree cover	6m	

Comment:

The provision of deep soil zones on the site is not considered to be a necessary or appropriate outcome in the CBD area of Bellingen, which is characterised by a lack of landscaping along the Hyde Street frontage and zero side setbacks.

The focus of the proposed landscaping is on providing an area of high amenity for the residential occupants of the development, who do not have access to the ground floor area of the development. It is considered that this is a reasonable design alternative to the provision of deep soil zones.

It is also noted that future residents will have access to a number public recreation areas within relatively close proximity to the site (eg: Connell Park, Jarret Park) that have mature trees species within deep soil zones.

Section 3F Visual privacy

Objective3F-1 Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy

Design guidelines

Separation between windows and balconies is provided to ensure visual privacy is achieved.

Minimum required separation distances from buildings to the side and rear boundaries are as follows:

Building height	Habitable rooms & balconies	Non habitable room
12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
Over 25m (9+ storeys)	12m	6m

Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room

Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties

Objective3F-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

Comment:

Minimum separation distances (as proposed by the design guideline) to adjoining boundaries on the east, west and south are not met by the proposed development. However, this is considered acceptable for the following reasons.

Firstly, the development site is within the CBD area of Bellingen which is characterised by zero side setbacks. The provision of a 6m side setback would result in an under-utilisation of prime commercial land, inhibit the achievement of the zone objectives, result in a development pattern that is inconsistent with the prevailing streetscape and development controls contained within the Bellingen Development Control Plan which encourages boundary to boundary development. Whilst achievement of the relevant setback would be appropriate within a residential zone where reasonable expectations of residential amenity prevail, it must be accepted that this may neither be achievable or appropriate in business zoned areas.

The setback to the boundary to the east is 1.517m at the north of the site, reducing to 1.284 at the south of the site. The western elevation of this building is characterised by a walkway access to the first floor unit of this building which is utilised for an office purpose, and ground floor access to a retail premises below. No adverse impacts on visual privacy will result from the proposed development to this elevation and there are no windows or open space areas proposed on the eastern elevation in any case.

The setback to the boundary to the west is 3m for the majority of the site, and 4.7 m to the adjoining building for most of its eastern elevation, with the exception of a small protrusion extending to the boundary. This setback has been provided not only to respond to the adjoining first floor residential use, but to ensure that due deference and respect is afforded to views of this significant heritage listed building.

In order to minimise the likelihood of any potential adverse impacts to the occupants of the first floor flat of the building to the west, the windows facing to the west from Unit 1 have

been raised to have a minimum sill height of 1.5m, which will limit any potential for casual overlooking. In addition, the relevant windows are located within a hallway area and a study area, which are not primary living areas that would be frequently occupied.

Units 10 to 14 which have a southerly aspect to their balcony areas are setback 0.19m from the adjoining lane, which is 6m in width. For lots to the south of the lane, there is approximately 5-6m of land typically provided for parking related functions along their northern boundary before the residential or commercial use of the land commences. This amounts to a 11-12m setback between the proposed units and any habitable or yard areas associated with those lots. From a privacy perspective, this is considered to be an adequate setback to maintain residential amenity.

Within the development site, there is a minimum distance of 12m between dwellings at the eastern edge of the development site, increasing to 17m towards the west of the site and between Units 3 & 11.

Adequate privacy is provided between the balcony areas of the development through the use of solid walls along boundaries and staggered articulation of the balcony areas along the Hyde street frontage. Privacy measures are less effective for the additional private open space areas adjoining the communal open space area however these are essentially additional to minimum balcony requirements and there will remain a suitably private alternative area for outside use on those balconies.

Section 3G Pedestrian access and entries

Objective3G-1 Building entries and pedestrian access connects to and addresses the public domain

Comment:

Pedestrian access to the residential units is provided along the western side of the building via a walkway which will be required to be dedicated as a public walkway.

Access to the retail premises will be via a recessed and obvious entry point on the Hyde street frontage that will further be delineated by a mosaic mural depicting native plants that will be provided across the point of transition between the public and private domain.

Objective 3G-2 Access, entries and pathways are accessible and easy to identify

Comment:

All access points, entries and pathways will be accessible and easy to identify. A condition of consent will be included that requires the placement of a sign on the southern elevation of the building to indicate the location of parking for people visiting the retail premises.

Objective3G-3 Large sites provide pedestrian links for access to streets and connection to destinations

Comment:

A pedestrian link will be provided between Hyde Street and Halpins Lane along the western side of the proposed development and a condition of consent will require that this is also dedicated as an easement for pedestrian access in favour of Council.

Section 3H Vehicle access

Objective3H-1 Vehicle access points are designed and located to achieve safety, minimise conflicts between pedestrians and vehicles and create high quality streetscapes

Comment:

The vehicle access point to the development is via the rear lane, which replicates traditional patterns of rear lane servicing in the conservation area. The application has demonstrated that sufficient off lane capacity exists for parking of a 12.5m long service vehicle within the loading bay, whilst still allowing for the passing of a 12.5m long vehicle within the lane.

Additional waste storage has been provided within the garbage area to allow for a once a week collection of waste associated with the development. Current contractual arrangements with waste contractors for Multi-Unit Developments also allow for entry to the waste storage area by garbage truck drivers (the driver – not the vehicle), retrieval of the bins for emptying in the parked vehicle (which could be parked in the loading bay for example) and return to the storage area. This will further minimise the need for bin placement on the lane in anticipation of collection.

The entry point is sufficiently integrated into the design for the southern elevation.

Section 3J Bicycle and car parking

Objective3J-1 Car parking is provided based on proximity to public transport in metropolitan Sydney and centres in regional areas

Comment

The land is not within a regional centre.

Objective3J-2 Parking and facilities are provided for other modes of transport

Comment:

The application has demonstrated the provision of 4 parking spaces for motorbikes, three electric vehicle charging points, and storage capacity for 2 bikes for each of the proposed 15 units.

Objective3J-3 Car park design and access is safe and secure

Comment

The underground carparking and access ramp has been assessed and amended for compliance with AS2890, a standard B99 vehicle, DCP 2017 and Austroads relevant standards. Adequate compliance has been demonstrated.

Objective3J-4

Visual and environmental impacts of underground car parking are minimised

Comment:

The visual impacts of the carpark are minimal by virtue of it being below ground. The ventilation feature for the carpark will be adequately screened from view.

Objective3J-5 Visual and environmental impacts of on-grade car parking are minimised

Comment

Not applicable.

Objective3J-6 Visual and environmental impacts of above ground enclosed car parking are minimised

Comment

Not applicable.

Part 4 - Controls Designing the Building

Section 4A Solar and daylight access

Objective4A-1 To optimise the number of apartments receiving sunlight to habitable rooms, primary windows and private open space

Design guidelines:

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.

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

A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter

Comment:

Units 1 to 9 have direct access to the northerly sun. All living areas directly adjoin balcony areas and the units will receive high levels of access to sunlight between 9am and 3pm at mid-winter. It is noted that the additional private open space areas located at the entry to the units from the communal open space area will not receive any direct sunlight, however these are additional to minimal requirements for balcony areas and will, in any case, present an attractive outdoor alternative in summer.

Units 10 to 15 do not have access to northerly sun for their main living areas and balconies. The balcony areas have been provided on the southern elevation in order to provide a greater level of amenity for occupants in terms of outlook than would otherwise have been afforded by principle reliance upon views to the north of the communal open space area. The principal living areas have accordingly been designed to directly adjoin the balcony areas. Notwithstanding this, the alternative private open space areas provided at the northern entry to the units will have access to northerly sun at the winter solstice, as will the other habitable rooms on this elevation. The following diagrams illustrate solar access at 11am and 2pm on 21 June.



Shadow Diagram - Southern Units, North Elevation June 21, 11.00 am



Shadow Diagram - Southern Units, North Elevation June 21, 2.00 pm

Objective4A-2 Daylight access is maximised where sunlight is limited

Comment:

All units have incorporated skylights to second storey bathroom areas that do not have access to natural light, and Units 1 to 9 also have louver windows on the roofline to allow extra natural light.

Although sunlight is limited to parts of the first floor communal open space and private open space areas, these are additional to minimum requirements and this is acceptable.

Objective4A-3 Design incorporates shading and glare control, particularly for warmer months

Comment

Adequate shading will be provided to balcony areas on the northern elevation in summer.

Section 4B Natural Ventilation

Objective4B-1 All habitable rooms are naturally ventilated

Objective4B-2 The layout and design of single aspect apartments maximises natural ventilation

Objective4B-3 The number of apartments with natural cross ventilation is maximised to create a comfortable indoor environment for residents.

Design guidelines:

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 enclose.

Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.

Comment:

The dual aspect of the apartments provides for excellent cross ventilation opportunities. All habitable rooms are naturally ventilated and the depth of the apartments does not exceed the recommended 18m when measured glass line to glass line.

Section 4C Ceiling heights

Objective 4C-1 Ceiling height achieves sufficient natural ventilation and daylight access

Design guidelines

Measured from finished floor level to finished ceiling level, minimum ceiling heights are:

<i>Minimum ceiling height for apartment and mixed use buildings</i>	
<i>Habitable rooms</i>	<i>2.7m</i>
<i>Non-habitable</i>	<i>2.4m</i>
<i>2 storey apartments</i>	<i>2.7m for main living area floor 2.4m for second floor, where its area does not exceed 50% of the apartment area</i>
<i>Attic spaces</i>	<i>1.8m at edge of room with a 30 degree minimum ceiling slope</i>
<i>If located in mixed use areas</i>	<i>3.3m for ground and first floor to promote future flexibility of use</i>

These minimums do not preclude higher ceilings if desired

Comment:

All first floor residential units will have a minimum ceiling height of 2.7m. Second floor units have a 2.4m ceiling height, however the second floor is less than 50% of total apartment area so this is considered acceptable.

The ceiling height for the retail component exceeds 3.3m.

Objective 4C-2 Ceiling height increases the sense of space in apartments and provides for well-proportioned rooms

Comment:

Units 1-9 of the development utilise a void space in the front of bedroom 1 on the second floor to give an impression of space to the living areas below.

Objective 4C-3 Ceiling heights contribute to the flexibility of building use over the life of the building

Comment:

Adequate flexibility for future uses is provided.

Section 4D Apartment size and layout

Objective 4D-1

The layout of rooms within an apartment is functional, well organised and provides a high standard of amenity

Design guidelines

Apartments are required to have the following minimum internal areas:

Apartment type	Minimum internal area
Studio	35m ²
1 bedroom	50m ²
2 bedroom	70m ²
3 bedroom	90m ²

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

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 room

Comment:

The following table depicts the internal and private open space areas of each apartment and demonstrates compliance with the minimum area requirements.

Units	Bedrooms	Internal area (m2)	Private open space (m2)	Livable Housing Level Compliance
1	1	56.9	17.2	Silver
2,4,6,8	2 + study	103.1	25.6	Silver
3,5,7,9	2	90.5	24	Silver
10,11,12	3 + study	127.1	29	Gold
13,14	3 + study	117	28.5	Silver
15	3 + study	105.4	30.3	Silver

All habitable rooms have windows in external walls that allow for direct access to sunlight and do not rely upon light borrowed from other rooms.

Objective 4D-2 Environmental performance of the apartment is maximised

Design standards

Habitable room depths are limited to a maximum of 2.5 x the ceiling height

In open plan layouts (where the living, dining and kitchen are combined the maximum habitable room depth is 8m from a window.

Comment:

As previously documented, all first floor residential units will have a minimum ceiling height of 2.7m, whilst second floor units have a 2.4m ceiling height.

This requires maximum room depths of 6.75m for first floor rooms and 6m for second floor rooms and all relevant bedrooms comply.

Kitchen areas to Units 1-9 are a maximum of 9m from the north facing windows in the open plan 1st floor layout, however these are also within 4m of the translucent entry doors proposed for entry to the units, which will provide access to natural light, and the predominant living areas are well within 8m of the north facing windows.

Objective 4D-3 Apartment layouts are designed to accommodate a variety of household activities and need.

Design guidelines

Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space)

Bedrooms have a minimum dimension of 3m (excluding wardrobe space)

Living rooms or combined living/dining rooms have a minimum width of:

- 3.6m for studio and 1 bedroom apartments
- 4m for 2 and 3 bedroom apartments

The width of cross-over or cross- through apartments are at least 4m internally to avoid deep narrow apartment layouts

Comment:

Relevant bedroom dimensions are complied with for all units, however the minimum width dimensions for Unit 1 do not comply. The minimum width of Unit 1 is 2m at the point of entry, with a minimum dimension of approximately 1.5m within the kitchen area at its narrowest

point. The Unit then splays outwards to approximately 4.4m at the northern edge of the verandah area.

The objective of this standard is to accommodate a variety of household activities and needs and it is considered that there would still be a demand for units of this nature. If the design of Unit 1 was replicated for the rest of the development then this would be deemed unacceptable however this is not the case.

Council has recently undertaken public consultation as part of preparing a new Growth Management Strategy for the Shire and one of the key messages was that there is demand for a greater variety of affordable housing options in the Shire. In this context, it is considered that, despite its smaller dimensions, Unit 1 would be more than capable of meeting the needs of certain purchasers while still providing a reasonable level of amenity for future dwelling occupants.

Section 4E Private open space and balconies

Objective 4E-1 Apartments provide appropriately sized private open space and balconies to enhance residential amenity.

Design guidelines

All apartments are required to have primary balconies as follows:

Dwelling type	Minimum area	Minimum depth
<i>Studio apartment</i>	<i>4m²</i>	<i>-</i>
<i>1 bd apartment</i>	<i>8m²</i>	<i>2m</i>
<i>2 bd apartment</i>	<i>10m²</i>	<i>2m</i>
<i>3 + bd apartment</i>	<i>12m²</i>	<i>2.4m</i>

The minimum balcony depth to be counted as contributing to the balcony area is 1m

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.

Comment:

All primary balcony areas comply with the relevant guidelines, with the exception of Units 10-15. The minimum dimensions of these balcony areas reduce to 1m for small portions of the balcony and the total area of the balcony on Units 13-15 ranges from 10.1 to 11m².

These are considered to be minor non-compliances and justifiable in the context of the additional private open space areas that are provided at the entry to these Units on the first floor that adjoins the communal open space area. These provide an additional 17.5m² of outdoor area for the amenity of occupants.

Objective 4E-2 Primary private open space and balconies are appropriately located to enhance liveability for residents.

Comment:

All primary balcony areas are located so as to enjoy direct access from living areas within the apartments. Although primary balcony areas on Units 10-15 face southwards, this is designed so as to take advantage of views to the south and appropriate solar access will still be provided to the secondary private open space area provided at their entry from the communal open space area.

Objective 4E-3 Private open space and balcony design is integrated into and contributes to the overall architectural form and detail of the building.

Comment:

Balcony design on the Hyde St frontage assists with articulating the front façade and replicating vertical streetscape elements within the heritage conservation area. The recessed balcony elements on the Hyde St frontage utilise both masonry balustrading and timber verandah posts which are appropriate in a heritage context.

The balcony areas on both Hyde St, and Halpins Lane, will assist with passive surveillance of the public domain.

Objective 4E-4 Private open space and balcony design maximises safety

Comment:

Complies.

Section F Common circulation and spaces

Objective 4F-1 Common circulation spaces achieve good amenity and properly service the number of apartments.

Design guidelines

The maximum number of apartments off a circulation core on a single level is eight

For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40

Comment:

Objective 4F-2 Common circulation spaces promote safety and provide for social interaction between residents.

Comment:

The apartment design does not include a circulation core, within the meaning discussed by the design guidelines. Notwithstanding this, the design of the development provides for a high amenity common circulation area by virtue of the 1st floor communal open space area that must be traversed in order to obtain individual entry to units.

Section 4G Storage

Objective 4G-1

Adequate, well designed storage is provided in each apartment

Design guidelines

In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:

Dwelling type	Storage size volume
Studio apartments	4m ³
1 bd apartments	6m ³
2 bd apartments	8m ³
3 bd apartments	10m ³

At least 50% of the required storage is to be located within the apartment.

Objective 4G-2 Additional storage is conveniently located, accessible and nominated for individual apartments

Comment:

There are a number of storage opportunities provided within each of the apartments including study areas, under stair areas, linen presses and within private open space areas.

10 of the units incorporate a study within the dwelling which has a storage volume of approximately 13m³.

For units 1,3,5,7 & 9, which do not have a study area for storage, dedicated sub floor storage areas are provided with volumes of between 7.1m³ – 9m³ and there are potential storage volumes also achievable within under stair areas.

Consent will be conditioned to ensure that appropriate caged areas are provided and allocated to individual units within the sub-floor area.

Section 4H Acoustic privacy

Objective 4H-1 Noise transfer is minimised through the siting of buildings and building layout

Objective 4H-2 Noise impacts are mitigated within apartments through layout and acoustic treatments

Comment:

In general terms, the building layout locates similar uses (such as bedrooms or living areas) next to each other so as to minimise the likelihood of conflict. Vertical separation between potentially conflicting uses is achieved through, for example, locating living areas above rear lane service areas rather than bedroom areas which are separated by the first floor layout. Common access areas such as the lift and stairwells do not directly adjoin any habitable rooms and open within the communal open space area.

Bedroom areas on the first floor of units 10-15 adjoin private open space areas at the front of the dwellings and although this is not optimal, it is considered preferable that living areas instead adjoin the balcony areas to the south.

All proposed windows and doors are double glazed to assist with minimising transmission of noise and it is also proposed to insulate all internal walls with R1.5 acoustic bats which will further minimise noise transmission between units.

Sub-floor and ground floor areas will be subject to different building classifications under the BCA and will be required to achieve high levels of acoustic and fire separation that will assist in minimising acoustic conflict.

Section 4J Noise and pollution

Objective 4J-1 In noisy or hostile environments the impacts of external noise and pollution are minimised through the careful siting and layout of buildings

Objective 4J-2 Appropriate noise shielding or attenuation techniques for the building design, construction and choice of materials are used to mitigate noise transmission

Comment:

The building fronts Hyde Street, is within the CBD of Bellingham and is also located across the road from the Federal Hotel. The development will be subject to external noise impacts and it is therefore important to ensure that a suitable level of amenity will be maintained for future occupants of the residential units.

The shop top housing is proposed in two rows, comprising units 1 to 9 adjoining and encroaching upon Hyde Street, and units 10 to 15 which share a common frontage to Halpins Lane. The latter row of units and central courtyard are shielded from Hyde Street by intervening development and this design measure will enhance the amenity of these spaces. Bedrooms in units 1 to 9 also incorporate good acoustic planning in their location behind the building line. Solid balustrades to units 1, 3, 5, 7 and 9 plus the commercial awning in Hyde Street will assist in reducing noise entering the residential buildings.

The shop top housing is proposed to incorporate acoustic treatments comprising;

- double glazing with “appropriate” seals on operable windows and doors (all windows and doors are proposed to be double-glazed with the exception of U1W1-3, U2W1, U3W1, U4W1, U5W1, U6W1, U7W1, U8W1, U9W1 as shown on Drawings 3 and 4 – these are south facing 1st floor windows in study or entry areas adjoining the communal open space area),
- concrete block and brick veneer construction,
- insulation to all ceilings and external and party walls, and
- air-conditioning systems in all living areas to enable the closure of windows and doors.

Section 3.1.4 of the “Noise Guide for Local Government 2013” gives some guidance to the consideration of noise in the DA process and notes that *“When a noise producing development is proposed near noise sensitive areas, or conversely, where a noise sensitive development is proposed in a noisy area, a noise impact assessment is warranted.”* The Guidelines also note that the complexity of the noise assessment can vary having regard to the circumstances of the case.

The initial assessment of noise impact in the Statement of Environmental Effects noted potential impacts on occupants from traffic and commercial related noise *“particularly at night when licensed hotels / taverns in the street are frequented by patrons and live music is hosted”*, however did not give consideration to actual potential noise levels or the ameliorating potential of the development design. The assessment of noise undertaken under the headings of Section 4J-1 & 4J-2 of the Apartment Design Guidelines also failed to provide any detailed assessment of the degree to which nominated amenity criteria might be met by virtue of the proposed design.

Having regard to this, Council requested that the applicant provide further details from an appropriately qualified acoustic professional that would nominate potential amenity criteria and provide a preliminary opinion as to the likelihood of certain amenity criteria being met by the design as proposed, or the design as amended. Council consequently received a “Noise Impact Feasibility Assessment” from Acoustic Consultants “SoundIN Pty Ltd”, dated 14 November 2018.

The acoustic assessment nominated *“Australian Standard AS2107:2000 Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors”* as the most relevant document providing guidance on internal design noise levels for various spaces. This Standard recommends, for residential buildings near minor roads, that sleeping areas be designed to achieve a satisfactory level of 30dBA internally, with a maximum design level of 35dBA.

A further point for comparison would be The Department of Planning's *Development near Rail Corridors and Busy Roads – Interim Guideline* which requires achievement of the following LAeq levels for developments that adjoin any road with an annual average daily traffic volume of more than 20,000 vehicles.

(a) *in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*

(b) *anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

(Note: the engineering Assessment provided in support of the DA estimates an average daily traffic volume of 5600 vehicles)

The acoustic assessment considers potential noise generation from the Federal Hotel, estimating an internal noise level of 106dBA when live music is on, and reducing to 57dBA at the residential façade. The assessment concludes that with 10.38mm laminated glazing the noise levels within the most exposed bedrooms of the proposed development would be predicted to be 30dBA, with potential for a further reduction in noise levels and attenuation from low frequency noise (such as bass) of 2dBA if the glazing was increased to 12.76mm.

It is important to ensure that occupants are not unreasonably impacted by noise from external sources, but also, that the vitality of the CBD area is not significantly diminished by virtue of potential complaints regarding noise generation. In the circumstances, it is considered appropriate to require a comprehensive professional acoustic assessment as a condition of consent that will certify that all bedrooms within the development are designed to achieve a satisfactory level of 30dBA internally, with a maximum design level of 35dBA, pursuant to AS2107:2000. The feasibility assessment prepared by the acoustic consultants provides sufficient comfort that this condition is realistic is capable of being achieved without the need for fundamental design alterations.

Section 4 K Apartment mix

Objective4K-1 A range of apartment types and sizes is provided to cater for different household types now and into the future

Comment:

There are a variety of apartment sizes and configurations provided that will provide an appropriate mix for potential purchasers.

Objective4K-2 The apartment mix is distributed to suitable locations within the building

Comment:

All apartments are entered via the first floor and have a second storey as well. The location is limited by virtue of the ground floor retail component.

Section 4L Ground floor apartments

Comment:

There are no ground floor apartments proposed.

Section 4M Facades

Objective4M-1 Building facades provide visual interest along the street while respecting the character of the local area

Comment:

The building has two separate designs for different facades of the building. The Hyde St façade consists of masonry and timber construction and deliberately introduces smaller vertical elements into the otherwise wide frontage to reinforce the dominant character of the heritage conservation area. Further visual interest is provided by the proposed mosaic mural work along the ground floor façade and entry area into the retail premises.

The Halpins Lane façade is necessarily dominated by servicing related functions on the ground floor level, as are many of the other rear facades of buildings in the lane. The use of the laneways for servicing functions associated with retail premises fronting Hyde St is a historic pattern of development in the CBD area of Bellingen. The residential façade which starts above the ground floor incorporates a blend of materials and colours, including concrete coloured blockwork, off-white fibre cement sheeting, and colorbond custom orb cladding in light brown and green colours. The incorporation of more lightweight materials is consistent with the residential types of construction visible along this lane and respects the character of the locality.

It is accepted that the Halpins Lane façade does not incorporate the same level of visual interest as the Hyde St frontage, however the secondary nature of this street frontage and prevailing character does not render this unacceptable.

Objective4M-2 Building functions are expressed by the facade

Comment:

Key building functions are adequately expressed by the façade. The entry point to the retail premises is expressed through the proposed mosaic mural and other subtle design cues. The pedestrian entry to the residential component is sufficiently legible, as is the point of entry to the underground carpark. A sign will be required as a condition of consent to indicate customer parking to further reinforce this functional arrangement.

Section 4N Roof design

Objective 4N-1 Roof treatments are integrated into the building design and positively respond to the street

Objective4N-2 Opportunities to use roof space for residential accommodation and open space are maximised

Objective 4N-3 Roof design incorporates sustainability features

Comment:

The roof form has been designed to be a recessive, rather than dominant, element in the streetscape in order to minimise the height of the development and to also provide the opportunity for incorporation of a significant array of solar PV panels to improve the environmental sustainability of the development.

No opportunities have been provided to use the roof area for open space opportunities as ample opportunities are provided by virtue of the first floor communal open space area, and this would also create a conflict with the key intended use of the roof for electricity generation purposes.

Section 4O Landscape design

Objective 4O-1 Landscape design is viable and sustainable

Objective 4O-2 Landscape design contributes to the streetscape and amenity

Comment:

A comprehensive landscaping plan has been prepared by a Landscape Architect, as is required by Chapter 9 of Councils Development Control Plan. The design incorporates species that are considered to be broadly suitable for the proposed locations.

Given the sites location in the CBD area of Bellingen, and the lack of landscaping incorporated along site frontages to Hyde St, it is not proposed, nor considered necessary, to require landscaping along street frontages that contribute to the streetscape and it is acceptable that the landscaping response focuses on improving the internal amenity of future residential occupants.

Section 4P Planting on structures

Objective 4P-1 Appropriate soil profiles are provided

Objective 4P-2 Plant growth is optimised with appropriate selection and maintenance

Objective 4P-3 Planting on structures contributes to the quality and amenity of communal and public open spaces

Comment:

All proposed landscaping on the first floor communal area will be installed upon structures and the engineering specifications for the development will need to have regard for this. The Landscaping Plan indicates typical soil depths of up to 900mm along the central grassed area in association with mounding for the planting of tree species.

Although initially proposed, it is no longer intended to provide the green roof area.

Section 4Q Universal design

Objective 4Q-1 Universal design features are included in apartment design to promote flexible housing for all community members

Objective 4Q-2 A variety of apartments with adaptable designs are provided

Objective 4Q-3 Apartment layouts are flexible and accommodate a range of lifestyle needs

Comment:

The development significantly exceeds the recommended standards included in the Apartment Design Guide. The ADG recommends that 20% of apartments meet the Silver level for incorporation of universal design features.

The proposed development provides Gold level universal design features for 20% of apartments, with all of the remaining 80% of apartments providing silver level universal design features.

The development also incorporates a range of different designs and configurations, with sufficient flexibility provided to meet a range of different lifestyle needs. For example, the provision of a study room in the majority of apartments provides flexibility in terms of the

potential use of these rooms either for storage or office purposes depending upon needs at any particular time. It is also noted that all apartments exceed the minimum areas requirements specified for particular bedroom configuration as stipulated in the ADG and that this would also provide some flexibility for alternative uses over time.

Section 4R Adaptive reuse

Comment:

The development proposal does not involve the adaptive reuse of an existing building.

Section 4S Mixed use

Objective 4S-1 Mixed use developments are provided in appropriate locations and provide active street frontages that encourage pedestrian movement

Comment:

The Hyde St façade for the retail premises provides for an active street frontage.

Objective 4S-2 Residential levels of the building are integrated within the development, and safety and amenity is maximised for residents

Comment:

The pedestrian residential entry to the premises is separated from the commercial premises, being located along the western elevation of the building at ground level. It is appropriately integrated into the design of the development. A condition of consent will be included to require appropriate automatic lighting to assist with entry after hours and to provide an appropriate level of security for occupants.

Access to lift and stair areas is also provided within the sub-floor area.

Section 4T Awnings & signage

Objective 4T-1 Awnings are well located and complement and integrate with the building design

Comment:

The development incorporates awnings along the Hyde St frontage that effectively integrate with the building design.

Objective 4T-2 Signage responds to the context and desired streetscape character

Comment:

The development does not include signage, however opportunities for signage have been effectively incorporated into the building design in a manner cognisant of typical signage locations for buildings within a heritage precinct.

Section 4U Energy efficiency

Objective 4U-1 Development incorporates passive environmental design

Objective 4U-2 Development incorporates passive solar design to optimise heat storage in winter and reduce heat transfer in summer

Objective 4U-3 Adequate natural ventilation minimises the need for mechanical ventilation

Comment:

The development incorporates passive design measures including access to northerly sun for drying opportunities, cross ventilation and access to adequate natural light in all habitable rooms.

Building materials such as concrete blocks provide thermal mass and the use of double glazing for the majority of windows will also assist with thermal performance.

Although significant opportunities exist in the building design for natural cross ventilation, it is also important to note that mechanical ventilation opportunities are provided in order to allow for the closing of windows in the event of raised noise levels that may eventuate due to the buildings location within the CBD area of Bellingren. The fact that the building incorporates a sizeable solar array to offset energy use will more than compensate for any need to rely upon mechanical ventilation from time to time.

Section 4V Water management and conservation

Objective4V-1 Potable water use is minimised

Comment:

The development is accompanied by a BASIX certificate that verifies that the development meets relevant standards for potable water use.

Objective4V-2 Urban stormwater is treated on site before being discharged to receiving waters

Comment:

The development incorporates Level 3 Stormwater treatment controls pursuant to the provisions of Chapter 12 of Councils Development Control Plan.

With the exception of the northern awnings and overhangs (which will discharge directly to the street kerb) the majority of the stormwater will be diverted to 4 stormwater filtration cartridges within the on-site detention basin, and will be treated to the following standards prior to discharge.

- 93.5% reduction in total suspended solids
- 85.8% reduction in Total Phosphorous
- 50.4% reduction in total Nitrogen
- 100% reduction in Average annual Gross Pollutant Load (>5mm)

During the assessment of the application Council sought clarification from the applicants as to whether stormwater in the basement would be collected and treated via the stormwater system and confirmation was provided that this could be collected and pumped to the ground floor treatment facility.

Objective4V-3 Flood management systems are integrated into site design

Comment:

Detention tanks are incorporated into the development as part of the Level 3 Stormwater Treatment required by Council.

The land is otherwise not subject to flooding in a 1%AEP flood event.

Section W Waste management

Objective 4W-1 Waste storage facilities are designed to minimise impacts on the streetscape, building entry and amenity of residents

Objective4W-2 Domestic waste is minimised by providing safe and convenient source separation and recycling

Comment:

Initial waste generation estimates were considered to be inadequate and Council consequently sought additional information from the applicant regarding waste storage and management. In particular, Council sought confirmation that adequate storage capacity existed within the ground floor storage area so as to not require multiple weekly collections.

Drawing No 2/8 confirms that capacity exists for;

- 5 x 1100 litre red bins
- 5 X 1100 litre yellow bins
- 4 x 240litre green bins
- 1 x waste compactor to compress cardboard boxes associated with future retail use.

This provides an extra 1100 litre bin capacity for both the yellow and red bin services beyond that recommended by Councils Waste Management Co-ordinator and is therefore considered acceptable. It is also noted that the standard waste service provided by Council contractors for Multi-Unit Developments allows for the waste contractor to enter the premises, retrieve, empty and return the bins to the storage area subject to the owners providing a key and an indemnity to enter the property. This arrangement would further minimise impacts to Halpins Lane associated with the placement of a relatively large number of bins on the lane frontage to await collection.

Within the development, domestic waste will be dropped from the first floor communal area into 4 rubbish chutes that will deposit into bins placed underneath within the ground floor waste storage area.

In conclusion, waste management associated with the development will minimise adverse impacts and will encourage effective recycling and separation of waste streams.

Section 4X Building maintenance

Objective 4X-1 Building design detail provides protection from weathering

Objective4X-2 Systems and access enable ease of maintenance

Objective 4X-3 Material selection reduces ongoing maintenance costs

Comment:

The building design utilises materials that are sufficiently durable and able to be maintained. Awnings, balcony roofs and recessing are provided to assist with protection from weathering and roof ladders are provided to enable access to the roof area to maintain external components and the solar arrays. Louvre windows are capable of cleaning from the inside.

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

Pursuant to the provisions of Clause 6 of this SEPP, the development involves the erection of a BASIX affected development. A BASIX Certificate has been submitted confirming that the proposal will meet the NSW Governments requirements for sustainability. A condition of consent is recommended to ensure that all BASIX commitments are appropriately notated on Construction Certificate plans and checked for compliance prior to the issue of an Occupation Certificate for the development.

State Environmental Planning Policy (Coastal Management) 2018

This Policy aims to promote an integrated and co-ordinated approach to land use planning in the coastal zone and to manage the coastal environment in a manner that is consistent with the principles of ecologically sustainable development for the social, cultural and economic well-being of the people of the State.

The land is within the coastal zone for the purposes of the Policy but is outside the range of the former *State Environmental Policy No 71-Coastal Protection*.

Clause 21 (1) of *State Environmental Planning Policy (Coastal Management) 2018* provides that:

The former planning provisions continue to apply (and this Policy does not apply) to a development application lodged, but not finally determined, immediately before the commencement of this Policy in relation to land to which this Policy applies.

As the DA was lodged with Council on 16 March 2018 and the Policy commenced on 3 April 2018, the Policy is not applicable to an assessment of the DA.

State Environmental Planning Policy (Infrastructure) 2007

Division 5 – Electricity transmission or distribution

Clause 45 - Determination of development applications—other

Clause 45 of *State Environmental Planning Policy (Infrastructure) 2007* establishes the criteria for when a development application is to be referred to the electricity supply authority for comment. The DA meets the established referral thresholds and was duly forwarded by Council to Essential Energy in correspondence dated 27 March 2018.

Before determining the DA, the consent authority must take into consideration any response received to the notice. Essential Energy submitted a response to Council on 11 April 2018 as below. The commentary is general in nature and is included as advisory notes and conditions to the recommendation of this Report.

Strictly based on the documents submitted, Essential Energy has no comments to make as to potential safety risks arising from the proposed development.

Essential Energy makes the following general comments:

- 1. If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment.*
- 2. Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with.*
- 3. Prior to any demolition works, satisfactory arrangements are to be made with Essential Energy for the disconnection of any power supply to the properties.*

4. *Satisfactory arrangements are to be made with Essential Energy for the provision of power with respect to all proposed lots/improvements which will form part of the development. It is the Applicant's responsibility to make the appropriate application with Essential Energy for the supply of electricity to the development, which may include the payment of fees and contributions. Refer Essential Energy's Contestable Works team for requirements.*
5. *Satisfactory arrangements are to be made with Essential Energy with respect to the proposed solar energy system which will form part of the development. It is the Applicant's responsibility to enter into the required Connections Agreements and any other requirements with Essential Energy for the development, which may include the payment of fees and contributions. Refer Essential Energy's Network Connections team for requirements via email networkconnections@essentialenergy.com.au or via weblink <https://www.essentialenergy.com.au/our-network/connecting-to-the-network>.*
6. *Satisfactory arrangements are to be made with Essential Energy with respect to the proposed electric car charging station which will form part of the development. It is the Applicant's responsibility to enter into the required Agreements and/or other requirements with Essential Energy for the development, which may include the payment of fees and contributions.*
7. *In addition, Essential Energy's records indicate there is electricity infrastructure located within the properties and within close proximity to the properties. Any activities within these locations must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure. Approval may be required from Essential Energy should activities within the properties encroach on the electricity infrastructure.*
8. *Prior to carrying out any works, a "Dial Before You Dig" enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW).*
9. *Given there is electricity infrastructure in the area, it is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure. These include the Code of Practice – Work near Overhead Power Lines.*

Division 17 – Roads & Traffic

Clause 101 - Development with frontage to classified road

Clause 101 establishes a range of criteria that must be considered when new development fronts a classified road. Hyde Street, which is also referred to as Waterfall Way [MR76] is a classified [State] road under the Roads Act 1993.

Clause 101 provides as follows.

The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:

- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*

Comment:
Complies.

- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
- (i) the design of the vehicular access to the land, or*
 - (ii) the emission of smoke or dust from the development, or*
 - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*

Comment:

Complies. The vehicular access to the site is via a rear servicing lane and traffic generation associated with the development will not significantly impact upon intersection performance on the classified road. The development will not emit smoke or dust to the detriment of the classified road and the classified road has adequate capacity to safely accommodate any minor increase in traffic generation attributable to the development.

- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

The residential component of the development is of a type that is sensitive to traffic noise. As a result, design measures to ameliorate traffic noise generated along Hyde Street have been incorporated into the development, and discussed extensively earlier in this report (See SEPP 65 Commentary – Noise & Pollution).

To reiterate, Council has received an acoustic assessment that nominated “*Australian Standard AS2107:2000 Acoustics – Recommended Design Sound Levels and Reverberation Times for Building Interiors*” as the most relevant document providing guidance on internal design noise levels for various spaces. This Standard recommends, for residential buildings near minor roads, that sleeping areas be designed to achieve a satisfactory level of 30dBA internally, with a maximum design level of 35dBA.

This provides a higher standard for compliance than the Department of Planning’s *Development near Rail Corridors and Busy Roads – Interim Guideline* which requires achievement of the following LAeq levels for developments that adjoin any road with an annual average daily traffic volume of more than 20,000 vehicles. (It is noted that the engineering assessment provided in support of the DA estimates an average daily traffic volume of 5600 vehicles for Hyde St.)

- (a) in any bedroom in the residential accommodation—35 dB(A) at any time between 10 pm and 7 am,*
- (b) anywhere else in the residential accommodation (other than a garage, kitchen, bathroom or hallway)—40 dB(A) at any time.*

In the circumstances, it is considered appropriate to require a comprehensive professional acoustic assessment as a condition of consent that will certify that all bedrooms within the development are designed to achieve a satisfactory level of 30dBA internally, with a maximum design level of 35dBA, pursuant to AS2107:2000. The feasibility assessment prepared by the acoustic consultants provides sufficient comfort that this condition is realistic and is capable of being achieved without the need for fundamental design alterations.

It is considered that this will sufficiently ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.

Clause 102 - Impact of road noise or vibration on non-road development

Clause 102 does not apply to this development as Hyde Street does not have an average daily traffic volume in excess of 20,000 vehicles.

Clause 104 - Traffic-generating development

Clause 104, and Schedule 3 of *State Environmental Planning Policy (Infrastructure) 2007*, establish the criteria for when a development application is to be referred to the Roads and Maritime Services for comment. The Development Application required referral to the Roads and Maritime Services pursuant to the SEPP because the development is a traffic-generating development involving “shops” of 500m² or greater gross floor area with pedestrian access to a classified road. Waterfall Way [MR76] is a classified [State] road under the *Roads Act 1993*.

The Development Application was referred to the RMS as part of the original advertising and notification of the Development Application. Initial comments received from the RMS raised queries with respect to;

- traffic counts,
- intersection capacities,
- connectivity between the parking area and the development site,
- loading bay dimensions and functionality
- parking availability for residents
- Inadequate details of electric vehicle charging bay on Hyde St
- Potential future need for turning lanes into Oak & Church St should population increase significantly

The Applicant has addressed the full range of questions posed by the RMS as part of the initial referral process and, consequently, the second referral made as part of the re-exhibition process resulted in the RMS advising Council that they had no objection to the proposed development.

Pursuant to Clause 104(3) of the SEPP, Council is also required to take into consideration the following additional matters.

(ii) the accessibility of the site concerned, including:

- (A) the efficiency of movement of people and freight to and from the site and the extent of multi-purpose trips, and*
- (B) the potential to minimise the need for travel by car and to maximise movement of freight in containers or bulk freight by rail, and*

Comment:

The site is within the CBD area of Bellingen and is readily accessible for future residents, customers, delivery and service vehicles. The site's location will facilitate pedestrian access to a wide range of services and facilities and minimise the need for travel by car.

(iii) any potential traffic safety, road congestion or parking implications of the development.

Comment:

The potential traffic safety, road congestion or parking implications of the development have been comprehensively considered by the Applicants, the RMS and Council's Development Engineer. Subject to the imposition of recommended conditions of consent regarding the necessary infrastructure upgrades, and the finalisation of a Planning Agreement between Council and the proponents regarding these matters, it is considered that the proposed development will have no significant adverse implications.

State Environmental Planning Policy (State and Regional Development) 2011

This Policy identifies classes and sites of development which are of State or regional significance and confers the consent authority function to the relevant Commission or Panel under section 4.5 of the Act.

Clause 20 of *State Environmental Planning Policy (State and Regional Development) 2011* declares the DA as regionally significant development in that it meets criteria 3 of Schedule 7 of that Policy. That is, the proposed development has a nominated capital investment value in excess of five (5) million dollars (at around \$8.985 million) and Council is the owner of land on which part of the development is to be carried out (notably verandahs, awnings, pavement and an electric car charging station in Hyde Street). The Northern Regional Planning Panel is accordingly the consent authority for the subject application.

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

SEPP (Vegetation in Non-Rural Areas) 2017 applies to the clearing of vegetation on land in urban areas and on land in environmental zones that does not otherwise require development consent. The minor degree of clearing proposed by the development has been considered as part of the assessment of this DA, will be authorised through the recommended granting of development consent, and does not require additional authorisation under SEPP (Vegetation in Non-Rural Areas) 2017. The SEPP is accordingly not applicable to the assessment of the DA.

Bellingen Local Environmental Plan 2010

Clause 2.2 Zoning of land to which Plan applies

Clause 2.2 of the BLEP provides that the land is Zone B2 Local Centre.

Clause 2.3 Zone objectives and Land Use Table

Clause 2.3 (2) of the BLEP provides that the 'consent authority must have regard to the objectives for development in a zone when determining a development application in respect of land within the zone'.

The objectives for development in the Zone B2 Local Centre are:

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*
- *To encourage employment opportunities in accessible locations.*
- *To maximise public transport patronage and encourage walking and cycling.*
- *To preserve the dominance of Hyde Street as the retail centre of Bellingen.*

It is considered that the development complies with the objectives of the zone. It is a mixed use development that provides a significant opportunity for an anchor retail use that will assist with preserving the dominance of Hyde St as the retail centre of Bellingen. The retail use will provide local employment opportunities in an accessible location and residents of the proposed development will have the opportunity to avail themselves of all of the benefits of a CBD location without needing to rely upon motor vehicles to access them.

The Bellingen Shire Employment Lands Strategy 2013 made comparisons between consumer demand (household expenditure) and the supply of existing retail floorspace within the Bellingen Shire and found that, as of 2011, there was an undersupply of all retail types within Bellingen Shire by over 10,000m², and in particular specialised retail premises. The Strategy also identified the need for an additional 14,391m² of floorspace within Bellingen Shires Centres by 2036, with the greatest percentage of this floorspace recommended for Bellingen in view of its role as the main centre within the Shire. Indeed,

the Strategy gave specific consideration to this site as being a potentially suitable location to deliver some of this increased floor space.

Having regard to these factors, it is considered that the proposed development is consistent with the objectives of the zone and will assist with the delivery of a documented undersupply of retail floorspace.

With regard to the Land Use Table, the DA constitutes shop top housing, which is permissible with consent within the Zone. The definition of “shop top housing” is included below.

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

The land use “retail premises” warrants further consideration as it is a “parent” definition which facilitates a broad range of “child” land uses. The definition is as follows:

retail premises means a building or place used for the purpose of selling items by retail, or hiring or displaying items for the purpose of selling them or hiring them out, whether the items are goods or materials (or whether also sold by wholesale), and includes any of the following;

- (a) (Repealed)
- (b) cellar door premises,
- (c) food and drink premises,
- (d) garden centres,
- (e) hardware and building supplies,
- (f) kiosks,
- (g) landscaping material supplies,
- (h) markets,
- (i) plant nurseries,
- (j) roadside stalls,
- (k) rural supplies,
- (l) shops,
- (la) specialised retail premises,
- (m) timber yards,
- (n) vehicle sales or hire premises,

but does not include highway service centres, service stations, industrial retail outlets or restricted premises.

The environmental impacts attributable to the inclusive list of land uses under the retail premises definition are notably varied. For example, when calculating car parking requirements under the DCP, the standards range between the land uses as described in the following Table 2.

Table 2: Car parking development standards by land use

Land Use	Car Parking Requirement	Additional Vehicular Access Requirements Specific to Land Use
<i>food and drink premises</i>	Dining; 1 per 10m ²	Off peak provisions will apply
<i>garden centres</i> <i>landscaping material supplies</i> <i>plant nurseries</i> <i>rural supplies</i>	Retail Plant nurseries; 1 per 20m ² accessible to public for building component, 1 space per 100m ² site area for external display area Landscape supplies; 1 per 50m ² for built component 1 space per 100m ² site area for external display area	Provisions must be made for trailer access and pick-up areas
<i>markets</i>	2.5 spaces per stall	
<i>roadside stalls</i>	Waterfall Way and Pacific Highway; Minimum 5 spaces on private property Other local roads; minimum 2 spaces	Waterfall Way and Pacific Highway; Dedicated turning lanes required for use. Subject to RTA concurrence. Other local roads: Adequate off road area with compliant site distances, pavement surfacing etc. Consideration may be given to use of road reserve for parking subject to safety issues and appropriate insurances being obtained.
<i>specialised retail premises</i>	1 per 50m ²	
<i>vehicle sales or hire premises</i>	1.5 per 200m ² of GFA and outdoor display area; 6 per mechanical work bay for service area	
<i>All other Retail Premises</i>	1 per 20m ² accessible to public	

With such a broad land use categorisation, it is not feasible for Council to identify the resulting environmental impacts or to calculate compliance with specific development standards. The assessment of the retail component of the DA will accordingly proceed on the specific land use definition of “shop.”

The definition of “shop” is included below.

“shop means premises that sell merchandise such as groceries, personal care products, clothing, music, homewares, stationery, electrical goods or the like or that hire any such merchandise, and includes a neighbourhood shop and neighbourhood supermarket, but does not include food and drink premises or restricted premises.”

This will facilitate a true assessment of the impacts of the proposed development and enable changes of use under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* without the requirement to obtain further development consent, including exempt changes of use to business premises, office premises, shops, kiosks and public administration buildings.

Clause 2.7 Demolition requires development consent

Noted. The application proposes the demolition of the existing structures on site and this will be covered by the recommended approval.

Clause 4.3 Height of buildings

In order to restrict the height of buildings in a manner that preserves the character and amenity of localities in the Bellingen Shire, clause 4.3 of the BLEP provides that '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 maximum height shown for the land on the Height of Buildings Map is ten (10) metres.

The proposed maximum building height is 11.697m above existing ground level. This is a 16.97% variation to the development standard. The applicant has submitted a request to vary this development standard pursuant to Clause 4.6 of the BLEP and a copy of this request is included as an Attachment to this report (Attachment: Clause 4.6 Variation Request to 10m height limit).

It is considered that there is merit in varying the 10m height limit contained in BLEP 2010 and this is further discussed below.

Clause 4.6 Exceptions to development standards

Description of non-compliance:

Development standard:	Height of buildings
Requirement:	10m
Proposed:	11.697m m
Percentage variation to requirement:	16.97%

Assessment of request to vary a development standard:

The following assessment of the variation to Clause 4.3 – Height of Buildings development standard contained within Bellingen Local Environmental Plan 2010 (BLEP 2010), has taken into consideration the recent judgement contained within Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118.

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

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

(2) Development consent may, subject to this clause, 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.

Comment:

The Clause 4.3 – Height of Buildings development standard is not expressly excluded from the operation of this clause.

(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.

Clause 4.6 (4)(a)(i) (Justification) assessment:

Clause 4.6 (4)(a)(i) requires the consent authority to be satisfied that the applicant's written request, seeking to justify the contravention of the development standard, has adequately addressed the matters required to be demonstrated by cl 4.6(3).

There are two separate matters for consideration contained within cl 4.6(3) and these are addressed as follows:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and

Comment:

The Applicant's written request (attached to this report as an Appendix) has demonstrated that the objectives of the development standard are achieved, notwithstanding the non-compliance with the development standard.

In doing so, the Applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of this case as required by cl 4.6(3)(a).

(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Comment:

In the matter of Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, Preston CJ provides the following guidance (para 23) to inform the consent authority's finding that the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard:

'As to the second matter required by cl 4.6(3)(b), 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.'

s 1.3 of the EPA Act reads as follows:

1.3 Objects of Act(cf previous s 5)

The objects of this Act are as follows:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

The applicant's written request states, in part, that:

- *The most effective utilization of the site requires a proposal that balances financial viability, respect for heritage and an efficient use of infill land resources. Single or double storey options are not the most efficient use of land resources in this context and are not financially viable.*
- *The objective of the 10m height limit is to "restrict the height of buildings in a manner that preserves the character and amenity of localities in Bellingen" – it is not necessary to strictly comply with the 10m height limit to achieve this objective. The proposal responds to heritage scale of Hyde St and the highest part of the building is setback to the SE corner, with a two storey presentation to Hyde St.*
- *The development does not have unreasonable off site amenity impacts arising from the height limit.*
- *The development has received favorable feedback from Council regarding heritage compatibility, there are other built forms that exceed the 10m height standard.*
- *Enforcing the 10m height limit would result in a largely imperceptible change to overall scale, however would significantly impact the financial viability of the proposal.*
- *The development would revitalise the site and achieve positive outcomes for the community in terms of housing choice, employment opportunities, economic activity and preserving the dominance of Hyde St as the retail centre of Bellingen."*

It is considered that the Applicant has specified a range of environmental planning grounds that justify the variation of the 10m development standard. The applicant's written request identifies that an infill development of this nature requires a careful balancing of economic feasibility against likely impacts. It identifies that the environmental impacts of the development on adjoining properties are minor in the context of the B2 Zoning of the land, that the impacts of the additional height will be largely imperceptible, and that strict compliance would unnecessarily jeopardise the economic viability of the proposal.

The request identifies that the development can integrate with the prevailing heritage character through design features such as presenting a two storey façade to Hyde Street, and focusing the main extent of the requested variation away from the heritage streetscape

of Hyde Street. It notes that the development provides an opportunity for a high amenity residential development that responds to the need for greater housing choice in Bellingen Shire, and allows for the orderly achievement of the zone objectives, one of which is to reinforce the dominance of Hyde Street as the retail centre of Bellingen.

In this regard, it is considered that the applicant's written request has demonstrated that the proposed development has integrated economic, environmental and social factors into the design parameters, promotes the sustainable management of built and cultural heritage, is an orderly and economic use and development of the land, and that the structure is of a good design that will reasonably protect and improve the amenity of the surrounding built environment, therefore satisfying cls 1.3 (b)(c) (f) (g) of the EPA Act.

Therefore, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard as required by cl 4.6 (3)(b).

Therefore, Council is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by cl 4.6(3).

Clause 4.6 (4)(a)(ii) (Public Interest) assessment:

cl 4.6 (4)(a)(ii) requires the consent authority to be satisfied that:

(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

Comment:

In considering whether or not the proposed development will be in the public interest, consideration must be given to the underlying objectives of the Height of Buildings development standard and the objectives of the B2 Local Centre zone. An assessment against these objectives is provided below.

Objectives of development standard

The objective of the development standard contained within Clause 4.3 – 'Height of buildings' of the BLEP 2010 is as follows:

(a) to restrict the height of buildings in a manner that preserves the character and amenity of localities in Bellingen.

Comment:

Strict compliance with the 10m height limit is not essential to preserve the heritage character of the Bellingen Heritage Conservation Area, and Hyde Street in particular. It is relevant to note that some of the most significant built elements in this streetscape are significantly larger than 10m and do not detract from the overall character. The development does not seek to dominate or compete with the larger building elements in the streetscape, providing due deference and sightlines to the adjoining Bank building for example, and the Hammond & Wheatley Building, which has a height of 15m.

In this instance, the degree to which the development preserves the character and amenity of the locality is considered to be more a function of the underlying design principles for the development, rather than its finished height. For example, the development incorporates a

mix of materials and design approaches that take their cue from the prevailing streetscapes on the respective frontages.

The development does not attempt to mimic heritage character however responds appropriately to this character through the use of appropriate setbacks to listed buildings, setting the bulkier elements of the proposal back from the Hyde Street frontage, using similar materials such as masonry and timber verandah posts, verandah awnings across the Hyde St frontage and the use of vertical elements on the Hyde St frontage to respond to the prevailing character of the street.

In this regard, a development that failed to observe the same design principles as those underpinning this proposal could have a significantly greater adverse impact upon the character of the locality, even if it was to comply with the 10m height limit.

In this respect, it is considered that the proposal will preserve the character and amenity of the locality and is therefore consistent with this objective.

Zone objectives

The underlying objectives of the B2 Local Centre Zone are as follows.

- *To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.*

Comment:

The proposed development is a mixed use development that will provide for new residential and retail opportunities in the heart of Bellinghen. The minor variation to the height limit allows for these multiple uses to be accommodated on the same property, in a manner that does not impact unreasonably upon the amenity of people who live in the local area.

- *To encourage employment opportunities in accessible locations.*

Comment:

The retail use will provide local employment opportunities in an accessible location.

To maximise public transport patronage and encourage walking and cycling.

Comment:

Residents of the proposed development will have the opportunity to avail themselves of all of the benefits of a CBD location without needing to rely upon motor vehicles to access them. The development has made provision for storage opportunities for two bikes for each residential unit which will further promote the use of alternative forms of transport.

- *To preserve the dominance of Hyde Street as the retail centre of Bellinghen.*

Comment:

The development provides a significant opportunity for an anchor retail use that will assist with preserving the dominance of Hyde St as the retail centre of Bellinghen.

Conclusion:

Overall, the zone objectives are concerned with providing a variety of uses and opportunities within the CBD area of Bellinghen and the development positively responds to these needs

and aspirations. The site is highly accessible and central to facilities and the extent of variation is considered reasonable in the context of allowing for a mixed use development that is financially viable, reinforces the retail dominance of Hyde St, and does not lead to any significant adverse impacts arising as a result of the minor exceedance of the relevant development standard.

For these reasons, the proposal is considered to be consistent with the objectives of the B2 Local Centre zone.

Clause 4.6 (4)(b) (Concurrence of the Secretary) assessment:

cl. 4.6(4)(b) requires the concurrence of the Secretary to be obtained in order for development consent to be granted.

Planning Circular PS 18-003 (Variations to development standards) allows the Regional Planning Panel to assume the Secretaries concurrence to vary the 10m height limit. Furthermore, because the Panel is not a delegate of the Council, it is not prevented from considering a request that varies a development standard by more than 10%, which is the case in respect of this development.

In this regard, and given the consistency of the variation with the objectives of the development standard, and the objectives of the zone, it is recommended that Northern Regional Planning Panel assumes the concurrence of the Secretary for the variation to the Height of buildings Development Standard.

Clause 5.10 Heritage conservation

The subject site is within a Heritage Conservation Area, pursuant to the provisions of Clause 5.10 and Schedule 5 of the BLEP.

The development involves the demolition of a building and the erection of a new building, and accordingly development consent is required for the works pursuant to Clause 5.10(2)(a)(iii) and Clause 5.10(2)(e)(i) respectively.

Clause 5.10(4) of the BLEP provides that the consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned.

Council has sought advice from its Heritage Advisor, Deborah Wray, in respect of the effect that the development would have on the heritage significance of the Bellingher Heritage Conservation Area. This is included as an Attachment to this report (Attachment: Heritage Referral – April 2018).

The Heritage Advisor concludes as follows with respect to the proposed development.

“The proposed redevelopment is an opportunity to provide for a long term enhancement of a non-contributory site within the Bellingher historic main street precinct. It is considered that the submitted plans successfully addressed the heritage matters outlined in previous reports, and that the proposed development is a positive design response which will harmoniously relate to the existing Heritage Conservation Area streetscape. After review of the proposed development and the existing assessed heritage significance, it is considered that the proposed development is not likely to have any adverse impacts on the assessed significance of the Bellingher Heritage Conservation Area or of adjacent items.”

Recommendations made regarding a schedule of external finishes, future signage and unexpected archaeological finds will be included as recommended conditions of consent.

Based upon this advice, it is considered that the proposed development will have no significant adverse effect on the heritage significance of the Conservation Area. It is also noted that significant discussion regarding heritage impacts is provided throughout various other locations within this report, and in particular, as part of comments addressing *Chapter 15 – Heritage* of the Bellingen Shire Development Control Plan 2017.

Clause 7.1 Acid sulfate soils

The development site is mapped as Class 5 ASS as shown on the BLEP ASS Map. Works proposed on this land that are 'within 500 metres of adjacent Class 1, 2, 3, or 4 land that is below 5 metres Australian Height Datum and by which the water table is likely to be lowered below 1 metre Australian Height Datum on adjacent Class 1, 2, 3 or 4 land' are required to be undertaken in accordance with an ASS management plan unless the works involve the disturbance of less than 1 tonne of soil and are unlikely to lower the water table.

It is unlikely that the development will lower the watertable on any adjoining Class 4 land. It is noted that geotechnical investigations to 10m depth did not encounter the water table.

Clause 7.2 Earthworks

Before granting development consent for earthworks, the consent authority must consider the matters contained under clause 7.2 (3) of the BLEP. These matters and associated commentary follow.

(a) the likely disruption of, or any detrimental effect on, existing drainage patterns and soil stability in the locality,

Comment:

Geotechnical investigations undertaken by the applicants noted that there was no watertable present when measurements were taken, and that groundwater issues are unlikely to be a significant issue on the development site. Conditions of consent will be imposed to require appropriate soil and erosion controls during the construction phase to limit the potential for sedimentation arising from unstabilised soils.

(b) the effect of the proposed development on the likely future use or redevelopment of the land,

Comment:

The proposed earthworks are essential to realise the development potential of the land and will facilitate its future use.

(c) the quality of the fill or the soil to be excavated, or both,

Comment:

Preliminary investigations have revealed the potential for contaminated soils to be excavated, given the sites previous use as a service station. A Remedial Action Plan is required to be prepared as a recommended condition of consent and this will determine appropriate treatment or disposal methods for any contaminated soil.

(d) the effect of the proposed development on the existing and likely amenity of adjoining properties,

Comment:

The proposed earthworks are significant and there is potential for these activities to detrimentally affect structural elements on adjoining properties if not carefully undertaken. Condition of consent are recommended to require that any excavation that extends below the level of the base of the footings of a building, structure or work on adjoining land must provide adequate protection to that building at the expense of the developer. A further condition of development consent is recommended to require the developer to obtain Dilapidation Reports for buildings on adjoining properties, to document the existing state of those buildings and to inform any potential restorative works required to rectify damage caused by earthworks or other construction activities.

It is likely that the excavation works will have short term impacts on the amenity of adjoining properties associated with potential noise and dust, however appropriate conditions of consent have been recommended to assist with mitigating those impacts.

(e) the source of any fill material and the destination of any excavated material,

Comment.

The applicant has confirmed that any excavated material will be disposed of at an appropriate facility, or approved location.

(f) the likelihood of disturbing relics,

Comment:

The land is not a recorded site on the OEH maintained Aboriginal Heritage Information Management System. Notwithstanding this, conditions of development consent are included in the recommendation of this Report to address the potential occurrence of Aboriginal or other cultural heritage on the land.

(g) the proximity to and potential for adverse impacts on any watercourse, drinking water catchment or environmentally sensitive area.

Comment:

The site is not in close proximity to any watercourse, drinking water catchment or environmentally sensitive area. Construction impacts will be appropriately managed via recommended conditions of development consent, to ensure that sediments or other polluting substances do not leave the development site and impact on these systems.

Clause 7.9 Public utility infrastructure

Clause 7.9 of the BLEP requires the consent authority to be satisfied that all public utility infrastructure required for the development is available, or that appropriate arrangements have been made to make that infrastructure available.

The development has direct road connection to the existing road network and is in proximity to existing public utility infrastructure, water, sewer, telecommunications and electricity. The DA identifies where connections and upgrades will be made to the existing infrastructure and includes the offer to enter into a planning agreement to provide for relevant upgrade works. Subject to conditions of development consent, the proposed measures are satisfactory.

Section 4.15 (1) (a) (ii) - Any Proposed Environmental Planning Instrument

There are no relevant proposed instruments that are or have been the subject of public consultation under the EPAA, or that have been notified to the consent authority or otherwise

directed by the Director-General. As such, this section is not relevant to the assessment of the DA.

SECTION 4.15 (1) (a) (iii) – ANY DEVELOPMENT CONTROL PLAN

The *Bellingen Shire Development Control Plan 2017* (DCP) applies to the land. The DCP contains a series of chapters, with each chapter dealing with a different aspect of development within the Shire. The following chapters are discussed as relevant to the proposed development.

Chapter 2 – Multiple Dwelling Construction

This Chapter is relevant to any development application which proposes the erection of more than one dwelling on a parcel of land. As the DA proposes 15 dwellings over two allotments, the provisions of the Chapter apply.

Notwithstanding this, Clause 6A of *State Environmental Planning Policy No 65- Design Quality of Residential Apartment Development* provides that development control plans cannot be inconsistent with the Apartment Design Guide in respect of the following:

- (a) visual privacy,
- (b) solar and daylight access,
- (c) common circulation and spaces,
- (d) apartment size and layout,
- (e) ceiling heights,
- (f) private open space and balconies,
- (g) natural ventilation,
- (h) storage.

To ensure that inconsistency does not arise, if a development control plan contains provisions that specify requirements, standards or controls in relation to any of the above matters, then those provisions are of no effect.

The *Bellingen Shire Development Control Plan 2017* (DCP) contains provisions in relation to;

- solar and daylight access (clauses 1.6.3 and 2.6.6),
- private open spaces and balconies (clauses 1.6.7 and 2.6.9),
- visual privacy (clause 2.6.12) and
- storage (clauses 2.6.16, 5.6.4 and Appendix 5.1).

As these provisions relate to the above criteria, they no longer have effect and these controls have consequently been deleted from the discussion below. Commentary on the remaining relevant clauses within Chapter 2 is provided below.

2.1 – Aims

The aims of Chapter 2 are reprinted below.

- *To encourage a high standard of residential development that is respectful to the amenity of neighbours, the character of the locality and the natural and built environment within which it is located.*
- *To encourage development that will contribute towards increased levels of physical activity and healthy living patterns.*
- *To encourage the provision of a range of dwelling sizes to accommodate changing housing needs.*
- *To improve housing affordability in the Bellingen Shire.*
- *To encourage and support the provision of more affordable dwelling types.*

- *To ensure that increased densities of development only occur where the developers make an appropriate contribution to the progressive improvement of the social, physical and environmental infrastructure necessary to support those increased densities.*

Comment:

The proposed development is respectful in character and will make appropriate contributions to local infrastructure to accommodate the increase in density. The development includes a range of apartment sizes and types which will increase the variety of housing stock available in the Shire, and potentially provide a greater variety of affordable housing options. The CBD location, and the developments incorporation of storage areas for bicycles, provide significant opportunities for residents to move around the town without needing motor vehicles and this will assist with the promotion of increased levels of physical activity.

2.6.3 – Permissible densities for development in residential zones

Comment:

The site is not within a residential zone and this provision does not apply.

2.6.5 – Setbacks from boundaries

Comment:

No relevant setbacks are prescribed for development within the B2 –Local Centre Zone.

2.6.7 – Vehicular access

Comment:

The development has been designed to have a single and centrally located point of access, with all vehicles capable of entering and leaving the site within a forward direction. The only exception to this is for vehicles using the delivery dock at the rear, which are required to reverse in given that the lane is one way only.

The development will require the upgrading of the entire laneway in accordance with a Planning Agreement to be entered into with Council. Accordingly, the development complies with the provisions of Clause 2.6.7.

2.6.10 – Clothes drying areas

Comment:

Adequate provision has been made for clothes drying areas within the private open space area provided at the front of units, adjoining the area of communal open space. Sufficient screening is provided to these areas by virtue of the proposed landscaping plan. These areas are not visible from the public realm.

2.6.11 – Landscaping

Comment:

See commentary under DCP Chapter 9 heading.

2.6.13 – Garbage storage areas

Comment:

See commentary under DCP Chapter 14 heading.

2.6.14 – Letterboxes

Comment:

Letterboxes are provided for each unit within the development within the ground floor entry area to the residential premises. It is not possible for the letterbox area to be visible from a dwelling within the development as they are not located on the ground floor, however their location within what will be a well utilised part of the building will assist with maintaining adequate surveillance of this area.

2.6.15 – Infrastructure requirements**Comment:**

Councils Development Engineer has advised as follows with respect to infrastructure requirements, as stipulated within Chapters 1 & 2 of the DCP.

Kerb & Guttering

Kerb & Guttering will be required across the full frontage of the development site along Halpins Lane.

Reticulated Water

Reticulated water is available via a 150mm diameter water main in Hyde St and a 100mm AC main in Halpins Lane. Councils preference is for the site to be serviced from Halpins Lane. Details identifying the proposed water reticulation works to service the development can be reviewed prior to the issuing of a Construction Certificate.

Fire fighting requirements

Councils mapping indicates that the proposed building is within the maximum distance of an existing street hydrant, to meet the requirements of AS 2419.1 – 2005.

Reticulated Sewer

Reticulated sewerage for the lot is currently gained via a 150mm sewer line within Halpins Lane.

Stormwater Drainage

The proposed development triggers the requirement for compliance with the Level 3 requirements within Section 12.6 of the DCP 2017. It is recommended that because the development is to comply with Level 3 drainage requirements a positive covenant be placed on the land burdening the registered proprietor with the maintenance of the onsite stormwater management systems.

With respect to electricity supply, the application has been referred to Essential Energy who have provided Council with recommended conditions of consent regarding electricity supply and connections, including additional matters specific to this proposal such as the proposed solar system and car charging stations.

Chapter 5 – Car Parking and Vehicular Access**Table 5.1 – Minimum surfacing requirements**

All driveway sections, parking areas and public roads that are required to be constructed, or upgraded as part of the proposed development, will be hardstand construction in accordance with the requirements of Table 5.1.

Section 5.6.4 – Schedule of parking & access requirements

The proposed development is required to provide the following parking by virtue of Section 5.6.4.

Retail premises

The retail premises have an area of 892.6m² accessible to the public. The DCP requires the provision of 1 carparking space per 20m² accessible to the public.

45 carparking spaces are therefore required for the retail component of the development.

Shop top housing

There are 15 residential units proposed by the development. The DCP requires 0.5 parking spaces per unit and storage facilities for two bicycles (noting that the storage requirement is rendered non applicable by virtue of SEPP 65).

8 spaces are therefore required for the shop top housing component of the development.

The development proposal involves the allocation of 1 carparking space per unit for the shop top housing, noting that this is considered to be a more realistic requirement for regional areas where there is a greater level of reliance upon private vehicles. The proposed basement level carpark has been designed to accommodate 36 car parking spaces, which means that 21 carparking spaces are provided for the proposed commercial use, inclusive of 5 spaces reserved for employees of the proposed shop .that will be accessible through the restricted area set aside for residents of the unit development.

Therefore, there is a shortfall of 24 spaces provided on site for the shop use.

Although the development site is within the CBD area of Bellingen, the development does not represent a minor change of use or minor addition, that might be capable of benefitting from the concession to supply additional parking that is provided by Clause 5.6.1 of the DCP.

Therefore, the proposed development does not provide the requisite number of carparking spaces on site, and it is necessary to request a variation to the provisions of Chapter 5 in order for the development to proceed. The development is not seeking a full dispensation from the need to provide the 24 additional car parking spaces, but is instead proposing to construct an additional 36 car parking spaces within the Oak St road reserve, between William St and South Street. This commitment will form part of a Planning Agreement to be entered into with Council regarding this matter, and other matters such as the upgrade of Halpins Lane.

Section 5.4 of the DCP provides as follows with respect to variations.

“Council may consider variations to the standards required of development in this chapter when the overall aims of this chapter and any specific aims that may be detailed for that particular standard can be achieved.”

There are no specific aims detailed within the schedule of parking requirements. The aims of Chapter 5 are reprinted below, with relevant supporting comments included below each of those aims.

- a) *To encourage redevelopment within established town centres of the Bellingen Shire,*

Comment:

The applicant has identified that insisting upon the provision of full on-site parking would render the development financially unviable. This would require the excavation of an

additional underground level of carparking that is significantly more expensive to provide than ground level parking. It is considered that the proposed parking strategy provides for a sufficient level of parking to mitigate the impacts of the development, whilst not rendering the development unviable and preventing the redevelopment of this important site.

- b) To remove obstacles for minor changes of use of premises located within established town centres of the Bellingen Shire,*

Comment:

The development is not a minor change of use.

- c) To encourage walking and cycling and reduce car dependency,*

Comment:

The proposed development and parking strategy meets this aim in a number of ways. For example, the development is located within the CBD area of Bellingen with excellent access to services and facilities within walking and cycling distance of the development site. The development also incorporates storage opportunities for all units for two bicycles to further promote this means of transport for local trips. In the recently adopted Bellingen Shire Council Town Centres Parking Strategy it was also demonstrated that parking spaces to the immediate north of the proposed parking area in Oak St had high levels of occupancy during peak times, which indicates that motorists are more than willing to park in this locality and to walk to the main street shopping precinct.

- d) To confirm the responsibilities of different development types to provide parking facilities and appropriate vehicular access and manoeuvring areas for the traffic they are likely to generate,*

Comment:

The development proposal has demonstrated that it can accommodate the relevant design vehicles for the purpose of access to the basement parking areas and access to the loading bay at the rear of the premises.

Noting that;

- the development was only required to provide 8 spaces on site for the residential component to strictly comply with the terms of the DCP (but provides 15), and
- the shortfall of 24 on-site parking spaces for the commercial component is to be met through the provision of 36 sealed spaces, and
- the removal of existing driveway crossovers in Hyde St associated with the former use of the site for a service station will an additional 4 carparking spaces along this frontage,

There are effectively 23 additional spaces being provided beyond minimum requirements by the development proposal.

In this respect, it is considered that the development makes a reasonable contribution to additional parking facilities in the locality having regard to the traffic that it is likely to generate.

- e) To reduce the need for kerbside parking for certain types of developments by ensuring that these developments are self-sufficient in the provision of off street parking facilities,*

Comment:

The development is not self-sufficient in the provision of off-street parking facilities, however it makes an appropriate contribution towards the provision of additional sealed and marked parking facilities in the CBD area, whilst not rendering the development unviable through insistence upon an on-site design solution.

- f) *To minimise the visual impact of on-site carparking.*

Comment:

The visual impacts of on-site parking are minimised by virtue of its basement location. The proposed parking areas in Oak St will be consistent with other hardstand parking areas provided in the northern part of Oak St, and will not result in any significant adverse visual impact.

Having regard to the matters discussed above, it is considered that the variation to the DCP in terms of the parking requirements required by Section 5.6.4 is reasonable and warrants support.

Section 5.6.5 Design Standards

Councils Development Engineer has provided confirmation that the underground car parking and access ramp has been assessed and amended for compliance with Australian / New Zealand Standard Parking Facilities; Part 1: Off - street car parking (AS/NZS 2890.1:2004 (Amendment No. 1)), a standard B99 design vehicle, Chapter 5 of the DCP and Austroads relevant design standards. Conditions of consent will require design drawings to further detail compliance with relevant standards.

Confirmation has been sought, and provided, that the carparking area will drain to the stormwater treatment system proposed on the ground floor and a Geotechnical Report was submitted to Council that considered the potential need for dewatering of the site during construction of the basement parking area. The geotechnical investigations involved the installation of three groundwater monitoring wells to depths of between 9.95m and 10.05m, each of which were dry when checked on two separate occasions. Based upon this, the Geotechnical Report concluded that the potential for seepage into excavations is likely to be low, and if encountered easily controllable using conventional gravity drainage to a sump where it can be pumped for disposal. A condition of consent is recommended to require the submission of Dewatering Management Plan that documents how any sediment laden water is to be treated prior to discharge to receiving systems.

The ventilation structure for the proposed basement carpark is suitably integrated into the roof design and screened from view.

Chapter 6 – Preservation of Trees and Vegetation in Urban Areas

This chapter is of relevance when the removal of vegetation is proposed that is not incidental to the carrying out of other development for which consent is required.

Vegetation on the site is of little significance and will be removed in conjunction with the carrying out of the development. Accordingly, Chapter 6 is of no relevance to the assessment of this application.

Chapter 7 – Advertising signage

No advertising signage has been proposed as part of the Development Application.

Notwithstanding this, Section 7.6.1(5) of the DCP requires that any DA to erect a new building from which business related purposes may be carried out must demonstrate how opportunities for advertising signage are to be incorporated into the buildings design.

In this respect, the DA provides future potential advertising opportunities on the Hyde St frontage, by providing 4 fascia panels along the front façade. This is a typical and traditional form of advertising within the CBD area and is an acceptable design response.

Chapter 9 – Landscaping Requirements

The proposed development includes the erection of multiple dwellings and a commercial component, and therefore Chapter 9 applies. In such circumstances, detailed landscape documentation is required to be submitted by a Landscape Architect. This documentation is required to indicate the proposed landscape and final layout of the site, including details of hard and soft landscape materials, treatments, plant species and groupings.

Specific principles needing to be addressed for “multiple dwelling” proposals include;

- i. Allowing for public surveillance of public roads*
- ii. Allowing for individual allocation of landscaping for residents, a communal / consolidated area, or a combination of both.*
- iii. Use of energy efficiency & ESD principles including appropriate solar access and plant selection*

Specific principles needing to be addressed for “commercial purposes” include;

- i. New commercial development should incorporate landscaping to complement the building design and positively contribute to the amenity and character of the established streetscape.*
- ii. Where Council has adopted an urban landscape master plan, or similar, landscaping will need to be undertaken with this or an appropriate contribution levied.*

General principles needing to be addressed for all landscaping proposals include;

- i. Corresponding with the conditions of the site and those of adjoining properties.*
- ii. Using appropriate species and positioning*
- iii. Retaining important landscape elements where they exist*
- iv. Screening when appropriate and maintaining views where necessary*

Comment:

Council has received a Landscaping Plan prepared by Darren Mansfield, Landscape Architect, from Mansfield & Mack Consultants. The landscaping plan is focused upon the first floor and includes a mixture of landscaped elements including a large communal open space area (incorporating lawn, larger trees and communal facilities such as seating, pergolas and barbeque areas), and private landscaped areas to provide screening for additional private open space areas at the entry to each of the proposed units. Confirmation has been provided from the Applicants that it is no longer proposed to provide the “Green Roof over Lift & Stairs” that was exhibited as part of the original public notification process given difficulties in accessing and maintaining this area.

Species to be used in the proposed planting include a mix of native species or cultivars such as Red Boppel Nut, Lilly Pilly, Lomandra & Dianella, all of which are locally occurring native species. Exotic species such as Frangipani, Crepe Myrtle and Dragon Tree are also included and plant types include a mix of turf, shrubs, grasses, groundcovers and trees. Shadow diagrams received by Council indicate that large parts of the landscaped areas will receive solar access, however certain parts will not receive direct solar access.

The landscaping plan is considered to be an appropriate design response given the local context. The Bellinghen CBD streetscape is characterised by zero front and side setbacks with no provision generally made for any landscaped elements along the Hyde St frontage. Accordingly, the landscaping focus has been on providing an area of high private and communal amenity for the residential occupants of the development on the first floor of the development, and in not disrupting the existing streetscape character through landscaping provision within the front setback to Hyde St.

Council has adopted an urban master plan for the Hyde St beautification works that have recently been undertaken throughout the CBD area of Bellinghen. The same footpath treatment will be provided across the Hyde St frontage of the development that has been used elsewhere in Bellinghen, and this will be covered by the Planning Agreement to be entered into with Council. This will assist with integrating the development site into other upgrading work recently undertaken by Council.

Overall, it is considered that the landscaping plan is appropriate for its location, context and intended use and adequately complies with Chapter 9 of the DCP.

Chapter 11 – Advertising and Notification of Development Applications

The development does not meet any of the definitions included within Clause 11.6.2 of the DCP that would render the application as “advertised development”. Notwithstanding this, Council formed an initial opinion that in view of the sites location, and the relative size of the development in the context of Bellinghen, the application required broader public comment than just notifying the development to adjoining owners. Council is entitled to make this determination by virtue of Clause 11.5(3) of the DCP which, relevantly, states as follows.

“... if Council is of the opinion that an application requires broader public comment (when it would normally require notification only) Council may decide to advertise the development in accordance with the provisions outlined in Section 11.6.2.”

The application was initially advertised and notified to adjoining owners for a minimum period of 21 calendar days in accordance with the provisions outlined in Section 11.6.2 and 11.6.4 of the DCP and the provisions of Clauses 87-91 of the Environmental Planning & Assessment Regulation 2000. The relevant advertisement was placed in the Bellinghen Courier Sun on Wednesday 4 April 2018, and the period within which submissions were to be made was between Wednesday 4 April 2018 and Tuesday 24 April 2018, which constitutes 21 calendar days.

It is noted that neither the DCP, nor the Act or the Regulation, require a Development Application to be made available online, or for a sign to be physically placed on the development site. Council may, at its discretion, and in accordance with Section 11.6.4(3) of the DCP, elect to advertise the application on a social media platform in instances where broader community consultation is considered desirable, however this option was not utilised in the this case. In the circumstances, it was considered that advertising the proposal (when it would only normally require notification) was an acceptable level of additional consultation for the proposed development.

In response to the original advertising and notification of the development, Council received a total of 14 submissions. It is noted that one objector submitted two separate pieces of correspondence, whilst another submitted 6 separate pieces of correspondence. For the purposes of documenting the total number of submissions received, these multiple correspondences have been viewed as representing a single submission in each instance from that particular author.

It is also noted that three submissions were received after the close of the public exhibition period. One of these, which was in support of the proposal and received on 1 May 2018, was not the subject of a request for an extension of time. One of these, which was received on 7 May 2018, was the subject of a request for an extension of time which was granted by Council.

The third submission, which was received on 25 April 2018 was the subject of a request for an extension of time which was granted by Council. This correspondence was however in addition to an earlier objection from the same author. Whilst the issues raised within this correspondence have been considered by Council, it has not however been counted as an additional objection to the proposal. In total, 12 of the submissions originally received by Council objected to the development proposal, whilst two proposals were in support.

During the course of assessment of the development application, it was observed that Council had not advertised the Development Application for a minimum period of 30 days, which is a requirement of Clause 13 of State Environmental Planning Policy 55 – Remediation of Land. This provision is included below.

13 Advertising of development application

(1) A category 1 remediation work is identified as advertised development, unless the remediation work is:

- (a) designated development, or*
- (b) State significant development.*

(2) Pursuant to section 29A of the Act, the period specified in clause 65 (5) (d) of the Environmental Planning and Assessment Regulation 1994 is extended to 30 days in relation to development identified as advertised development by this clause.

This resulted in the need to readvertise and renotify the development pursuant to the provisions of SEPP 55 and the provisions of Clauses 87-91 of the Environmental Planning & Assessment Regulation 2000.

The relevant advertisement was placed in the Bellingen Courier Sun on Wednesday 16 January 2019, and the period within which submissions were to be made was between Thursday 17 January 2019 and 18 February 2019, which includes a period of 30 days. Adjoining owners were also notified of the proposal.

At the end of the second round of advertising, Council had received a total of 4 (four) additional submissions. It is noted that one objector submitted three separate pieces of correspondence, and that this objector was the same person who had submitted 6 separate pieces of correspondence in response to the original advertising of the proposal. The three separate pieces of correspondence from this author have been considered as a single submission for the purpose of the second round of advertising. This is the same approach that was adopted for the initial round of advertising.

As part of the second round of advertising, the Applicant also submitted an Addendum to the original Statement of Environmental Effects that described a series of minor amendments that had been made to the development proposal as originally submitted and advertised. These included;

- Provision of ladders to access roof area.
- Removal of roof top garden proposal.
- Increase sill height of western facing windows in Unit 1 to 1500mm to reduce potential overlooking of adjoining residence.

- Provision of increased bin storage capacity and garbage compactor within garbage area on ground floor.
- Demonstrated capacity for 12.5m rigid vehicle to park within rear loading bay.
- Amendment of the Draft Planning Agreement to better clarify proportional responsibility for costs to upgrade Halpins Lane, minimise impacts on heritage street trees in Oak St and to ensure linkages between the parking spaces and the development site are appropriately constructed and lit.

Although Clause 11.6.6 of the DCP provides that Council is not required to re-notify or re-advertise an amended application if Council is of the opinion that the amended or substituted application differs only in minor respects from the original and will have no greater impact than that originally submitted, the need to readvertise provided an opportunity to ensure that the community were presented with the most current version of the development. Accordingly, the re-exhibition documentation included the Addendum document submitted by the Applicant and revised plans where relevant.

The public submissions are considered in this report under the heading *Section 4.15 (1) (d) – Any Submissions Made in Accordance with this Act or the Regulations.*

Chapter 12 – Stormwater

The proposed development includes more than 5 dwellings and new commercial development. Accordingly, Table 12.1 of the DCP requires “Level 3” stormwater treatment to be provided for the development, which means that both stormwater quality controls and stormwater quantity controls need to be provided.

The proposed stormwater strategy utilises a 17,000 litre detention tank to assist with stormwater quantity control, and also provides 4 filtration cartridges to ensure that stormwater quality objectives are met.

The DCP requires that peak discharges for the 100%, 20%, 10% and 1% AEP storm events are not increased by virtue of the proposed development and that the following reductions are achieved in water quality measures.

- 90% reduction in total suspended solids
- 65% reduction in total phosphorous
- 45% reduction in total nitrogen
- 90% reduction in average annual gross pollutant load (>5mm)

The Stormwater Management Plan prepared by Glenn Haig & Partners has demonstrated that the proposed stormwater system can meet those design objectives and Councils Development Engineer considers that the proposed strategy complies and is achievable.

An additional condition of development consent has however been recommended by Councils Development Engineer that requires the placement of a positive covenant on the land burdening the registered proprietor with the maintenance of the onsite stormwater management systems. This is considered important as these systems will not meet the design objectives should they fail to be appropriately maintained.

Chapter 13 – Universal Housing

The development proposes shop top housing and the provisions of Chapter 13 therefore apply. The DCP requires that 20% of all new shop top housing developments involving the construction of 5 or more dwellings must demonstrate “Gold Level” compliance with Australia’s Livable Housing Design Guidelines, with the remainder incorporating “Silver Level” compliance.

The application was accompanied by an assessment of compliance prepared by an accredited LHA Design Guideline Assessor, Guido Eberding, that demonstrated that Units 10,11 & 12 complied with the gold level requirements, with the remaining units complying with the silver level requirements.

Accordingly, the development is considered to comply with the provisions of Chapter 13.

Chapter 14 – Site Waste Minimisation and Management

The development involves the construction of residential accommodation and commercial premises and the provisions of Chapter 14 therefore apply.

The Development Application was accompanied by a Site Waste Minimisation & Management Plan (SWMMP) that documented anticipated construction waste generation, in addition to ongoing waste management measures necessary for the residential and commercial aspects of the development.

Initial waste generation estimates provided in the SWMMP were considered to be inadequate and Council consequently sought additional information from the applicant regarding waste storage and management. In particular, Council sought confirmation that adequate storage capacity existed within the ground floor storage area so as to not require multiple weekly collections.

Drawing No 2/8 confirms that capacity exists for;

- 5 x 1100 litre red bins
- 5 X 1100 litre yellow bins
- 4 x 240litre green bins
- 1 x waste compactor to compress cardboard boxes associated with future retail use.

This provides an extra 1100 litre bin capacity for both the yellow and red bin services beyond that recommended by Councils Waste Management Co-ordinator and an extra 8300 litres of total weekly bin capacity than that initially proposed by the SWMMP. This is considered acceptable.

It is also noted that the standard waste service provided by Council contractors for Multi-Unit Developments allows for the waste contractor to enter the premises, retrieve, empty and return the bins to the storage area subject to the owners providing a key and an indemnity to enter the property. This arrangement would further minimise impacts to Halpins Lane associated with the placement of a relatively large number of bins on the lane frontage to await collection.

Consent will be conditioned to ensure that the bin storage area is drained to the Council sewer, and managed in a way to minimise any adverse impacts on amenity. The application has not provided an area for the storage of non-recyclable bulky items that are awaiting removal (eg: mattresses) and consent will be conditioned to require the submission of an appropriate plan documenting provision for such a facility prior to the issue of the Construction Certificate.

Chapter 15 - Heritage

This Chapter applies to the proposed development in accordance with clause 15.3 of the DCP and sets out controls to retain the cultural significance of heritage items and conservation areas, their settings and curtilage.

The application was referred to Council's Heritage Advisor for review on 27 March 2018 following detailed pre-lodgement consideration on 19 August 2016, 21 June 2017 and 12 October 2017. The pre-lodgement heritage advice provided by Council is appended to the Statement of Heritage Impact at Appendix D of the SEE. It should be noted that the heritage policies contained in Chapter 15 of the DCP were not formally in place at the time of the pre-application discussions but came into force on 6 December 2017.

The following Table is an addendum to the Heritage Advisor's review of the proposed development and provides specific responses to the current policies of Chapter 15-Heritage of the DCP.

Table : Assessment against the Principles, Objectives and Controls of Chapter 15

15.7 Design and Practice Principles (Applies to <u>all works</u> to, or in the vicinity of, listed or potential heritage items or heritage conservation areas)			
Section	Control	Complies? Y/N/NA	Comment
15.7.1 Authenticity			
15.7.1 (1) (2) (5)	Original fabric retained and maintained	N/A	
15.7.1 (3)	If original fabric proposed to be removed – proposal is supported by adequate Heritage Impact Assessment	N/A	
15.7.1 (4)	Any reconstruction is historically accurate	N/A	
15.7.2 Streetscape			
15.7.2	Development consistent with heritage streetscape	Y	<p>As outlined in the previous heritage referrals, the proposed development is considered to be consistent with the heritage significance and setting of the Bellingen Heritage Conservation Area and historic main street precinct.</p> <p>The proposed development presents as a two storey building to Hyde Street, which is consistent with adjoining two storey development. The proposed third storey is set back, so that it is not imposing and does not dominate the one and two storey established character of the heritage precinct.</p> <p>The rear of the proposed development will introduce a three storey building height to Halpins Lane which is currently characterised by a range of single storey sheds, garages and commercial premises, with an occasional two storey building, however this would not impact upon the principal heritage streetscapes within the Conservation Area or on the settings of heritage items in the vicinity of the site.</p> <p>The two storey form is sympathetic to the fine grained form of the streetscape.</p> <p>Alignment to the front boundary is appropriate in</p>

			<p>a commercial precinct such as this main street. Side setbacks have been provided to create some separation with the adjoining heritage item and lessen the bulk of the building which occupies a wide frontage.</p> <p>The proposed materials are generally neutral with a brick finish which is compatible with the later developments in the historic precinct.</p>
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15.7.3 Infill			
15.7.3	<p>Infill reflects streetscape character (without necessarily replicating heritage design). Development achieves:</p> <ul style="list-style-type: none"> - Visual harmony - Reflects scale in height, size, form, massing & proportion - Sympathetic setbacks - Sympathetic colours, tones and materials (but not copied) 	Y	<p>Same comments as above.</p> <p>The proposed development is responsive to the pattern and character of the Conservation Area and adjoining heritage items and contributory items.</p> <p>The proposal is considered to satisfactorily address Article 21 of the Burra Charter for new work.</p> <p>In terms of scale, a two storey height is proposed fronting Hyde Street, and sympathetic verandahed form to the streetscape, with the third storey set back behind a parapet. This was a specific requirement of pre application advice and addresses the policy requirement that <i>'New development should be designed to reflect the scale of adjacent and surrounding significant development in terms of height, size and proportions to ensure that new buildings do not dominate significant buildings and items'</i>.</p> <p>The design of the façade and alternating one and two storey verandah elements effectively subdivides a large frontage into a series of smaller elements which is complementary to the fine grained pattern and rhythm of the existing streetscape.</p> <p>Alignment to the front boundary is appropriate in a commercial precinct such as this main street. Side setbacks have been provided to create some separation with the adjoining heritage item and lessen the bulk of the building which occupies a wide frontage.</p> <p>Two shades of grey brick are proposed to the front façade and part of the return elevations, which are currently represented in the heritage precinct in the Court House and Police Station. Traditional materials of a brick (or rendered) finish is supported in preference to other forms of contemporary cladding materials which could appear incongruous in this precinct.</p> <p>The need for identity of the building as a contemporary building is acknowledged and a neutral body palette is likely to be successful. The proposed natural finish timber posts will provide this reference, distinct from the traditional painted timber of the heritage building stock, whilst relating to the timber heritage of the area.</p> <p>The proposed materials appear sympathetic and final samples of materials, and colours for external finishes, windows and other elements are recommended as a condition of development consent.</p>

15.7.4 Reconstruction			
15.7.4	Reconstructed new works appropriate & distinguishable from original	N/A	

15.8 Heritage Item – Development Objectives & Controls

(Applies to Heritage Listed items only)

[Detailed policies for shopfronts and commercial premises are outlined in Section 15.8.11; Verandahs and Awnings in Section 15.8.12; and Doors and Windows in Section 15.8.13, and although this section of the DCP specifically applies to heritage items, these policies are also relevant.]

Section	Control	Complies? Y/N/NA	Comment
15.8.11 Shopfronts and commercial premises			
15.8.11	<ul style="list-style-type: none"> - New commercial buildings should follow the basic pattern of development that characterises, maintains and enhances existing streetscapes. -Retail/commercial buildings shall generally have awnings. The materials, height and architectural styling should match traditional adjacent awnings. Facades should be detailed to provide texture, relief, and shadow. - The design of windows and doors in new development should be drawn from traditional characteristic door and window patterns. -Replacement windows and doors must match the original characteristic pattern and materials. -New shopfronts should reflect the typical details and finishes which set the significant character of the streetscape. 	Y	The proposed development complies with all these controls.
15.8.12 Verandahs and awnings			
15.8.12	<ul style="list-style-type: none"> Where there is a pattern of development that incorporates verandahs, new buildings should include a verandah or awning, to create an appropriate street frontage and to enhance the amenity of the premises. -All development within the 	Y	<p>The proposed development incorporates verandahs to the whole frontage with simple skillion roof forms.</p> <p>This is articulated into small frontages in alternating one and two storey verandahs, similar to the smaller shop fronts and narrow frontages within the main street.</p>

	heritage conservation area, including new buildings and alterations to the frontages of existing buildings must have a verandah to the street frontage and/or over the front door and stretch across the full width or at least the majority of the facade.		
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15.8.13 Doors and Windows			
15.8.13	The spacing, proportions and detailing of doors and windows of heritage items are a major contributing factor to their aesthetic significance. Changing doors and windows or adding new openings can dramatically affect the character of a heritage item.	Y	Whilst the site is not a heritage item, the proposed glazing is responsive to the predominant vertical proportions within the main street precinct. A traditional solid to void relationship is also reflected in the proposed design with a solid stall riser and minimising large areas of floor to ceiling shop front glazing which would be out of character with the Conservation Area.

15.9 Development in Vicinity of Heritage Items and Bellingen Conservation Area <i>(Applies to works in the vicinity of heritage items and Bellingen CA [vicinity depends on context])</i>			
Section	Control	Complies? Y/N/NA	Comment
15.9.1 Setting			
15.9.1 (1) (5)	Setbacks equal to or greater than that of nearby heritage item,	Y	<p>The front of the building addresses the street with a zero setback consistent with the adjoining commercial developments including the heritage listed Commonwealth Bank building to the west.</p> <p>Side setbacks are not characteristically used in the main street, however setbacks to the eastern and western side boundaries are provided to separate the development from the adjoining heritage item, allowing it to retain visual prominence as a landmark historic building within the main street precinct and reduce the bulk of the building in the streetscape in accordance with the policy 15.7.3 above.</p>
15.9.1 (2) (3) (4)	Height and bulk does not dominate item and does not obscure views	Y	As outlined above, the subject site is substantially wider than other sites in the main street precinct which creates potential for a larger overall development. However the bulk of the proposed building is managed by creating a two storey height to Hyde Street and the articulation of the façade into a series of narrow frontages to reflect the pattern and rhythm of development which characterises the main street precinct.

			<p>The development is designed with a similar overall height to the adjoining heritage item but the frontage of the development will read as lower and two storey. A setback to the side boundary has been provided to separate the development from the adjoining heritage item, allowing it to retain visual prominence as a landmark building within the historic main street precinct. This setback will assist reducing the bulk and scale of the new development in proximity to the heritage item.</p>
15.9.1 (5)	Where trees significant, development not within dripline	N/A	

15.9.2 Scale			
15.9.2 (1) (2)	Not larger in scale than heritage item unless significant views not obscured	Y	<p>The proposed development is a similar height to the adjoining Commonwealth Bank building, and separation is to be provided to the side setback to enable the heritage item to retain its aesthetic and landmark qualities. The former service station site with a large open forecourt currently allows views of the eastern side wall of the adjoining Commonwealth Bank heritage item from the street. However the side elevations of commercial development situated within a commercial frontage, as opposed to a corner site, are generally not intended to be visible or prominent in a main street setting.</p> <p>The significant streetscape view of the heritage item would not be affected. The subject site is substantially wider than adjoining sites, which creates potential for a larger overall development. However the bulk of the proposed building is managed by the height of the frontage and setback of the upper storey, and articulation of the façade into a series of narrow frontages.</p>

15.9.3 Siting			
15.9.3 (1) (2)	Proposed setback does not impact views or landscape items		<p>The proposed development will not affect significant views or landscape items in the context of the heritage main street precinct. North-South views in this site context are primarily commercial in nature and generally relate to the streetscape frontage to the main street with the laneway and service areas generally to the rear.</p> <p>The East-West views relate to views in and out of the main street to other commercial development within the town and glimpses of rural landscape in the background. This will be unaffected by the proposed infill</p>

			development on an existing commercial site within the main street precinct.
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15.9.4 Materials & Colours			
15.9.4 (1)	<p>New development should take into consideration the dominant original materials of heritage items in the vicinity of the development. Materials should be selected so that attention is not drawn away from the heritage item to the new development and the heritage item remains visually dominant.</p> <p>Avoids stark contrasts with adjacent development</p>	Y	<p>Detailed discussions took place in relation to materials and the need for a 'soft' approach to integrate the development into a rural historic main street precinct. The proposed neutral brick façade was considered to be consistent and harmonious with the main street precinct of buildings. Two shades of grey brick are proposed to the front façade and part of the return elevations, which is currently represented in the heritage precinct in the Court House and Police Station.</p> <p>Traditional materials of a brick (or rendered) finish is supported in preference to other forms of contemporary cladding materials, i.e. sheet metal or tiled facades which could appear incongruous in this precinct. The need for identity of the building as a contemporary building is acknowledged and a neutral body palette is likely to be successful.</p> <p>The proposed natural finish timber posts will provide this reference, distinct from the traditional painted timber of the heritage building stock, whilst relating to the timber heritage of the area. A final schedule of all external materials and finishes is recommended as a condition of consent.</p>

15.10 Development in the Bellingen Conservation Area (Applies to works in the Bellingen CA)			
Section	Control	Complies? Y/N/NA	Comment
15.10.1 Special controls for contributory items			
15.10.1 (1) (2) (3)	Contributory items not demolished or substantially altered unless Heritage Impact Assessment shows significance will not be altered	N/A	

15.10.1 (1) (4)	Proposal maintains and/or enhances contribution of building to overall streetscape character and heritage significance	N/A	
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15.10.2 Special control for Neutral Items			
15.10.2 (1)(2) (3)	Neutral buildings to be retained or enhanced unless removal will not compromise significance of area	N/A	

15.10.3 Special Controls for Infill Items			
15.10.3 (1)	Demolition application accompanied by application for appropriate replacement building	Y	
15.10.3 (2)	Alterations to infill buildings remove detracting elements	N/A	

15.10.4 Objectives & Controls for development in BCA			
15.10.4 (1) (2)	Demolition accompanied by application for appropriate replacement building and Heritage Impact Statement	Y	The development is accompanied by detailed documentation including a SOHI.
15.10.4 Landform	Natural shape of landform maintained	Y	Basement parking is proposed however this will not alter existing street level floor heights.
15.10.4 Subdivision pattern	Predominant pattern of subdivision retained. Avoid amalgamation of lots. Allow re-subdivision of previously amalgamated lots	N/A	No change is proposed to the existing lot boundary.
15.10.4 Existing buildings...	Retain and protect all contributory structures, remove detracting elements and restore original details	N/A	The existing service station is a detracting element in the main street precinct.
15.10.4 Siting, setbacks & gardens	- Maintain historical pattern of development including amenity of gardens - Keep at least 40% of	Y	These controls are principally aimed at residential forms of development, however, the proposal does reinforce the historical pattern of development in the streetscape by alignment to the front boundary and by

	residential site for soft landscaping - Keep and protect trees - Avoid alterations and additions to front or side of heritage buildings - Avoid disturbing archaeological sites		creation of a built pattern of narrow frontages within the façade which reflects the character of the main street. Landscaping is not a characteristic of main street frontage but is incorporated to the rear for the proposed shop top housing.
15.10.4 Extensions	Maintain visual dominance of heritage building Keep consistency of materials Avoid disturbing archaeological sites	N/A	
15.10.4 New development to rear of heritage buildings	- Keep and repeat existing scale - Setback between new and existing 10m minimum Avoid disturbing archaeological sites	N/A	
15.10.4 New buildings generally	- Maintain traditional uses where possible - Maintain similar scale and setback - Provide front verandahs - Use of sympathetic materials and signage		<p>The development continues a commercial use which is consistent with historical significance of the site.</p> <p>As per previous comments, the proposed development creates a two storey elevation to the main street which is consistent with the pattern of built form in the general streetscape. The proposed third storey does not exceed the height of the adjoining heritage item and is to be recessed so that it is not visually prominent or perceptible to pedestrians at street level.</p> <p>The building incorporates verandahs which are an important element of the streetscape. Sympathetic signage panels are shown as part of the proposed shopfronts. Sympathetic materials are proposed which are harmonious with the Conservation Area built character which includes a mix of early weatherboard and iron buildings with later development in brick and masonry.</p>
15.10.4 Materials and Colours	- observe general requirements of this chapter - avoid applying graphics to windows so interior remains prominent - external lighting encouraged where subtle and fittings concealed	Y	<p>Detailed discussions took place in relation to materials and the need for a 'soft' approach to integrate the development into this rural historic main street precinct.</p> <p>The proposed neutral brick façade was considered to be consistent and harmonious with the main street precinct of buildings rather than other options which were also considered, including contemporary finishes such as wall tiles and dark metal cladding which are not typical of the precinct. A final schedule of all external materials and finishes and signage is recommended as a</p>

			condition of consent.
15.10.4 Garages, carports ancillary buildings	<ul style="list-style-type: none"> - avoid carports and garages front of building lines - make structures visually recessive and lightweight with no decorative features - do not attach to buildings - driveways of traditional materials 	Y	<p>Basement parking area is proposed. Parking will not visually dominate the site or Conservation Area. Additional parking is proposed via contributions for the upgrading of parking in the road reserve of Church Street as part of the development.</p> <p>This road reserve is already fully sealed and is not likely to be adversely affected subject to careful treatment around significant street tree plantings.</p>
15.10.4 Fences	Avoid front fences higher than 1200mm, metal clad, aluminium, steel replica and swimming pool type fencing	N/A	
15.10.4 Public lands	<p>Retain streetscape elements</p> <p>Avoid increases in vehicular traffic</p> <p>Avoid significant changes in planting in traditionally urban areas</p>	N/A	
15.10.4 Traffic calming	Avoid major changes to street alignment and use subdued materials and colours	N/A	
15.10.4 Solar panels and communicatio n devices	Locate on ancillary buildings where possible, avoid visibility from streetscape	Y	Solar arrays are proposed on the roof of the proposed building and will have limited or no visibility from the public streetscape as they are located behind a two storey level parapet.

15.11 Shire Wide Conservation Issues (Applies Shire-wide)			
Section	Control	Complies? Y/N/NA	Comment
15.11.1 Cultural Landscape			
15.11.1	Retain Cultural Landscapes (where identified development must be supported by relevant study)	N/A	
15.11.2 Natural Heritage Principles			
15.11.2 (1) (2)	Impacts on significance of natural heritage	N/A	

	addressed using <i>Australian Natural Heritage Charter</i>		
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15.11.3 Aboriginal Heritage			
15.11.3	Where site is known or suspected contact made with OEH	N/A	No known Aboriginal sites are listed on this property.

15.11.4 Archaeology			
15.11.4	Archaeological assessment provided where potential for archaeology identified	N	The site has been highly disturbed by previous redevelopment and installation of underground fuel tanks. Appropriate archaeological conditions and procedures are proposed in the event of any unexpected finds.

Section 4.15 (1) (a) (iiia) – Any Planning or Draft Planning Agreement

A Draft Planning Agreement was submitted with the Development Application and was publicly exhibited as part of the first round of public exhibition.

An amended Draft Planning Agreement was submitted for Councils consideration on 21 November 2018 that made minor changes to the previously exhibited version to address matters that had arisen in the course of assessing the Development Application. This was publicly exhibited as part of the second round of advertising of the development and is included as an Attachment to this report.

The principle changes that were made were to;

- ensure that the proponent contributed 33% of the total cost of the Halpins Lane upgrade, and
- insert additional details into *Schedule 1 - Public Works* to cover additional infrastructure upgrades and connections between the proposed parking spaces on Oak St and the development site.

The key features of the Draft Planning Agreement are noted below.

- Halpins Lane will be upgraded for its entire length by removing the existing bitumen from the pavement and replacing it with a new AC seal and upgrading the pavement. The Developer will meet 33% of the total costs and Council will meet 67% of the total costs.
- 36 car parking spaces will be provided in Oak St, including footpath connectivity and lighting back to the development site at full cost to the Developer.
- 4 on street parking spaces will be reinstated at the front of the development on Hyde St at full cost to the Developer.
- The footpath area in front of the development on Hyde St will be reconstructed in the same materials utilised in the Bellingen Mainstreet Masterplan, with the Developer meeting 50% of the costs and Council meeting 50% of the costs.

The Draft Planning Agreement effectively channels \$9259.45 of contributions that would have been levied for Community Facilities & Open Space, and \$19,021.29 of contributions

that would have been levied for Local Roads & Traffic Infrastructure, towards the costs of upgrading Halpins Lane to accommodate impacts associated with traffic generation.

The construction of the Draft Planning Agreement provides Council with sufficient comfort that the developer will commit to the carrying out of the essential infrastructure upgrades that are documented in the agreement. Conditions of development consent are also recommended that will require the applicant to enter into the Planning Agreement, which will require separate and additional consultation pursuant to relevant legislation, prior to its final execution.

It is considered that the works proposed by the Planning Agreement are in the public interest for the following reasons.

- The site is centrally located with access to a wide range of community facilities and open space. In this regard, it is considered that the diversion of Community Facilities & Open Space Contributions to instead fund the lane upgrade works is an acceptable use of this funding that will not have any significant adverse impact on future provision of community facilities or open space.
- The upgrade of Halpins Lane will accommodate other forms of redevelopment in this area and the diversion of Local Roads & Traffic Infrastructure Contributions towards this end has strategic merit. The existing lane surfacing has been impacted by historic patterns of use and all existing and proposed users of the lane will benefit from its upgrading to contemporary infrastructure standards.
- The provision of additional sealed and marked carparking spaces within the Oak St road reserve will provide additional carparking opportunities for all residents, or visitors to Bellingen, rather than that parking being restricted solely for patrons of the future shop use on the development site. The Draft Planning Agreement provides 50% more carparking spaces than are required to meet the shortfall of on-site spaces on the development site. This parking area will be provided at no cost to Council or the community.
- The Draft Planning Agreement will facilitate the redevelopment of a site that, in its current form, is aesthetically intrusive in the streetscape and is highly suited towards redevelopment.
- The Draft Planning Agreement will facilitate the supply of both additional retail floorspace in Bellingen, and an increased diversity of housing options, both of which have been identified as strategically important for Bellingen. It is considered that the approval of the proposed development will assist with promoting developer confidence to undertake other projects within Bellingen Shire that may assist with addressing the documented under-supply of housing options beyond the 4 bedroom detached single dwelling.

Section 4.15 (1) (a) (iv) – The Regulations

For the purposes of section 4.15 (1) (a) (iv) of the Act, the only relevant matter prescribed as a matter to be taken into consideration by a consent authority in determining this development application is *Australian Standard AS 2601—1991: The Demolition of Structures*.

The proposed development involves the demolition of all existing structures on the site. Recommended conditions of development consent will require the submission of appropriate documentation prior to the commencement of works that will document how this standard is to be observed, once demolition works commence.

Clauses 50 (1A & 1B) require that the Development Application is accompanied by a statement from a qualified designer regarding the design of the residential apartment component of the development and this has been submitted.

Section 4.15 (1) (b) – The Likely Impacts of that Development

Environmental impacts on natural environment

The development site is within a highly modified urban environment, with little direct connection to the natural environment. There is potential for the movement of sediments from the site during the construction phase for the development, however suitable conditions of development consent are recommended to ensure that an appropriate erosion and sediment control plan is prepared to mitigate against this occurring.

Once established, the development will have little to no ongoing impact upon the natural environment. Level 3 stormwater quality treatment is proposed to be incorporated into the development and this will ensure that receiving systems do not receive polluted stormwater from the site, to the detriment of the natural environment.

The construction of the proposed car parks in Oak St may impact to some degree upon the root systems of established street trees, however a suitable condition of development consent is recommended to ensure that appropriate protections are put in place to prevent adverse impact to these trees occurring.

Environmental impacts on built environment

The built environment that may possibly be impacted upon by this development includes adjoining properties, local infrastructure, and the streetscape of the Bellingher Heritage Conservation Area.

As previously documented in this report, conditions of development consent are recommended to require the preparation of a dilapidation report prior to the commencement of works, as well as the need to protect the foundations of adjoining buildings. These measures will assist with avoiding any adverse physical impact to adjoining structures or infrastructure that may arise from the proposed development.

Other impacts on adjoining properties that may eventuate as a result of the development, such as overshadowing & impacts on privacy have been carefully considered in addressing the requirements of relevant legislation such as State Environmental Planning Policy 65 and the Apartment Design Guide and found to be minor, and reasonable, given the sites location within the CBD area of Bellingher. The potential noise impacts of adjoining properties on the subject development have also been carefully considered, with additional protections warranted and recommended via conditions of consent. These conditions will serve to protect both residents from undesirable noise impacts, and premises such as the Federal Hotel from unreasonable complaints.

The assessment of the application has identified the need to undertake upgrades to infrastructure in the locality, such as Halpins Lane and car parking in Oak St, in order to accommodate increases in use attributable to the development. All necessary upgrades are identified through the recommended conditions of development consent, and a level of agreement has been reached between the proponents and Council regarding the proportional responsibility for those upgrade works. This agreement will be formalised via the Planning Agreement that will be entered into with respect to the development.

The proposed development integrates with the existing streetscape and is unlikely to have any significant adverse impact upon the heritage character of the Bellingher Conservation Area.

Social impacts in the locality

The proposed development will contribute towards a greater diversity in housing stock than that which currently exists in the Shire, and this is likely to increase social diversity within the Shire.

"Homes for our Future" is the first stage in the review of the 2007 Growth Management Strategy. It is a Discussion paper which outlined a number of trends and challenges facing the future of Bellingen Shire and asks the community how and where they want to grow into the future. The Discussion Paper was publicly exhibited in 2018 and responses to the public exhibition were documented in an Engagement Report that was presented to Council in December 2018.

The Homes for our Future Discussion paper provided a number of interesting insights into the Bellingen housing market and population trends. The data shows Bellingen is lacking in housing supply and choice and the younger age cohorts are moving away (18-34 year olds) although in the last census period there was a slight growth of 25-34 year olds in the Bellingen suburb.

This indicates it is a popular location for younger people. The proposed development could attract this cohort, especially the 2 bedroom (and one bedroom) offer, seeking to live close to town services and entertainment. The proposal also provides a type of housing (shop-top housing/residential flats) that is rare in the Shire in a highly accessible location. It is accepted that the development may not represent an affordable housing choice for purchase, however the developer is under no legal compulsion to make the units affordable for purchase, and they may still be viable rental options in any case, providing a form of housing supply that is currently under-represented in the Shire.

The proposed development appears to be addressing a gap in the housing market as outlined in the Homes for Our Future Discussion Paper, and this was further confirmed by the community following the public exhibition of this document. For example, *The Homes for our Future Community Engagement Report – November 2018*, documents both a strong preference for infill development, in addition to the most common theme from the consultation being the need for more housing choice and greater housing affordability (over 30% of comments).

There is the potential for adverse social impact should occupants of the development be exposed to noise generated from entertainment venues in the locality, and this gives rise to complaints that would unreasonably limit activities undertaken from those venues.

As previously documented though in this report, a preliminary acoustic assessment has indicated that acceptable noise levels within bedroom areas of the development could realistically be achieved, and conditions of development consent have been recommended to ensure that this takes place. In this regard, it is considered unlikely that the development will have any significant adverse social impact in the locality.

Economic impacts in the locality

It is considered that the proposed development will have a positive economic impact in the locality. It will provide employment opportunities by virtue of the construction process itself, and the retail premises will provide ongoing employment opportunities. There may be some short term adverse impacts associated with the construction of the development, however conditions of consent have been recommended to mitigate against those impacts.

More significantly, it is considered that the proposed development provides the opportunity for an anchor retail use within the existing town centre that will serve to reinforce the dominance of Hyde St as the retail centre of Bellingin, which is a key zone objective. Frequently, local communities are faced with the prospect of new retail uses establishing on greenfield sites at the fringes of towns, and this is often to the detriment of the established town centres that find pedestrian and vehicular traffic, and expenditure, is diverted away from those areas.

The provision of a viable retail opportunity for an anchor use within Bellingin is also desirable in that it will reduce the potential need for locals to travel outside of the Shire for certain shopping purposes, and this may result in an increased expenditure within the local community rather than this escaping to adjoining local government areas.

The development will result in an increase in traffic generation and demand for carparking spaces in the locality, however adequate provision has been made to supply parking and it is unlikely that visitation to Bellingin would be adversely impacted as result of this development. It is also noted that Council is pro-actively addressing parking supply within Bellingin as part of its recently adopted parking strategy.

The proposed development is, in the context of recent development patterns within Bellingin, a rare injection of significant capital into a site with unique potential. To refuse the development would not only see the potential economic benefits of this development foregone, but would also adversely affect developer confidence to undertake other projects within Bellingin Shire that may assist with addressing the documented under-supply of housing options beyond the 4 bedroom detached single dwelling.

Section 4.15 (1) (c) – The Suitability of the Site for the Development

Strategically, the site has been identified as an ‘infill’ site in terms of heritage, as identified in Chapter 15 of the DCP 2017. The DCP identifies that *“These buildings present an aesthetic intrusion to the streetscape and conservation area due to their scale, bulk, setback, setting and/or inappropriate material choice. Redevelopment of these sites is highly desirable.”*

Strategically, the site was also discussed in the Bellingin Shire Growth Employment Lands Strategy 2013 as being potentially suitable for a shop, and therefore capable of meeting the identified need for additional retail floorspace in the Shire, and Bellingin in particular. This is documented in the following extract.

“A similar opportunity exists in relation to the sizeable site at 84 - 90 Hyde Street, presently occupied by a service station and mechanical repairs. Over the medium to long term, larger parcels of land such as this site could come to the market presenting a central opportunity for a new supermarket.”

Strategically, the objectives of the B2 zone encourage development that reinforces the dominance of Hyde St and the proposal responds directly to this need.

In terms of the specific attributes of the site, it is rare in terms of its size within the context of the Bellingin CBD and lends itself towards a development of this nature. The site adjoins a development to the east that is non-contributory in terms of heritage significance and the site contains rear lane access, to facilitate ease of access for delivery vehicles and residents. The site has been identified as potentially containing contaminated land by virtue of its historic use as a service station, however investigations reveal that observed contamination levels do not exceed relevant thresholds and that the site can be made suitable at the completion of remediation works for the subject development. Appropriate conditions of consent have been recommended to ensure that this occurs.

The site represents an opportunity for infill development in the highly accessible and well-serviced middle of Bellingen town centre, and encourages healthy living by being in walking distance to shops, services and recreation facilities, thereby encouraging active transport (and good health) as well as reducing car dependency. The proposal includes Bellingen's first public electric car charging station, which pays homage to the historical use of the site as a service station and tells a story about changes in technology plus two other charging stations in the underground car park.

Section 4.15 (1) (d) – Any Submissions Made in Accordance with this Act or the Regulations

As previously documented, a total of fourteen (14) public submissions were considered to have been made in relation to the proposal as a result of the original exhibition and notification period. Three (3) of these submissions were received after the close of the exhibition period.

Two (2) of the lodged submissions were in total support of the application for reasons including its contribution to the streetscape, its sympathetic building height, its future-planning via electric vehicle recharging stations and its capacity to deliver a “much needed injection of fresh shops and accommodation.”

The twelve (12) other public submissions raised points of objection and the key matters provided are summarised below under the heading “Public Submissions” and commented on in turn, with copies of all independent submissions provided to the Panel for their deliberation.

As also previously documented, the Development Application was re-advertised and notified in order to ensure compliance with the 30 day exhibition period required by Clause 13 of State Environmental Planning Policy 55 – Remediation of Land. A total of four (4) additional submissions were considered to have been made in relation to the re-exhibition of the application and these have also been summarised below under the heading “Public Submissions”, with copies of all submissions provided to the Panel for their deliberation.

Council received submissions from two government / agency bodies, the Roads & Maritime Services and Essential Energy. These submissions were received as a result of consultation with those agencies that was required by State Environmental Planning Policy (Infrastructure) 2007 and these submissions have been therefore considered under that heading in this report.

Public submissions

Issue 1: The development seeks to bypass rules and a built environment that limits development across the Shire to two storeys.

Comment:

There are numerous three-storey buildings developed within the Bellingen Shire - such as the unit development at 20 Newry Street East, Urunga - and there are no planning controls specific to the limitation of the number of storeys within a development. A consideration of building heights and the impacts of the development on settings and views are relevant considerations capable of limiting the number of storeys in a development.

The *Bellingen NSW Main Street Study* as prepared by Tim Shellshear does identify that a random mix of one and two-storey buildings has always been a part of the Hyde Street streetscape. However, this observation omits consideration of the Former Masonic Lodge which is sited on the Dorrigo approach to the Bellingen township. Experiencing

“uninterrupted views from some distance away,” and comprising “about the only building one sees until entering the main street proper,” this three-storey heritage building “makes a very good first impression” of the historic main street precinct, notwithstanding its approximate 16.8 metre building height (Office of Environment & Heritage: Former Masonic Lodge statement of significance).

The building is designed in a manner that is commensurate to the planning controls and the development of a three-storey building above the existing ground is neither new to the Shire or the Bellingen Conservation Area.

Issue 2: *The height of the development is inconsistent with the built environment and permissible heights within the Bellingen Conservation Area.*

Comment:

The permissible height of buildings in the Shire is controlled by the BLEP 2010.

Clause 4.3 of the BLEP 2010 seeks “to restrict the height of buildings in a manner that preserves the character and amenity of localities in Bellingen.” This is achieved by providing that the height of any building is not to exceed ten (10) metres.

Clause 4.6 of the BLEP 2010 provides the circumstances in which development may exceed the ten (10) metre height limit. A request for variation to this standard has been made and discussed elsewhere within this report and is deemed acceptable in the circumstances.

Additional considerations are provided at clause 5.10 of the BLEP 2010 which seeks, amongst other matters, “to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views.” An assessment of the consistency of the development with the heritage significance and setting of the Bellingen Conservation Area and historic main street precinct has been undertaken by Council’s Heritage Advisor, including the following commentary:

The proposed development presents as a two storey building to Hyde Street, which is consistent with adjoining two storey development. The proposed third storey is set back, so that it is not imposing and does not dominate the one and two storey established character of the heritage precinct.

The rear of the proposed development will introduce a three storey building height to Halpins Lane which is currently characterised by a range of single storey sheds, garages and commercial premises, with an occasional two storey building, however this would not impact upon the principal heritage streetscapes within the Conservation Area or on the settings of heritage items in the vicinity of the site.

The two storey form is sympathetic to the verandahed fine grained form of the streetscape.

The *Bellingen NSW Main Street Study* contains the recommendation that “heights of new development should be compatible with significant building heights” (Shellshear: 65). Significant buildings include the adjoining Commonwealth Bank (Former Rural Bank) which is a heritage item of local significance and the State significant Hammond and Wheatley Emporium. These buildings have heights of 11 metres and 15 metres respectively. The proposed development has a maximum height of 11.6 metres and this is compatible with significant building heights and respectfully subservient to the height of the Hammond and Wheatley Emporium.

Design elements incorporated into the building including the increased boundary setback for the third storey and the emphasis on narrow verticality for the highest building elements fronting Hyde Street further render the building height compatible with the built environment and permissible heights within the Bellinghen Conservation Area.

Further, the assessment of this application has found that the development achieves consistency with the underlying objectives of Clause 4.3 and Clause 4.6 of the BLEP and that there are sufficient environmental planning grounds to justify and support the variation in this instance.

Issue 3: The Statement of Heritage Impact was not prepared by a suitably qualified heritage consultant and reference therein to Council's heritage adviser may constitute a conflict of interest.

Comment:

The Office of Environment and Heritage has issued a guideline for composing Statements of Heritage Impact. The guideline does not place caveats on an author's qualifications, but rather details the matters to be addressed within the Statement in order to furnish the determining authority with information that will assist in making an informed decision.

The Guideline provides details on how information is to be presented, including the requirement to reference and affix pertinent reports: "any other specialist consultant reports, are simply referred to in the statement, then attached." The pre-lodgement advice from Council's Heritage Advisor was legitimately provided through Council's Development Control Unit. This is a service that provides pre-lodgement advice to proponents intending to carry out development within the Bellinghen Shire. The service relayed to the proponent Council's expectations for a quality new design that is sympathetic in form and finish and is respectful of its context. The pre-lodgement advice is relevantly information that will assist in making an informed decision and is a "pertinent report" suitable for reference and attachment to the Statement of Heritage Impact.

According to the Independent Commission against Corruption, "A conflict of interest occurs when the private interests of a public official come into conflict with their duty to act in the public interest." Council's Heritage Advisor has, in all relevant matters, acted in the public interest. The Heritage Advisor does not have a decision-making role in the DA and the provision of pre-lodgement heritage advice from Council does not in itself equate to a private interest and should not be construed as generating an appearance of a conflict.

Issue 4: Construction, demolition and remediation works could structurally impact adjoining buildings including the heritage listed Commonwealth Bank.

Comment:

It is possible that works on the development site could adversely impact adjoining structures if adequate care is not taken. The proposed conditions of consent include a prescribed condition required by the Environmental Planning & Assessment Regulation 2000 that requires adjoining buildings to be protected from damage when excavations are proposed that will extend below the base of the footings of buildings on adjoining land.

In addition to this, further conditions of consent are recommended that will require the proponent to submit an;

- initial dilapidation report to Council prior to the issue of the Construction Certificate for buildings on adjoining properties, and a
- final dilapidation report to both Council, and the adjoining landowners, upon the completion of works and prior to the issue of an Occupation certificate.

Issue 5: Construction, demolition and remediation works will adversely impact local businesses, tourism and residents.

Comment:

It is acknowledged that construction, demolition and remediation works will have the potential to cause some degree of short term disruption in the locality; however this is not a sufficient reason to refuse the Development Application.

A number of conditions of consent have however been recommended to assist with mitigating these impacts and these include the following;

- Traffic Management Plan
- Demolition of Structures Plan
- Remedial Action Plan
- Erosion & Sediment Control Plan
- Noise Management Plan
- Waste Management Plan

This is considered to be a reasonable response to the concerns raised in submissions.

Issue 6: Remediation works need to be supported by a professional contamination report and undertaken in a manner that does not impact human health.

Comment:

A professional contamination assessment accompanied the Development Application. This indicated that contamination was unlikely to be an issue for the majority of the site, however there were some areas that were not able to be tested which may have some residual levels of contamination that require treatment.

It is recommended that a condition of consent is imposed that requires the submission of a Remedial Action Plan, by a suitably qualified contaminated land practitioner (within the meaning of Council's Contaminated Land Policy & Guidelines) prior to the commencement of works that will document processes to be observed during the commencement of earthworks to ensure that any contaminated land issues are appropriately dealt with, as they arise, during the course of site excavation, and that the site is made suitable for its intended use.

Issue 7: The development will adversely impact adjoining residential privacy, solar access and views.

Comment:

The development complies with relevant provisions within SEPP 65, and the Apartment Design Guidelines and any impacts are considered reasonable within the context of these documents, and the sites location within the CBD area of Bellingen.

The windows in the adjoining residence to the west face directly east and will experience a loss in direct solar access during the morning, however it must be noted that that the development site is within the CBD area of Bellingen, which is characterised by zero side setbacks to adjoining boundaries, and it is not realistic to expect a similar level of residential amenity that may be provided within a residential zone for example. There are only two windows that face to the west (in Unit 1), and these have been designed so as to have a minimum sill height of 1500mm so as to avoid any potential for overlooking of the window areas in the adjoining dwellings.

The dwelling to the west will also experience a loss of current views obtained when looking east, across the current single storey building that is currently on the development site, however again, retention of side boundary views within a CBD area characterised by zero side setbacks is not considered to be a realistic design parameter that needs to be observed for redevelopment projects of this nature.

There is adequate building separation, including the separation provided by the 6 metre wide road reserve of Halpins Lane, provided between the development and development to the south to ensure no unreasonable overlooking of living areas (outdoor and indoor) occurs..

This development pattern also allows for the majority of the overshadowing impacts that would be attributable to the development being contained to within the laneway area and the parking / carport areas.

Issue 8: The development may exacerbate existing drainage issues and should incorporate measures to mitigate flooding of the underground car park.

Comment:

Councils Development Engineer has reviewed the stormwater management details submitted by the Applicant and has not identified any significant existing drainage issues that cannot be addressed in the ultimate Plan that is required to be submitted to Council as a condition of development consent.

The site is not subject to flooding in a 1% AEP flood and it is not necessary to consider the relevant provisions for underground car parks within a flood affected area that are included within Councils Development Control Plan. Notwithstanding this, confirmation has been received from the Applicant that any stormwater entering the underground car park will be pumped back to the stormwater treatment facilities that are provided on the ground floor prior to discharge to receiving systems.

Issue 9: The development is incompatible with the heritage streetscape.

Comment:

This matter has been comprehensively addressed throughout this report. The development does not attempt to replicate a heritage design, in accordance with best practice principles, however incorporates design elements that will assist the development to integrate with the existing heritage character including use of sympathetic materials such as masonry, timber verandah posts, vertical design elements and awnings across the Hyde St frontage.

The development has been considered by Councils Heritage Advisor and assessed against the design principles included within Chapter 15 of Councils Development Control Plan, and Clause 5.10 of the Bellingen Local Environmental Plan 2010 and is considered to be acceptable.

Issue 10: The development cannot proceed absent an Aboriginal Heritage Impact Permit issued under the National Parks and Wildlife Act 1974.

Comment:

The development site is highly disturbed, does not contain any known item of aboriginal heritage and there is no identified need to obtain an Aboriginal Heritage Impact Permit. Appropriate conditions of consent will be imposed to identify protocols that must be observed in the event that any items of potential aboriginal heritage significance are uncovered,

Issue 11: *Public consultation for the DA was inadequate, including the absence of notification of the development application online and onsite, and the period for submissions should be extended.*

Comment:

The Development Application was advertised and notified for 21 days initially and subsequently for a minimum period of 30 days when Council became aware of the need to readvertise the proposal. There is no legal requirement to advertise the development online, or to place a sign on the site. Requests for additional time were reasonably dealt with by Council during the assessment process and the application was legally notified in accordance with all relevant requirements.

The application has been notified in accordance with the relevant planning legislation (including the Bellingen Development Control Plan).

Issue 12: *The bulk, scale, density, size and mass and uniform vista of the development is in contrast with the unique neighbourhood character and is of concern.*

Comment:

As discussed earlier in this report, the proposed development will be one of the larger buildings within the Heritage Conservation Area, however this does not necessarily render it incompatible with the streetscape or undesirable in its impact.

The development has been designed to present a two storey façade across the Hyde St frontage in order that it is similar in scale to the adjoining bank building and other two storey developments within the street. The articulation of the front facade, and incorporation of vertical design elements, assists with breaking up this elevation and demonstrating sympathy with the prevailing streetscape character. The bulkier elements of the development are located along the eastern façade, which adjoins a building with no heritage value, and to the rear of the site which does not have a similar heritage streetscape or character to the Hyde Street frontage.

There are no specific density controls applicable to the site, however it is considered that the unit sizes are generous and the density is appropriate for a CBD location.

Issue 13: *The design doesn't have due regard to the streetscape of Halpins Lane and will adversely affect the heritage setting when viewed from any aspect other than the north. Need to ensure that rear view also presents well.*

Comment:

The existing streetscape of Halpins Lane is dominated on the north side by rear lane service related functions for buildings fronting Hyde Street. Building forms on this frontage are simple and functional, demonstrating none of the heritage aesthetic associated with Hyde Street. Materials used include common brick and concrete bricks, and building setbacks to the lane are occupied by vehicles or other materials that may be stored in this location to serve the retail functions carried out at the front of the building.

The existing streetscape on the south side of Halpins Lane is dominated by vehicle functions serving the dwellings or business premises that address William St as their primary frontage. Materials used along this frontage include lightweight constructions such as timber, sheet metal and fibro sheeting associated with garages and carports, with many of these structures built up to the lane boundary.

The residential façade of the proposed development which starts above the ground floor incorporates a blend of materials and colours, including concrete coloured blockwork, off-white fibre cement sheeting, and colorbond custom orb cladding in light brown and green colours. The incorporation of more lightweight materials is consistent with the residential types of construction visible along this lane and respects the character of the locality.

It is accepted that the Halpins Lane façade does not incorporate the same level of visual interest as the Hyde St frontage, however the secondary nature of this street frontage and the fact that its prevailing character is different to Hyde St, does not mean that this is unacceptable.

Issue 14: The design would benefit from the use of alternative materials, such as a weatherboard exterior or timber and lace iron work in acknowledgement of heritage character, the nearby Federal Hotel and the Hotels formerly developed on the subject land.

Comment:

The proposed development proposes a masonry façade to Hyde St, which demonstrates a consistency with other important heritage buildings within the Bellingen CBD, including the two bank buildings to the immediate west and the Bellingen Court House & Police Station complex. It is noted that the Heritage Council does not advocate reproduction of heritage forms and finishes, instead supporting quality new design that is sympathetic in form and finish and is respectful of its context. It is submitted that the proposed development is acceptable in this regard.

Issue 15: Halpins Lane should be resurfaced at appropriate grades to accommodate traffic generated by the development.

Comment:

It is agreed that Halpins Lane will need to be resurfaced to accommodate the increased traffic generation that will result from the proposed development. Proposed conditions of development consent, and a Planning Agreement that will be entered into with the proponent, will ensure that there is a minimum 25mm AC seal, with the proponent responsible for 33% of the total costs of upgrade.

Issue 16: Pedestrian connectivity from the existing footpath network to the proposed Oak Street parking should be developed and kerb and gutter installed.

Comment:

It is agreed that the Oak St parking area should be made accessible from the proposed development site with an appropriate footpath and lighting. This will be achieved through a recommended condition of consent that will require the construction of kerb & guttering, drainage and lighting associated with these parking spaces, including footpath connectivity to Halpins Lane.

Within Halpins Lane, it would be desirable to construct a footpath linking Oak St with the western pedestrian entry to the site, however whether this can be achieved will be subject to detailed design works regarding the lane upgrade which will be required as a condition of consent. Should a footpath not be possible due to design limitations associated with the narrow laneway, then Councils Development Engineer has identified that Halpins Lane would need to be designated as a "Shared Zone" from the developments western pedestrian access to Oak Street, thereby ensuring that it can safely accommodate pedestrian traffic.

A condition of consent is recommended that requires submission of detailed design drawings providing for either a footpath within Halpins Lane, or appropriate road surfaces and finishing's to allow the lane to function as a "Shared Zone" between Oak St and the western pedestrian entry as a minimum.

Issue 17: Shop top housing may adversely impact the operations of the Federal Hotel and the development should mitigate the impacts of offsite noise, vibration and light pollution on future resident – can conditions be placed on the development to limit noise intrusion?

Comment:

It is agreed that the potential impacts of noise require careful consideration and that mitigation measures should be incorporated into the development design. As previously documented in this report, the proponents have sought advice from an acoustic consultant regarding potential noise emissions, likely noise levels within bedrooms and amenity thresholds used in recognised guidelines. This investigation indicated that noise levels not exceeding 30dbA in bedroom areas could realistically be achieved through the use of a minimum 10.38mm laminated glass, with potential for further noise reductions if glass width is increased. It is recommended that a condition of consent is imposed to require a detailed investigation of noise levels by a suitably qualified acoustic consultant, and certification that the final design will achieve the requisite standards.

Issue 18: The development would benefit from additional civic landscaped open space, vertical garden inclusions and natural lighting via a courtyard, laneway or sky lighting to the ground floor of the building.

Comment:

The proposed development does not incorporate public landscaped areas along the primary frontage, as is typical of the prevailing development pattern within Hyde Street. There are adequate areas of civic landscaped open space within close proximity of the site and it is considered that the principle landscaping focus should be on providing an area of suitable amenity for the residents of the shop top housing.

Adequate natural light will be provide to the ground floor retail area by virtue of the sites long frontage and use of glass on this elevation.

Issue 19: The provision of off-site car parking for shop top housing along Oak Street "is a completely unreasonable impost on the township."

Comment:

The car parking to be provided along Oak St is not for the residents of the shop top housing. These residents have been provided with dedicated car parking within the basement area of the development at a rate that is double what is required by Chapter 5 of the Bellingen Shire Development Control Plan 2017, in addition to storage areas for bicycles.

Issue 20: Variations in height across the covered walkway to Hyde Street are in conflict with the continuous colonnades opposite the development site.

Comment:

The variations in height across the covered walkway are a design feature utilised to avoid continuous horizontal symmetry, and to assist with breaking up the Hyde St elevation through the use of vertical design elements that demonstrate sympathy with the prevailing streetscape character. In the circumstances, it is considered that this is the more important aspect of streetscape that needs to be expressed by the development, rather than a continuous colonnade of similar awnings.

Issue 21: *The development will “grossly” overshadow the adjoining premises 82 Hyde Street.*

Comment:

The development will overshadow the adjoining premises at 82 Hyde Street in the afternoon, as the sun moves towards the west however morning sunlight (9am to midday) will be maintained. The Bellingen CBD is characterised by zero side setbacks to boundaries for commercial development. It is unreasonable to expect the development to provide setbacks to preserve solar access to 82 Hyde St and the development is considered acceptable in this regard.

Issue 22: *The proposed footway linking Hyde Street and Halpins Lane is too narrow to provide any civic amenity and will facilitate crime.*

Comment:

Views along the pedestrian pathway proposed along the western side of the development are unobstructed when viewed from either Halpins Lane or Hyde St, thereby reducing opportunities for concealment.

The narrow access provided along the western boundary of the site does include a change in step and a potential opportunity for concealment, however this is not the principle pedestrian access between Hyde St and Halpins Lane and is not the point of entry to the residential premises. A condition of consent will be imposed to require an appropriate lighting strategy for both pedestrian access points along the eastern and western boundaries that will assist with minimising opportunities for concealment, whilst also preserving the amenity of any adjoining residential occupancy.

The width of the pathways are acceptable for their intended purposes and it is not considered necessary that they provide any significant civic benefit or amenity.

Issue 23: *The development represents “extreme overdevelopment,” including high density apartment dwellings.*

Comment:

The degree to which a development can be viewed as “an extreme overdevelopment” is a function of its compliance with predetermined development controls, the degree to which the impacts of the development are appropriately contained and managed on site, and the degree to which the development will provide a high amenity outcome for its intended users.

In these respects, the proposed development does not contravene any density control imposed by Council. The development involves a request to vary the 10m height limit (which has been carefully considered and deemed reasonable in the circumstances) and involves a need to provide additional parking off-site, which has also been considered to be acceptable and will be implemented by virtue of a Planning Agreement to be entered into with the proponents.

The development will result in negligible external impacts by virtue of traffic generation, overshadowing and loss of view, however these impacts are considered to be acceptable having regard to the proposed upgrade works for Halpins Lane, the sites CBD location, the zone objectives and the predominately zero side setbacks that exist within this area.

The development has been carefully considered with respect to the Apartment Design Guidelines and SEPP 65 and it is considered that the shop top housing will provide quality internal amenity for future dwelling occupants, in addition to two private open space options and a large communal area of private open space.

Having regard to these matters, it is not considered that the development represents an extreme overdevelopment of the site.

Issue 24: *The proposed loading bay off Halpins Lane is undersized and will impair traffic flows along the Lane.*

Comment:

The original development plans that were placed on public exhibitions showed a loading bay that was only designed to cater for a 8.8m delivery vehicle and this was considered to be inadequate. Subsequent plans obtained from the applicant have successfully demonstrated that a 12.5m rigid vehicle can be parked within the loading bay, whilst also allowing for a 12.5m rigid vehicle to pass within the lane.

The applicants have expressed to Council that deliveries for the retail premises can successfully and realistically be made with a 12.5m rigid vehicle. As Council has not had the opportunity to consider whether deliveries could be safely made to the site by any vehicle exceeding a 12.5m rigid vehicle, it is appropriate that the consent is conditioned to restrict the maximum vehicle permitted to make deliveries to the development to a 12.5m rigid vehicle.

Issue 25: *Traffic generation attributable to the development along Halpins Lane will be disastrous and in conflict with other commercial and residential users, including existing loading and unloading regimes and parking movements within the Lane.*

Comment:

Calculations provided by the applicant in support of the proposed development indicate the following pre-development and post development scenarios for peak traffic generation along Halpins Lane. These estimates have been reviewed by both the RMS and Council's Development Engineer and found to be reliable. It is not considered that this amounts to an excessive or adverse increase in traffic generation

Traffic Movement	Pre-development scenario	Post development scenario
Entering Halpins Lane during Peak AM period	15 vehicles per hour (vph)	20 vph
Exiting Halpins Lane during Peak AM period	15 vph	30vph
Entering Halpins Lane during Peak PM period	15 vph	30vph
Exiting Halpins Lane during Peak PM period	15vph	20vph

The proposed development will incorporate a purpose built unloading bay that will enable unloading to take place on site, without otherwise impacting upon the functionality of the laneway. It is considered that this is likely to be superior to many of the unloading regimes that have evolved within the laneway over time, without the benefit of considered design.

Issue 27: *The proposed bin storage area must accommodate the volume of waste generated by the development and will generate odour and harbour pests to the detriment of the amenity of the locality.*

Comment:

As previously documented within this report, initial waste generation estimates were considered to be inadequate and Council consequently sought additional information from

the applicant regarding waste storage and management. In particular, Council sought confirmation that adequate storage capacity existed within the ground floor storage area so as to not require multiple weekly collections.

Drawing No 2/8 confirms that capacity exists for;

- 5 x 1100 litre red bins
- 5 X 1100 litre yellow bins
- 4 x 240litre green bins
- 1 x waste compactor to compress cardboard boxes associated with future retail use.

This provides an extra 1100 litre bin capacity for both the yellow and red bin services beyond that recommended by Councils Waste Management Co-ordinator and is therefore considered acceptable.

An operational condition of consent is recommended to ensure that waste management is carried out in a manner that does not impact upon the amenity of residents of the development, or other residents in the locality.

Issue 27.5: The placement and collection of commercial and household waste will impair traffic.

Comment:

The standard waste service provided by Council contractors for Multi-Unit Developments allows for the waste contractor to enter the premises, retrieve, empty and return the bins to the storage area subject to the owners providing a key and an indemnity to enter the property.

This arrangement will minimise impacts to Halpins Lane associated with the placement of a relatively large number of bins on the lane frontage to await collection.

Issue 28: There is an insufficient allocation of on-site car parking for the shop top housing and for the commercial premises.

Comment:

It is recognised that the development is unable to provide the requisite number of on-site car parking spaces, as required by Chapter 5 of the Bellingen Shire Development Control Plan 2017. The shortfall of 24 spaces is proposed to be compensated for by the construction of 36 spaces in Oak St, subject to the provisions of a Planning Agreement to be entered into with the proponents.

Issue 29: The formalisation of car parking spaces in Oak Street is inconsistent with the heritage character of the streetscape.

Comment:

Car parking spaces in the northern section of Oak St have long been formalised, without any significant impact on heritage character. It is not considered that the proposed development will have any significant impact in this regard.

Issue 30: The proposed building should be offset from Hyde Street to allow relief from the scale of the building, enhance the civic space and provide landscaped green space at the front.

Comment:

The building presents a two storey scale on the immediate frontage to Hyde Street, which is similar to many other buildings within the heritage conservation area. The civic space at the front of the site is covered by awnings associated with the development, which is typical of the Hyde St streetscape.

There is no pattern of providing additional civic space (or landscaped green space) at the frontage of commercial developments in Hyde St and it is considered that this would, in fact, be inconsistent with the heritage streetscape.

Issue 31: The proposed parking area in Oak Street is already utilised for car parking and its formalisation will not mitigate Bellinghen's parking shortage.

Comment:

Council recently adopted the Bellinghen Shire Council Town Centres Parking Strategy. This strategy looked at the utilisation of carparking spaces within Bellinghen and found that the existing sealed parking spaces within Oak St were heavily used at 11am to 1pm on both Tuesdays and Saturdays, with 80-100% occupancy rates. Some of the comments received in response to the public exhibition of the Strategy expressed concern with the poor delineation, pavement surfacing and line marking of parking spaces, both on-street and off-street.

It is considered that the construction of a properly formed and marked parking area for 36 vehicles within Oak St, in a location that is shown to be well used by the public and sufficiently close to the development site will appropriately assist with mitigating the impacts of carparking associated with the development.

The proposed development is not required to mitigate the perceived shortage of parking within Bellinghen. Notwithstanding this, it is timely that the Parking Strategy has been adopted by Council as a strategic approach is preferable to parking supply within Bellinghen and Strategy has identified a number of recommendations that may assist with parking supply and management within Bellinghen. These include a potential multi-level parking structure at the rear of the Memorial Hall.

Issue 32: The proposed parking area in Oak Street is overly distant from the development site and the resultant residential use of adjoining commercial parking spaces will foster escape expenditure and reduced visitation.

Comment:

As mentioned above, the existing parking spaces within Oak St demonstrate high levels of occupancy at both 11am and 1pm on Tuesdays & Saturdays and this indicates that this precinct is not considered as too remote from the town centre to be utilised for parking. In actual fact, they may be preferentially used in view of the relatively low traffic flow in these areas, when compared to Church St or Hyde Street, for example.

Issue 33: The development will reflect noise generated from the Federal Hotel along Hyde Street to the detriment of residents at the top of town.

Comment:

This submission has provided no proof that such an outcome would eventuate. In any case, it is not considered that development that would normally be expected within the CBD area of Bellinghen should be prevented from occurring on this basis.

Issue 34: The development application would benefit from three-dimensional computer modelling, photo montages and a scale model to facilitate the public's understanding of the scale of the development and its integration into the streetscape.

Comment:

The development was exhibited with a photo montage depiction of the development, demonstrating its relationship to other development along the south side of Hyde Street. This was on Drawing 7/8 and was titled "Street View – Impression". The additional items mentioned in this submission may indeed have been desirable, however they are not mandatory and the impacts of the development are readily able to be ascertained with reference to the plans that were submitted

Issue 35: *The density of the shop top housing should be considered in Council's Growth Management Strategy "to avoid any mistakes in the town centre."*

Comment:

Consultation undertaken by Council as part of the review of the Growth Management Strategy has indicated a general preference for infill development, and a desire for a greater variety of housing stock within Bellinghen Shire. The proposed development is considered to be consistent with these general preferences.

Issue 36: *The location of an underground car park off Halpins Lane will not be readily identifiable to passing traffic.*

Comment:

It is agreed that the location of the underground parking area may not be readily identifiable to passing traffic. A condition of development consent is recommended to require the placement of signage on the Halpins Lane frontage to direct motorists to this parking area.

Issue 37: *The development application does not address the social issue of affordable housing.*

Comment:

The Development Application is not required to address the social issue of affordable housing. Notwithstanding this, it does however provide a desirable mix of apartment sizes that may be suitable to a range of people for purchase, or for renting, and serves to increase the variety of housing options that are available to people within the Shire, which is presently dominated by 3-4 bedroom detached housing stock.

Issue 38: *The proposed retail space may not be tenanted due to issues of demand and rental affordability.*

Comment:

The commercial success, or otherwise, of the retail space is not considered to be a relevant matter for consideration in the assessment of the Development Application.

Notwithstanding this, the Bellinghen Shire Employment Lands Strategy 2013 made comparisons between consumer demand (household expenditure) and the supply of existing retail floorspace within the Bellinghen Shire and found that, as of 2011, there was an undersupply of all retail types within Bellinghen Shire by over 10,000m², and in particular specialised retail premises. The Strategy also identified the need for an additional 14,391m² of floorspace within Bellinghen Shires Centres by 2036, with the greatest percentage of this floorspace recommended for Bellinghen in view of its role as the main centre within the Shire.

Issue 39: *The development application has been incorrectly made as the owners of Lots 1 and 2 DP 900116 failed to date the application form.*

Comment:

Council has sought independent advice on this matter and can confirm that the failure to date the development application form does not invalidate the making of the development application. As such, the development application does not require resubmission, re-notification or re-exhibition.

Issue 40: The proposal to develop verandahs over the Hyde Street footpath poses a safety risk with heavy vehicular traffic.

Comment:

The majority of buildings within the CBD area already have awnings or verandahs constructed across the Hyde St frontage and there is no pattern of damage from heavy vehicle traffic that would justify any different approach for this development.

Issue 41: The residences may be turned into a hotel.

Comment:

The Development Application that is before Council does not propose to use the building for the purposes of a hotel. Council is obliged to consider the application that is before it.

Notwithstanding this, a condition of consent is recommended that will limit the use of the shop-top housing to permanent residential use, and not for short term tourist and visitor accommodation, unless this is otherwise permitted via State Environmental Planning Policy (Exempt & Complying Development Codes) 2008

Issue 42: There is inadequate light provided to the commercial area

Comment:

The commercial area has windows across the northern frontage of the development that will assist with providing natural light to this area. There is no requirement to provide natural light to this area and the proposal is acceptable in this regard.

Issue 43: Could give rise to proliferation of "stack and pack" apartments and progressive transformation of character of Bellingen.

Comment:

The development site is relatively unique within the CBD area of Bellingen given its size, central location and development potential. Many other sites within the CBD area are significantly constrained by the heritage value of the buildings that are upon them and would not present comparable opportunities for a development of this nature.

Council's existing suite of planning controls is considered to be sufficient to ensure that the heritage character of Bellingen is retained should future redevelopment proposals come before Council. Should it become apparent that these controls are not working, then the appropriate response is to revise those controls, rather than frustrating the approval of this proposal on the basis of scenarios that may never eventuate.

Issue 44: Surprised that no archaeology has been considered for the site given historic uses-Archaeological survey should be incorporated into excavation and used to provide visitor interest in retail complex

Comment:

A condition of consent has been recommended to advise the proponents of protocols that are to be observed in the event of uncovering any deposit, artefact, object or material evidence defined as a relic under the Heritage Act 1977. It is agreed that the incorporation of

any such element into the retail complex may have merit however it is not considered necessary to formalise this as a requirement of the development consent.

Issue 45: *The proposed development will include significant planning, amenity, visual, economic and social impacts to the community and ratepayers of Bellingen and there is now a responsibility for Council to recognise climate litigation in regards to the culture of our times (following Rocky Hill coalmine case).*

Comment:

It is difficult to respond to the claims made in this submission given the lack of specificity regarding the particular impacts to which the author is referring. To respond in general terms, it is considered that the application itself, and the assessment presented in this report, has carefully and comprehensively addressed all relevant "planning, amenity, visual, economic and social impacts" and that the development will not be unacceptable with regard to any of these matters.

With respect to the issue of climate change and the recent decision regarding the Rocky Hill Coal Mine, it is not considered that there are any immediately obvious parallels that can be drawn from that decision, and the development the subject of this application. Indeed, if anything, the proposed development incorporates numerous climate sensitive design features, including a significant array of solar panels designed to reduce the developments demand on conventional grid power and provision of the first electric charging stations for Bellingen. In this respect, it could be argued that the development is in fact a model for climate change adaptation through the development design process.

Issue 46: *The proposed development vistas are deceptive and don't take into account the slope of the street*

Comment:

It is accepted that the rendered "Street view Impression" on Plan 7/8 does not accurately portray the entire slope of the western side of Hyde Street, however the plans for the northern elevation of the proposed development, as depicted on Plan 6/8 clearly illustrate the change in slope across the site and allow for informed assessment of the impacts of the development.

Issue 47: *The Northern Regional Planning Panel expressed concerns with varying a height limit on a development in Byron Shire on a proposal that hadn't been subject to community consultation.*

Comment:

Council has been through two periods of public exhibition for the proposed development, with the proposal to vary the 10m height limit clearly explained and justified in the exhibition documentation. The parallels between the subject development and the development in Byron Shire are inadequately articulated in the submission and are not considered to warrant any further investigation.

Issue 48: *Councils Heritage Advisor has expressed concerns with bulk, scale and height*

Comment:

The author of this submission has extracted segments of previous heritage comments that were made by Council's Heritage Advisor on an earlier iteration of the development proposal. These have then been included in an out of context manner to suggest that they relate to the current proposal.

The applicants have significantly evolved the design of the development to address concerns raised by Councils Heritage Advisor, who has expressed their support for the current development in a referral provided to Council and included as an Attachment to this report.

Issue 49: How can this development not have a Traffic Management Plan?

Comment:

It is agreed that a Traffic Management Plan is required to manage the traffic impacts of the development and a condition of consent is recommended to require the submission of a Traffic Management Plan to Council prior to the commencement of work.

Issue 50: Both adjoining commercial developments have sophisticated computers that would require them to relocate during the construction phase.

Comment:

Council has not received any concerns from the adjoining commercial premises regarding a need to relocate.

Issue 51: Several businesses have already closed in Bellinghen due to main street beautification works and construction works will further impact.

Comment:

It is not accepted that there is a direct link between previous construction works and business closure, or proposed construction works and business closure. It is considered that the construction of a significant retail complex within the heart of the Bellinghen CBD will ultimately preserve the dominance of Hyde St as the retail centre of Bellinghen, in accordance with the objectives of the B2 Zone, and that in the long term this will continue to improve the profitability of businesses in the locality.

Issue 52: Reinstatement of the kerb in front of the 2 access openings will not provide 4 spaces with reference to Australian & New Zealand Standards.

Comment:

Councils Development Engineer has advised that the author of this submission has chosen to use the *AS2890 Part 6: Off-Street Parking for People with Disabilities Code* to argue that there is not enough room for an extra 4 carparks. The carparks proposed are not however disability carparks and the correct Australian Standard to apply is *AS2890.1:5 On Street Parking*.

Section 2.2.1 of the On Street Parking Code identifies that carpark lengths of between 6m to 6.7m are applicable in the circumstances. The existing driveway crossovers are around 10m long. Taking into consideration that general carparks within Hyde Street are not currently line marked, and that even a portion of a car is not permitted to park in front of existing driveways Councils Development Engineer advises that it is reasonable to assume that the removal of the 2 driveways will generate an additional 4 carparks.

Section 4.15 (1) (e) – The Public Interest

The expression ‘the public interest’ does not have any fixed meaning and depends on the particular set of circumstances applying to the development. It does require a determination as to what best serves the advancement of the interest or welfare of the public, society or the nation and requires consideration of the competing facets of the public interest.

In one respect, the degree to which the proposal represents the public interest could be determined with reference to how it conforms to Councils key corporate planning document, which is the “*Shire of Bellingin 2027 Community Vision*”.

The Community Vision is a high level plan for our Shire developed in partnership with the community to outline the future for the local community. The plan sets out all the strategic priorities, outcomes and aspirations for the future of our local community, and is structured under five themes - Resilient Economy, Community Wellbeing, Places for People, Living Environment and Civic Leadership.

The proposal is consistent with a number of the community’s strategic priorities as detailed in the assessment below. Importantly, the proposal is not contrary to any of the strategic directions of the Vision.

Theme - Resilient Economy: We have meaningful work and vibrant businesses within our community

- *Our community has a diversity of businesses and new industries*
- *We have the public infrastructure to appropriately support business activity*
- *Our families are able to support themselves locally*

Comment:

The ground floor of the proposal will be a retail use, and a significant amount of retail floor space is provided- over 900m² which will provide a number of benefits to the town centre, including activating the main street, and providing jobs. Retail jobs often employ younger people and provide entry level positions (albeit usually on a part-time or casual basis), which can help address issues with unemployment, in particular youth unemployment.

Theme - Places for People: We are connected and able to move around in a safe, accessible, affordable healthy and environmentally friendly way

- *We have a network of cycleway, footpaths and walking trails, supported by maps and signage which encourage active transport and reduce car dependency*
- *Our local infrastructure supports electric vehicles and non-motorised forms of transport*
- *We have a system of safe, well-maintained roads including car calming infrastructure*

Theme – Community Wellbeing: We have facilities and services needed to be a healthy and active community

- *Healthy lifestyles and practices are enhanced*

Comment:

Infill development in the highly accessible and well-serviced middle of Bellingin town centre, encourages healthy living by being in walking distance to shops, services and recreation facilities, thereby encouraging active transport (and good health) as well as reducing car dependency.

The proposal includes Bellingin’s first public electric car charging station, which pays homage to the historical use of the site as a service station and tells a story about changes in technology plus two other charging stations in the underground car park. The proposal also includes 30 bicycle parking spaces and storage to encourage active transport.

The proposal also includes a Draft Planning Agreement which will see the upgrade of the laneway, improvements to footpaths and additional hardstand car parking spaces on Oak Street provided.

The provision of new apartments in the Shire does provide more housing choice, and a mixture of 2 and 3 bedroom apartments are provided, with a single one bedroom unit proposed. It remains to be seen as to whether the proposed units could be considered 'affordable' relative to current housing stock, however the developer is under no legal compulsion to make the development affordable.

Theme - Living Environment: We live sustainably and reduce our ecological footprint and contribution to climate change

- *Alternative forms of energy are embraced*

Theme – Biodiversity: We protect and enhance biodiversity

- *Biodiversity is managed and protected for future generations*

Comment:

The proposal includes a 67.8 kW Solar panel system to assist in providing a renewable energy source for the building. The units are designed with consideration to climate sensitive practices, including dual aspects (for ventilation and light), maximisation of northerly aspects, minimal exposure to hot westerly aspects and enclosed (shaded balconies) as well as generous outdoor spaces (in the context of apartment living). Infill development makes use of already developed areas, thereby protecting environmentally sensitive undeveloped areas from housing development.

In conclusion, it is submitted that approval of the subject development is within the public interest, as expressed through the "Shire of Bellingen 2027 Community Vision."

Any Other Relevant Legislation/ Matter

Contributions

The proposed development attracts a contribution payment under section 7.11 of the EPAA towards the provision of public amenities, infrastructure and services. The relevant plans are the:

- *Community Facilities and Open Space Infrastructure Section 94 Developer Contribution Plan 2014; and*
- *Local Roads and Traffic Infrastructure Developer Contribution Plan 2015.*

Conditions of development consent are recommended in respect of this matter. It is noted however that a Draft Planning Agreement has been submitted to Council that would divert the payment of those contributions towards the upgrading of Halpins Lane, and that this has been discussed in previous sections of this report.

Additional developer charges are applicable under the *Water Management Act 2000* for the water and sewer connections. A condition of consent requiring the proponent to obtain a certificate of compliance under section 307 of the *Water Management Act 2000* is recommended and a proposed schedule documenting applicable charges is included as an attachment to the proposed conditions.