

RESPONSE TO COMMUNITY SUBMISSIONS: DA 272/19 - 49 BEACH RD, BATEMANS BAY

Issue	Response
<u>Community consultation and notification</u> <ul style="list-style-type: none"> Lack of community consultation in preparing the DA A stakeholder engagement plan should be prepared Stringent time frame to respond to DA notification Certain information not made available at beginning of notification process Perceived Council bias due to apparent support for the DA 	<ul style="list-style-type: none"> While not a statutory requirement, the applicant undertook pre-lodgment consultation with Councillors to discuss details of the proposal & the community's interest and potential concerns. Two formal pre-lodgment meetings with Council officers were also undertaken, as well as consultation with the Batemans Bay Local Aboriginal Lands Council. The notification and Council bias process are matters for Council.
<u>Unclear details</u> <ul style="list-style-type: none"> Combining proposal in a single SEE has made it difficult to distinguish the relationship of legislation and assessment pertaining to the concept and Stage 1 proposal Unclear which legislation applies to which components of the development Discrepancies between car parking numbers between SEE and traffic report 	<ul style="list-style-type: none"> Section 4.22 of the EP&A Act relates to concept DAs and stipulates that, <i>'in the case of a staged development, the application may set out detailed proposals for the first stage of development.'</i> The proposed Concept and Stage 1 application has therefore been made as a single DA, supported by a single SEE. In describing and assessing the proposal, the SEE clearly differentiates between the Concept and Stage 1 development. Where reference is only made to the 'concept' DA/proposal, this reference is assumed to encompass Stage 1B by virtue of s4.22 of the EP&A Act. The SEE clearly identifies where there is overlap between relevant applicable legislation – e.g. the LEP applies to the entire development, SEPP 65 applies to Zones A and B while the Seniors Housing SEPP applies to Zones B and C. All reasonable efforts have been made to ensure all documentation and plans are consistent.
<u>Insufficient details / assessment</u> <ul style="list-style-type: none"> Lack of primary and secondary data to support conclusions Construction and operational impacts not clearly differentiated Seasonally differing scenarios not considered in assessing construction and operational impacts Details on construction timing, sequencing, duration Inadequate assessment of potential risks, including cumulative impacts How will mitigation measures be carried out throughout the project's life cycle 	<ul style="list-style-type: none"> All relevant potential impacts of the proposed development have been assessed by professional consultants, based on secondary and primary data. Construction and operational impacts have been clearly differentiated throughout the SEE and supporting documentation, as relevant. Impacts associated with the construction of the development have been addressed throughout the DA, including as follows: <ul style="list-style-type: none"> Sediment and erosion control measures will be implemented Additional groundwater and ASS investigations will be undertaken to inform the detailed design phase Ecological controls will be implemented in line with the ecological consultant's recommendations to protect the pied oystercatcher (having regard to breeding season) and Swamp Oak Forest

	<ul style="list-style-type: none"> ○ A construction waste management plan will be prepared ▪ General details on construction sequencing are provided within the SEE and Staging Plans within the Architectural Plans. ▪ Construction impacts and mitigation measures, as well as details on timing, sequencing and duration, will be further addressed through the preparation and implementation of a Construction Management Plan (CMP) and Traffic CMP prior to the Construction Certificate stage. A CMP and Traffic CMP will be prepared for the overall site and individual stages, with due regard to seasonally differing scenarios where relevant. ▪ Operational mitigation measures (including in relation to potential ecological impacts) can be secured by conditions of any consents granted.
<p><u>Clause 4.6 Variation Request</u></p> <ul style="list-style-type: none"> ▪ Proposed exceedance is beyond intent and purpose of CI 4.6 and should be supported by a Planning Proposal ▪ Variation Request should address DPE 2011 Guidelines, relevant LEP provisions and recent LEC decisions ▪ Variation Request should only apply to the parts of the proposal for which approval is being sought under the ELEP ▪ In addressing the “Wehbe five part test”, the justification relies only upon the first element and ignores the other four elements and does not address the R3 zone objectives. ▪ Variation Request primarily relies on flooding to justify exceedance. Was the current height limit set having regard to the site’s flood affectation? ▪ Insufficient justification to demonstrate compatibility with existing and future character ▪ Proposed height out of character with existing and future development, including as envisaged under the Greater Batemans Bay Structure Plan (GBBSP) which recommends maintaining a 2-storey building height restriction on the water side of Beach Road. ▪ The Variation Request does not acknowledge the subtle difference between density and building bulk and scale ▪ The variation should be supported by a comprehensive view loss and visual impact assessment 	<ul style="list-style-type: none"> ▪ The height of the proposed buildings across the site have been significantly reduced, as discussed below. ▪ A Planning Proposal is not considered necessary or appropriate as the proposed development is consistent with the LEP zone and height of building objectives, as outlined in the Variation Request. ▪ The originally submitted and amended Variation Request have been prepared in accordance with DPE Guidelines and, more importantly, the legislative requirements of Clause 4.6 and recent decisions of the NSW LEC. Of particular recent relevance are the decisions of Dixon SC in <i>Brigham v Canterbury – Bankstown Council [2018] NSWLEC 1406</i> and of Preston CJ in <i>Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118</i>, which both provide a clear outline of the matters required to be demonstrated by Clause 4.6, including the structure of such requests. ▪ The remaining four 'tests' in Wehbe are not considered relevant to the current proposal and therefore the Variation Request seeks to rely on the first 'test' in <i>Wehbe</i>, only. This approach is consistent with the findings of Dixon SC in <i>Brigham</i>. ▪ The amended Variation Request does not seek to rely on the necessary raising of the proposed development above the FPL as a justification for exceeding the building height limit. ▪ The 2-storey height restriction envisaged in the 2007 GBBSP is not a contemporary indication of the area’s desired future character. The 2012 LEP has since placed an 11.5m height limit over the site and surrounding area. ▪ A revised view loss assessment has been prepared and additional consideration of visual impacts has been provided in the amended documentation, as discussed below. ▪ The Variation Request is not required to demonstrate that the non compliance results in a public benefit [refer to Clause 4.6(5(b))].

<ul style="list-style-type: none"> Public interest benefit not adequately demonstrated e.g. no demonstration of public advantage resulting from the non-compliance nor any major commitments made The choice of the proposed residential apartments (and potential accommodation) should be equitable if the proposed supply is to satisfy the R3 zone objective. Perceived demand for seniors housing to support the variation should be supported by data The proposed below ground car parking does not meet the LEP definition of 'basement', therefore 75% of building read as 4-storey plus podium 	<ul style="list-style-type: none"> Local and state government strategic plans for the area highlight the need for additional seniors housing. The LEP building height standard relates to building height in metres rather than storeys.
<p><u>Built form and character</u></p> <ul style="list-style-type: none"> Out of character with quiet, leafy residential area Proposed height, scale and density inappropriate and inconsistent with existing and future character of locality 'High-rise' buildings do not blend into setting Represents a significant overdevelopment of the site (reflected by the extent of the height exceedance) and sets a precedent for similar developments 	<ul style="list-style-type: none"> The following key amendments have been undertaken to reduce the development's built form: <ul style="list-style-type: none"> Relocation of two of the 2-storey serviced self-care housing buildings a further 7m north of the site's southern boundary to facilitate the preservation of trees in the setback area. Reduction in the ceiling to ceiling height of each building to reduce building height overall. Reduction in the height of the Wellness Centre from 3 storeys to 2 storeys and a concomitant reduction in its floorspace. Reduction in the height of the RCF from 4 storeys to 3 storeys. Generally comprising self-contained seniors dwellings, the proposed 2 storey development along the site's southern boundary will be sympathetic in height, bulk and scale with the adjoining area's existing and desired future character. As a result of the stepping up in height of the site's proposed buildings from their 2 storey forms to the taller, centrally located buildings, the proposed development is considered to be compatible in height, bulk and scale with the locality's existing and desired future character. Of note, the LEC's "Planning Principle: compatibility in the urban environment" provides that, in an urban design context, the most apposite meaning of "compatibility" is "capable of existing together in harmony" and is therefore different to "sameness". Furthermore, it is considered that the granting of the SCC for the subject land by the DPE acknowledged the compatibility of the taller, centrally located buildings on the site with the locality's existing and desired future character. While the ELEP 2012 does not prescribe any statutory FSRs in the LGA, and therefore does not seek to quantitatively control building bulk and scale, it is noted that the proposed development has an overall FSR of 0.81:1. Such a density is not considered excessive for development in an R3 zone and could not be regarded as an over-development of the site.

Visual Impact

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| <ul style="list-style-type: none"> ▪ A robust visual impact assessment is required ▪ Poor architectural design – monolithic structures with uniform design, massing and footprint ▪ Buildings appear as solid walls when viewed from water ▪ Partially aboveground car parking contributes to excessive bulk ▪ Adverse impact on natural beauty of area, including waterfront, leafy areas and parkland ▪ Non-compliant building heights planning visible from surrounding areas ▪ Bulky buildings located along southern boundary (in place of existing trees and open space) present as a built ‘barrier’ when viewed from the adjoining residences - development ‘turns its back’ on Hanging Rock ▪ Increase setback from southern boundary and reduce southern building heights to be consistent with adjoining neighbours ▪ Most of the non-compliant buildings will be readily visible from surrounding areas ▪ Visual impact from loss of existing trees ▪ Need more open space/green areas between buildings ▪ Limit basement car park to building footprint to increase opportunities for deep soil plantings | <ul style="list-style-type: none"> ▪ As mentioned above, the development’s built form and height has been substantially reduced to minimise potential visual impacts from the water and surrounding development. Other amendments, such as retention of existing trees along the southern boundary and increased building articulation, will also reduce potential visual impacts along the southern boundary. ▪ The development will facilitate the provision of new view corridors into the site from Marlin Avenue and through the site from Tuna Street to the water, thereby improving views to the water from the public domain and adjoining dwelling houses. ▪ The lower, compliant built forms towards the site’s southern boundary will assist in limiting the visibility of the taller, buildings when viewed from adjoining development to the south. In addition, the amended increased landscaped setbacks now proposed along the site’s southern boundary will further serve to screen and soften the visual presence of the proposed taller buildings that contravene the building height development standard. ▪ The concept proposal maintains the existing Hanging Rock Creek vegetated riparian corridor fronting the site. In addition, the proposed 3 storey RCF adopts a similar setback from Hanging Rock Creek to that of existing site development. This setback, coupled with significant landscaping, is consistent with adjoining development to the south along Beach Road and will ensure compatibility of the proposal with the streetscape in a form that appropriately reduces its visual impact. ▪ The raised podium enables carparking to be almost entirely concealed below ground, with the majority of the unbuilt-upon area able to be dedicated to landscaping and communal areas. This positioning of car parking underground facilitates the provision of residential apartments, seniors housing and ancillary facilities across the site in a landscaped setting largely free of exposed parking areas. It is submitted that the raised podium design, although contributing to the building height exceedances, results in a significantly enhanced visual amenity for the site compared with the provision of at-grade car parking across the site and therefore justifies contravention of the development standard. ▪ Pursuant to Section 4.22 of the EP&A Act, ‘a concept development application is a development application that sets out concept proposals for the development of a site, and for which detailed proposals for the site or for separate parts of the site are to be, the subject of a subsequent development application or applications.’ Accordingly, in the context of the proposed development of the subject land, the concept proposals forming the DA seek to generally establish features such as building bulk and scale, with the opportunity for variation in the architectural character being developed further during later DA stages. Accordingly, having regard to the design of the proposed buildings, particularly those fronting the water, all buildings shown outside Stage 1B are conceptual, only. |
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<p><u>View loss</u></p> <ul style="list-style-type: none"> A robust view loss assessment should be undertaken View loss to and from water and from surrounding development Impact would be improved through reduction in density and form 	<ul style="list-style-type: none"> An amended View Analysis has been undertaken. Views through the site to the water from nearby development are currently obscured by existing trees and development within the site. The only potential view loss impacts resulting from the proposed development are exceedingly minor and would not be considered unreasonable or significant in the context of this large site. In addition, the proposal will facilitate the provision of new view corridors into the site from Marlin Avenue and through the site from Tuna Street to the water, resulting in improved views to the water from the public domain and adjoining dwelling houses.
<p><u>Privacy, solar access and ventilation</u></p> <ul style="list-style-type: none"> Proposed buildings block sunlight and sea breeze to adjoining dwellings 7m setback from southern boundary inappropriate, particularly when there are generous gaps between proposed buildings within the site Loss of privacy – windows of proposed buildings will overlook rear yards of adjoining dwellings due to removal of trees along southern boundary The RCF is not oriented for good solar access, water views and privacy 	<ul style="list-style-type: none"> All proposed buildings along the southern boundary are limited to 2 storeys in height, and meet or exceed the setback requirements prescribed by the ADG. Relocation of two of the 2 storey serviced self-care housing buildings a further 7m north of the site's southern boundary will facilitate the preservation of trees in the setback area, thereby maintaining privacy to the existing dwelling houses to the south. In addition, the residential and seniors buildings have been designed so as to orient active living spaces towards the north, away from neighbours to the south in order to maintain privacy. Only bedrooms and bathrooms have window openings to the south. Generous spaces between the buildings will allow for natural airflow to adjoining neighbors. The adjoining residential development along the site's southern boundary is currently significantly overshadowed by dense vegetation positioned along the site's southern boundary. Due to the extent of this existing impact, the amended proposal does not significantly accentuate the existing level of overshadowing to the adjoining residential development to the south. The RCF has been architecturally designed and sited to provide a modern facility fronting the water that will offer residents a high-level of amenity. While not all residents' rooms overlook the water, the roof-top communal area will provide all residents with a space to relax and enjoy generous water views.
<p><u>Noise, odour and dust</u></p> <ul style="list-style-type: none"> Limited details on location and type of AC units and potential noise impacts Noise from potential holiday letting of apartments Noise and pollution from increased traffic on residential roads Air quality and acoustic impact assessments should be undertaken addressing construction and operational impacts Increased sewage smell Impact from waste collection point near adjoining properties 	<ul style="list-style-type: none"> The precise location and model of AC units will be considered at the detailed design stage, with due regard given to minimising adverse impacts on neighbouring dwellings. Importantly, however, the Stage 1B plans show services located on the rooftop being adequately screened to minimise acoustic impacts. Global Living will offer each purchaser of a Residential unit the option to enter its Holiday Letting and Management program, allowing for non-permanent residents to let their units out for tourist accommodation. This program will ensure appropriate management and regulation of the apartments, thereby avoiding potential noise concerns for the community.

	<ul style="list-style-type: none"> ▪ The <i>Assessment(s) of Traffic and Parking Implications</i> (ATPIs) found that the local road network has adequate capacity to accommodate anticipated traffic movements from the proposed development. Therefore any traffic noise or pollution emanating from vehicles accessing the site could be reasonably expected. ▪ The new pump station is to be designed to cater for the development loading and the external Council catchment, ensuring there will be no adverse odour impacts. ▪ The waste collection arrangement has been revised in line with the approach discussed with Council officers. the revised waste collection arrangement will involve relocation of bins in the basement by small collection cart to designated waste collection areas at-grade for collection by a private contractor. Noise generation by a small collection vehicle in the basement will be minimal. ▪ Air quality and acoustic impacts during the construction phase will be addressed in the CMP to ensure there are no adverse impacts on nearby development. The operation of the development is not anticipated to result in any adverse air quality or acoustic impacts.
<p><u>Traffic and Vehicular Access</u></p> <ul style="list-style-type: none"> ▪ Current intersections near site are inadequate (poor light phasing, congested, right turns onto Beach Rd difficult) and dangerous ▪ The proposal will result in more regular and increased number of vehicle movements with more broadly spread impacts compared to current use ▪ Additional road congestion, particularly during peak holiday periods ▪ Increased traffic on residential streets due to new vehicle access to Tuna Street and Marlin Avenue and current restriction on right turns into site from Beach Road (also from potential holiday tenancies) ▪ Impact on pedestrian and cyclist safety from increased traffic – lack of footpath in area means pedestrian generally use road and children currently play in quiet streets ▪ Alternate traffic routes should be considered eg site entry and exit via Hanging Rock roundabout, use of existing road running through site, access via Beach Road with internal road arrangement servicing the development 	<ul style="list-style-type: none"> ▪ The amended ATPIs addresses the following key matters: <ul style="list-style-type: none"> ○ Updated modelling was undertaken based on the relevant holiday data obtained from the RMS. The modelling results confirm that the revised AM counts were marginally lower and PM counts marginally higher than previously assumed, and therefore essentially consistent with the existing analysis (based on August 2018 traffic counts). ○ The Catlin Avenue/Beach Road intersection 'will continue to operate with a quite satisfactory level of service with the completed development and there will be no requirement/need to upgrade the intersection or modify the traffic signal phasing.' ○ Access and servicing arrangements for each zone are appropriate and will not result in adverse impacts on the surrounding road network. In particular, the proposed Zone C access arrangement is appropriate for the site, and that it will be an adequate arrangement to manage traffic for the RCF and Wellness Centre. ○ Heavy vehicle access/servicing is not required during operation. Residential waste will be collected by a private contract service using 11.2m trucks, while deliveries and servicing of the RCF and community centre/restaurant is likely to be undertaken by 8.5m long trucks. Detailed turning path assessments for these vehicles indicate a satisfactory provision for access, turning and maneuvering. ○ No adverse impacts on road or pedestrian safety are envisaged. ○ The likely trip distribution pattern of traffic throughout the local road network is detailed within the ATPIs. ▪ In addition, the following is noted:

<ul style="list-style-type: none"> Management of heavy vehicle access and servicing arrangements, including 6 garbage trucks per day, is unclear Lack of facilities and poor access for commercial and delivery vehicles No flood/hazard evacuation management plan for basement parking areas Proposed traffic routes for those travelling to and from site unclear Due to lack of public transport, provision of a single daily bus service is grossly inadequate for the needs of future residents Impact and duration of construction phase activities, development phasing, cumulative impacts as development progresses Construction vehicle access to site unclear <i>Traffic report deficiencies:</i> bias towards development assessment undertaken during a historically quiet period of the year, rather than during the peak holiday season compiled more for larger cities, rather than a small enclave of four streets inconsistent apartment numbers Total daily traffic count numbers have not been provided, only AM and PM peak hour 	<ul style="list-style-type: none"> A flood emergency management plan will be prepared The facility will have a resident Bus from the first day of occupation A Traffic CMP will be prepared to manage construction traffic and access into the site
<p><u>Parking and Pedestrian Access</u></p> <ul style="list-style-type: none"> Public pedestrian and cycle access should be available through the site to the waterfront from the south Insufficient on-site parking (e.g. restricted access to underground car parking for larger vehicles/trailers, limited at-grade car parking for visitors, no designated caravan/boat parking) will result in vehicles parking in street 	<ul style="list-style-type: none"> The 'Access Principles' plans included within the amended Architectural Plans demonstrates public access into the site and pedestrian connectivity between the zones. The ATPs confirm that the development provides adequate on-site car parking, ensuring no vehicles will park on the local streets.
<p><u>Geotechnical / Soils</u></p> <ul style="list-style-type: none"> The following additional investigations/assessments should be undertaken: <ul style="list-style-type: none"> ASS Management Plan to address potential impacts from ASS during construction 	<ul style="list-style-type: none"> The following recommendations of the <i>Report on Preliminary Geotechnical Assessment (RPGA)</i> will be taken into account during the detailed design of Stage 1B, as well as in the preparation of future DAs for subsequent stages of the concept development: <ul style="list-style-type: none"> Further investigation during Stage 6C to delineate the extent of Potential Acid Sulfate Soil (PASS) materials in the north-western part of the site.

<ul style="list-style-type: none"> ○ Groundwater impact assessment, including modelling and assessment of impacts to groundwater resources, impacts on nearby development, impacts on groundwater quality ○ Contamination assessment due to potential unknown fill materials due to land filling works carried out ▪ Further sub-surface geotechnical investigation is required once a preferred engineering design for building founding is determined 	<ul style="list-style-type: none"> ○ Further investigation and detailed modelling and analysis of groundwater flow to determine appropriate dewatering methods and ensure no adverse impacts. ○ Borehole drilling to obtain soil samples and rock level/quality, and installation and monitoring of standpipe piezometers. ▪ The RPGA report does not identify any unidentified fill within the subject site. The site is considered to have a low likelihood of contamination based on the current condition of the site and its current and historical use for tourist accommodation purposes. Notwithstanding, should any evidence of contamination be found on the site during any future works, additional testing will be undertaken in accordance with the requirements of SEPP 55.
<p><u>Coastal Management, Flooding and Stormwater</u></p> <ul style="list-style-type: none"> ▪ Unable to fully assess DA against provisions of the Coastal Management SEPP due to lack of detail and uncertainty regarding coastal protection works and potential impacts to and from coastal processes, funding obligations etc ▪ Lack of consultation with DPI Marine Parks ▪ A hydrogeological environment assessment should be undertaken, including full analysis of the hydraulic hazards and coastal tidal influences likely to impact on the site ▪ Eurobodalla Coastal Hazard Assessment and Program – risk of coastal inundation ▪ Natural ground level and flood level unclear on plans ▪ The site flood study should identify a location specific flood planning level ▪ A flood hazard evacuation management plan should be prepared ▪ Underground parking very close to the water table level possibly causing flooding to adjacent properties ▪ Raising site will block stormwater drainage currently running through site from south and increase flood risks to adjoining land - no analysis undertaken of the likely effect of flood water dissipation or increased hazard across adjoining land ▪ A more detailed assessment of the proposed OSD system and its capabilities in an extreme situation is required ▪ Greater assessment justification against Council stormwater policy position and the respective codes is required 	<ul style="list-style-type: none"> ▪ The proposed coastal protection works have been removed from the concept DA, pending further negotiations with the Marine Park Authority. Detailed consideration of the Coastal Management SEPP will be considered as part of the future DA for the coastal protection works. ▪ The Supplementary Letter prepared by MI Engineers addresses the following key matters: <ul style="list-style-type: none"> ○ The proposed development achieves compliance with the <i>Floodplain Development Manual</i> ○ It improves the impact of flooding for adjoining residential development by improving the conveyance of stormwater for the catchment ○ Since the 2100 year planning level is not a specific requirement under Council's <i>Interim Coastal Hazard Adaptation Code</i>, it is deemed that the 3.24m AHD FPL (50 year planning level) is suitable for the development ○ The FPL has been set having regard to estimate wave overtopping and run-up levels ○ When in operation, the basement car parks will not be subjected to inundation, as the entrance ramps will be situated above the FPL. Therefore, runoff entering the basement car park will be limited to that falling on the ramp itself, and residual water from entering vehicles. This will be managed utilising typical basement car parking stormwater drainage techniques, such as a grated drain at the bottom of the basement ramp and collection pits throughout the basement ○ A flood emergency management plan will be prepared in accordance with the FDM. ▪ The raising of the site, coupled with the proposed stormwater regime, will ensure the site is suitable for the proposed development without adversely impacting on adjoining land. ▪ Natural ground level and flood level is shown on the amended Architectural Plans.

<ul style="list-style-type: none"> Additional design verification of the below surface vehicle parking areas and management of stormwater ingress is required, particularly for Stage 1B The DA is to fully comply with the requirements of the SCC with respect to flooding The proposal is contrary to Council's 'South Coast Regional Sea Level Rise Policy and Planning Framework' which notes some areas may need to be relocated or abandoned and some low-lying services may fail 	
<p><u>Ecological Impacts</u></p> <ul style="list-style-type: none"> Pied oyster catcher assessment based on very brief field observations Risk to viability of pied oystercatcher due to increase in residential population, construction activities, pets and ongoing noise and visual impacts adjacent to breeding locations Umwelt report identifies areas of uncertainty in the likely direct and indirect impacts of human activity generated by the proposal. This 'uncertainty' requires additional assessment in meeting the requirements of Part 7.3 BC Act An ecological assessment should be undertaken to assess potential impact on broad range of species, including local birdlife Removal of site vegetation, including trees in good condition, and replacement with buildings and grass is not supported Consider opportunities to integrate existing vegetation into proposal Need to consider potential ecological value of trees within site for species habitat, foraging and nesting Potential impacts to the mangrove and tidal flat environments should be considered, and the more broader Clyde River Estuary which is recognized as a high value ecosystem on the Directory of Important Wetlands of Australia Potential impact on raised vegetative buffer/riparian corridor which extends along the site's southern boundary 	<ul style="list-style-type: none"> The <i>Ecological Assessment</i> (EA) prepared by Umwelt made the following key findings: <ul style="list-style-type: none"> Important habitat for threatened flora and fauna, such as hollow bearing trees, hollow logs and rock outcrops is absent from the subject site due to past disturbance. Foraging habitat for the majority of threatened species is also absent from the site. While no vegetation within the subject site met criteria for classification as any EPBC Act and/or BC Act listed threatened Endangered Ecological Communities (EECs), a patch of swamp oak floodplain forest located adjacent to the south-east corner of the site was determined to conform to a BC Act listed EEC. Areas of intertidal mudflat immediately adjacent to the subject site were identified as being potential habitat for a range of threatened and migratory shorebirds. A known long-term nesting site for pied oystercatcher, an endangered species listed under the BC Act, was confirmed to the north-east of the site. Assessments of significance under the EPBC Act and/or the BC Act were conducted for one non-local threatened flora species (narrow-leaved black peppermint) identified on site, the Swamp Oak EEC adjoining the site, and for 23 threatened or migratory fauna species that have a moderate or high probability of occurring in the subject site or on the intertidal mudflats adjacent to the site. Assessment of significance tests indicated that the proposed development is unlikely to have any significant adverse impacts on any matters listed under the EPBC Act and/or the BC Act, including the pied oystercatcher and Swamp Oak EEC. Umwelt confirmed with OEH that the level of disturbance to the Pied Oystercatcher could be mitigated and not deemed 'significant'. The proposal does not exceed the BOS Development Thresholds under the BC Act. While the EA found that significant impacts were unlikely, it makes a number of recommendations to minimise potential adverse impacts on pied oystercatcher breeding habitat and hydrology affecting the adjacent BC Act listed Swamp Oak Forest.

<ul style="list-style-type: none"> Potential impacts to listed threatened species, ecological communities, migratory marine species or their habitat, and potential for significant residual impacts to these MNES, not assessed. Consequently, the DA should be referred to the Department of the Environment and Energy for consideration of the potential for significant residual impacts to MNES. 	
<p><u>Aboriginal Heritage</u></p> <ul style="list-style-type: none"> Cultural recognition of this site 	<ul style="list-style-type: none"> An <i>Archaeological Assessment and Heritage Impact Statement</i> (AAHIS) was prepared by EMM Consulting in consultation with the Batemans Bay LALC. The AAHIS found that the proposed concept development would not impact the heritage significance of the 'Hanging Rock Heritage Conservation Area', Aboriginal objects, sites or areas of archaeological potential.
<p><u>Compliance with LEP and DCP</u></p> <ul style="list-style-type: none"> Inconsistent with LEP objectives The proposed wellness centre and community centre cannot be considered as ancillary to the residential or seniors housing uses, particularly due to their respective sizes and their availability to the general public The pharmacy and wellness centre etc are commercial uses which are prohibited in the SP3 zone Extensive built up non-permeable areas do not meet Clauses 1.2(2)(h) and 6.4 of LEP and 7.2 of DCP 	<ul style="list-style-type: none"> The amended SEE and Clause 4.6 submission outline the proposal's consistency with the relevant LEP objectives The NSW DPE Planning Circular on 'How to characterize development' refers to an ancillary use as follows - 'if a component serves the dominant purpose, it is ancillary to that dominant purpose.' In this respect, the following is noted: <ul style="list-style-type: none"> The restaurant and café will be the only components of the community centre open to the public (both of which are permissible in SP3 zone). The remaining components of the community centre are intended for use by residents, only, and are therefore considered 'ancillary' to the dominant seniors housing use. The proposed wellness centre is ancillary and subordinate to the overall seniors housing development on the subject land, predominantly providing health services to the various components of the seniors housing development. It will not be independent of the seniors housing. Details of the services to be provided in the wellness centre are outlined in the SEE. It is also noted that the size of the wellness centre has been reduced from 3 storeys to 2 in the amended DA plans, consistent with the SCC. This also results in the wellness centre's GFA being reduced from 1,696m² to 1,184m². Clauses 1.2(2)(h) and 6.4 of LEP and 7.2 of DCP are addressed in the Amended SEE.
<p><u>Compliance with Seniors Housing SEPP</u></p> <ul style="list-style-type: none"> Principles not met e.g. neighborhood and amenity, appropriate residential character, streetscape, impact of boundary walls on neighbours, retain major trees, privacy Cl 44- lack of proportionate facilities and services being provided - for staged development, facilities provided proportionately according to number of residents in each 	<ul style="list-style-type: none"> In terms of Clause 44, the existing conference centre on site will operate as a temporary community centre for residents from the first time of occupation, offering meals, recreational activities and social events. The proposed community centre will be constructed during Stage 3B, providing a café, restaurant, gymnasium and swimming pool. In addition, personal care and nursing care will be available to residents of the self-contained dwellings from the time of first occupation. The proposed development will incorporate a resident bus service provided on the site from the first day of occupation.

<p>stage. no proportion of services or facilities of the wellness centre are provided in first stage</p>	
<p><u>Site Combability Certificate</u></p> <ul style="list-style-type: none"> ▪ SCC should not have been issued since SP3 zoning is not zoned primarily for urban purposes ▪ The form of the development is inconsistent with the SCC e.g. 150 beds in the RCF compared to 160 proposed ▪ The scheme submitted with the SCC showed a compliant building height 	<ul style="list-style-type: none"> ▪ The SP3 zoned portion of the site adjoins 'land zoned primarily for urban purposes' (i.e. R3 zoned land), and therefore Clause 24 enables a SCC to be issued for development on the site. ▪ The proposed number of beds within the RCF has been reduced from 160 to 150, consistent with the SCC. ▪ The SCC application sought approval for buildings varying in height between 2 storeys and 4 storeys. Following submission of the SCC application in February 2018, the applicant issued a letter to the DPE on 15 May 2018 relating to the site's flood risk and flood affectation. The letter included advice obtained from Council regarding the flood planning level applicable to the site and the need to raise the proposed buildings above this level. An amended plan showing the 2 to 4 storey buildings above the 3.06m flood planning level was included with the letter. The DPE issued the SCC on 10 August 2018 in the knowledge of the building heights proposed.
<p><u>Social and Economic Impacts</u></p> <ul style="list-style-type: none"> ▪ A social and economic impact assessment should be prepared ▪ Need integration of the RCF, Wellness Centre, Seniors and residential units to facilitate constructive social interaction ▪ Incorporate contemporary Ageing in Place Design Principles in the site planning, building design and landscape design, to provide a greater diversity of external spaces for community interaction that reflects the site context and the intended uses ▪ Type of proposed seniors housing is not appropriate to meet community demand i.e. too expensive for many locals ▪ Suitability of multi-storey developments for seniors housing compared to villa style independent living ▪ Increased demand on services e.g. medical services and hospital ▪ Question need for more aged care developments in area ▪ Issues mixing tourism accommodation (residential apartments) with permanent residents, particularly seniors ▪ Unregulated quasi holiday apartments with lack of formal on-site management not supported 	<ul style="list-style-type: none"> ▪ The proposal strongly aligns with state and local government strategic objectives for the area, in particular by promoting increased housing diversity and density in an accessible and well-serviced location supported by the nearby Batemans Bay town centre. Council's local plans and strategies, which are informed by primary and secondary data, consistently highlight the need for additional seniors housing in the Batemans Bay area. Given this strategic context, preparation of a social and economic impact assessment is not considered necessary for the proposed development. ▪ Zones B and C provide a range of seniors housing opportunities to cater for a range of price points – e.g. high and low care accommodation, opportunities for varying levels of service for residents in Zone B, 1, 2 and 3-bedroom units in Zone B, some units and RCF rooms with water views and some without ▪ Multi-storey seniors housing developments are common and entirely appropriate, with accessibility requirements being met through the provision of lift access to every building level. ▪ The proposal is unlikely to result in a detrimental or unacceptable increase in demand for publicly-funded community services or facilities within the area. Many of the residents' needs would be met on-site, such as the provision of nursing, laundry and cleaning services. Further, the proposed wellness centre would assist in meeting the new residents' medical needs as well as the needs of the existing surrounding community. Importantly, the development's staging will ensure there is no sudden spike in demand for services.

<ul style="list-style-type: none"> ▪ A local content assessment identifying how the proposed development will benefit local businesses should be prepared ▪ Loss of tourism facilities and flow-on effect to community and local businesses ▪ Economic viability of the proposed development ▪ More foreign ownership of Australian land ▪ Loss of property values ▪ Prime parcel of land could be used for community park, markets, leisure centre etc ▪ No account has been taken of lighting as a deterrent in the prevention of crime 	<ul style="list-style-type: none"> ▪ In terms of leasing the proposed residential apartments, Global Living will offer each purchaser of a Residential unit the option to enter its Holiday Letting and Management program, allowing for non-permanent residents to let their units out to tourist accommodation. This program will ensure appropriate management and regulation of the apartments. ▪ The development will result in a number of positive flow-on economic impacts to the local economy, both through the purchase of construction goods and services, and through purchases by residents and staff throughout the operational phase. Importantly, flow-on effects during the proposed development's operation will be more constant and less seasonal, compared to the site's current usage. ▪ The economic viability of the proposed development, use of privately-owned land as a community park, foreign ownership of Australian land and loss of property values are not relevant planning considerations. ▪ Lighting will be considered at detailed design stage, in accordance with the recommendations of the Crime Risk Assessment.
<p><u>Utilities and Infrastructure</u></p> <ul style="list-style-type: none"> ▪ Suitability of existing infrastructure, including water and sewer, and ability to cope with additional loads ▪ The existing 'temporary' break wall is unsafe ▪ The site's foreshore land should be dedicated to Council under a VPA as public land ▪ New streets and roads should be dedicated to Council and not excavated to create a podium of private roads with basement car parking beneath ▪ More detail of LPG storage tank required and assess against SEPP 33. Why is it necessary to install a potentially explosive installation so close to residents when electricity is readily available? 	<ul style="list-style-type: none"> ▪ The suitability of existing infrastructure servicing the site has been confirmed with Council and relevant agencies. As discussed in the Amended DA and supporting plans, a number of utility, service and infrastructure upgrades or installations are proposed as part of the Stage 1B and subsequent DAs to meet additional infrastructure demands generated by the proposed development. ▪ It is proposed to replace the existing 'temporary' wall with a 'permanent' wall under a future DA, pending further negotiations with the Marine Park Authority. ▪ No existing public access is available through the site and dedication of the site's foreshore land as public land is not considered reasonable or necessary. ▪ Private ownership of the internal road network is desirable for maintenance, management and safety reasons. ▪ Stage 1B involves the relocation of the existing LPG tank from Stage 1B to the Stage 5B area. The existing LPG tank will be decommissioned and a new tank commissioned at a later stage, as required. Additional details and assessment of the LPG tank against SEPP 33 will be undertaken as part of the separate DA, as relevant.
<p><u>Miscellaneous</u></p> <ul style="list-style-type: none"> ▪ Significant changes to landform and extent of excavation required to accommodate the development (e.g. car parking) indicates overdevelopment of site. 	<ul style="list-style-type: none"> ▪ As discussed in this table, the proposed changes to landform are required in response to the site's flooding constraints, and to accommodate the basement car parking levels. This enables the majority of the unbuilt-upon area able to be dedicated to landscaping and communal areas. Importantly, the proposed development's density is not considered excessive for development in an R3 zone and could not be regarded as an over-development of the site.

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| <ul style="list-style-type: none">▪ Will the project be referred to the NSW DPE as a Major Project given the scale and cost of the development, and also its proximity to the marine environment? | <ul style="list-style-type: none">▪ The development is not classified as State Significant Development under the State and Regional Development SEPP, and therefore the NSW DPE is not the determining authority. |
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