

COUNCIL ASSESSMENT REPORT

Panel Reference	2018STH030
DA Number	272/19
LGA	Eurobodalla Shire Council
Proposed Development	Concept Development Application for a Three (3) Stage Development consisting of Residential Apartments, Self-Care Seniors Housing and a Residential Care Facility and Wellness Centre
Street Address	49 Beach Road, Batemans Bay
Applicant/Owner	Global Lifestyle Developments Pty Ltd / Birss Nominees Pty Ltd
Date of DA lodgement	16 November 2018
Number of Submissions	126 Submissions - 95 Objections, 31 In Favour
Recommendation	Approval subject to conditions of consent
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011)	General Development over \$30 million
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • Applicable State Environmental Planning Policies • Eurobodalla Local Environmental Plan 2012 • Batemans Bay Regional Centre Development Control Plan • relevant regulations e.g. Regs 92, 93, 94
List all documents submitted with this report for the Panel's consideration	<ul style="list-style-type: none"> • Plans • Clause 4.6 • Site Compatibility Certificate • Agency responses • Statement of Environmental Effects
Report prepared by	Katrena Browne
Report date	26 August 2019

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes / ~~No~~**

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 / ~~No~~ / ~~Not Applicable~~**

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 / ~~No~~ / ~~Not Applicable~~**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **Yes / ~~No~~ / ~~Not Applicable~~**

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 / No**

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

The Development Application has been submitted as a concept development application in accordance with clause 4.22 of the Environmental Planning and Assessment Act, 1979.

The concept development includes a Seniors Housing development consisting of 210 serviced self-care dwellings and a 150 bed residential care facility, a consulting centre for the residential care facility and a community facility containing restaurant and café and recreation spaces for the residents. The development also includes 128 medium density residential apartments. All car parking for the site will be located in four partially submerged basements corresponding with the zones.

The development application also includes the proposed construction of Stage 1B a residential flat building containing 18 seniors housing self-care dwellings and associated infrastructure. This includes the installation and upgrading of the existing stormwater infrastructure that runs parallel to the southern boundary and discharges into Hanging Rock Creek.

The development is integrated development and general terms of approval have been issued for the proposal by NSW Rural Fire Service and Natural Resources Access Allocator.

The proposed development involves the upgrading and installation of stormwater infrastructure which are below the mean high water mark. The development is supported by concurrence from Marine Parks.

The Development Application includes a Statement of Environmental Effects which contains supporting technical assessment reports discussing the implications of the proposed development.

The proposed development relies on a Site Compatibility Certificate (SCC) for permissibility in the SP3 Tourist zone. The Department of Planning and Environment issued the SCC in accordance with the provisions of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 on 10 August 2018. The proposed development is of a kind that is consistent with the application for the site compatibility certificate. The proposed development is consistent with the provisions of the SEPP.

The proposed development is compliant with the provisions of the applicable environmental planning instruments.

The applicant has requested to vary the height of buildings development standard. The proposed development is consistent with the provisions of clause 4.6 and the written request satisfies the clause.

The proposed development is recommended for approval subject to compliance with the conditions of consent.

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REPORT

Background

The Development Application (DA) was submitted to Council on 16 November 2018. The application was placed on public exhibition in accordance with the requirements of the Council's Advertisement and Notification Code and the requirements for nominated integrated development as outlined in the Environmental Planning and Assessment Regulation 2000.

The applicant submitted an amended DA on the 1 March 2019 in accordance with clause 55 of the Environmental Planning and Assessment Regulation 2000. This application was placed on exhibition for a period of 30 days from 6 March until 5 April 2019.

The Southern Planning Panel (SPP) conducted a site inspection on Thursday 9 May 2019. Following this site inspection a briefing with staff was held and questions were raised which required further consideration. Additional information was sought from the applicant and subsequently the plans were revised and submitted to Council on 14 June 2019.

The SPP also held on Thursday 9 May 2019, a public briefing inviting all persons who made a submission during the exhibition periods to publicly address the SPP and voice their concerns.

Description of the Site

The site is known as Lots 12 and 101, DP 124295 and 850637, 49 Beach Road, Batemans Bay. The site contains the development known as the Coachhouse Marina Resort a tourism development with a history dating back to the 1970s. Image 1 below provides an aerial view of the resort. The existing resort contains 89 villas, comprising 536 bedrooms, a two storey function centre containing a restaurant and 3 conference rooms and outdoor swimming pool, a detached conference facility, a marquee, manager's residence, open space facilities including a tennis court, volleyball court, playground, swimming pool and barbeque facility. The existing built form is predominantly single storey, with some two storey components.

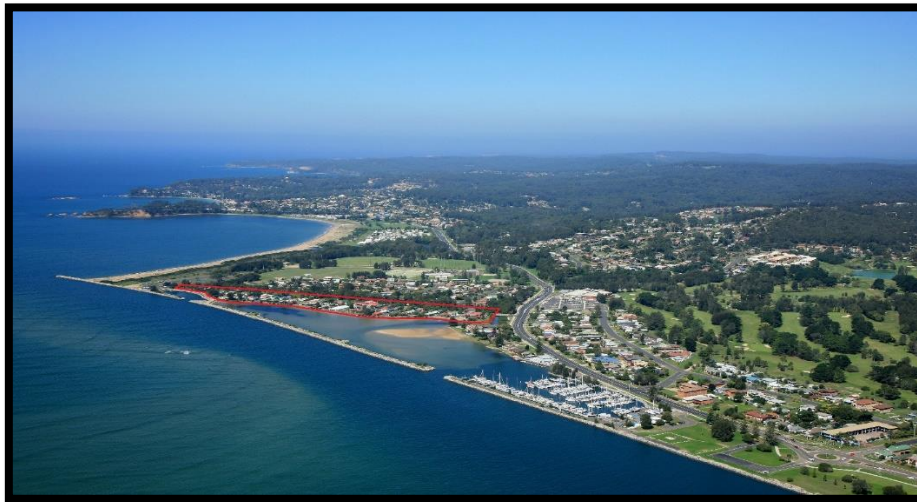


Image 1 – Oblique Aerial view of Coachhouse and Marina with the site outlined in red

The site is waterfront land. It is bounded to the north by Batemans Bay Marina, to the northwest and west by Hanging Rock Creek, to the east the Hanging Rock Boat Ramp and to the south is the residential area commonly referred to as Hanging Rock.

Along the eastern and north eastern boundary, the site adjoins a public footpath which provides pedestrian access out onto the break wall surrounding the marina and provides connectivity along the coastline to Corrigans Beach which is located to the south east of the site. Currently there is no pedestrian access through the site. It is a private gated site with access provided only to staff and visitors using the facility.



Image 2 – Aerial view of Marina with site outlined and local facilities in the vicinity of the development

The site contains two lots. The northern lot contains the existing development, including the reclaimed land and the southern lot which is mostly open recreation space. Along the southern boundary a berm containing established vegetation has been installed to provide a screen between the existing tourism development and the adjoining residential lots.

The site is subject to coastal inundation and flooding. The existing ground surface level varies between 0.9m AHD and 2.4m AHD. The berm has an upper surface level height ranging from 2.2m AHD to 2.9m AHD.

The site contains existing water, sewer and stormwater infrastructure. This includes an existing sewer pump station. The site contains an existing overland stormwater channel which is located between Zones B and C.

The site contains a Conservation Area known as AH2 and listed in Schedule 5 of Eurobodalla Local Environmental Plan 2012 (LEP). AH2 is an area of local heritage significance at Hanging Rock and extends along the riparian zone to Catlin Avenue.

History of land use

The site is known as the Coachhouse Marina Resort. The resort dates back to 1977 when Council holds the first record of an approval for a brick toilet block. This resort, contains a mixed land use which consists of 89 short term dwelling sites, function centres, restaurant, caretakers dwelling and ancillary outdoor recreation facilities. The resort is currently operating on an approval to operate issued in accordance with the provisions of the Local Government Act, 1993. This approval to operate is valid until 31 September 2020.



Image 3 – shows the area of reclaimed land to the north of the existing road. The temporary revetment wall (blue) is visible along the waterfront boundary. Photo courtesy of Google Images.

The site was granted consent for the placement of dredging materials in the 1990s. The reclamation works occurred in 2016 and the materials were reclaimed from the Marina. The area identified in red in Image 3 was the area where the dredging materials were placed.

Description of the Proposal

The proposed development involves a concept development proposal, consisting of Residential Flat Buildings and a Seniors Living Development containing a residential care facility and serviced self-care seniors living units, a and construction of the development as nominated as stage 1B.

The concept proposal consists of:

- Demolition of the existing resort accommodation and all ancillary developments on the existing site, including landscaping and infrastructure;
- Installation of ancillary services and infrastructure to the site including:
 - Temporary relocation of the existing LPG tank and then installation of a new LPG tank
 - Play ground
 - Boardwalk
 - Decommissioning and installation of a new pump station
- Construction of three separate zones across the site:
 - Zone A – Residential Flat Buildings:
 - 9 buildings, containing 128 apartments consisting of 78 two bedroom and 50 three bedroom apartments with basement car parking for 256 car parking spaces and 26 visitor car parking spaces;
 - Vehicular access is via Tuna Street;
 - Zone B – Serviced Self-Care Seniors Housing:
 - 8 buildings, containing 210 apartments consisting of 18 one bedroom, 120 two bedroom and 72 three bedroom apartments with two separate basement car parking areas;
 - Vehicular access is via Marlin Street;
 - Each basement will contain 141 car parking spaces and 21 visitor spaces
 - Car parking on grade for 18 vehicles, including 2 accessible spaces;
 - A community building consisting of a public restaurant and café, services and facilities for the seniors living including a fitness centre, administration and

office, two multi-purpose rooms with kitchen and store room, balcony, swimming pool, deck and barbeque areas at the first floor level; and

○ Zone C – Residential care facility and Wellness centre:

- A residential care facility containing 150 beds, covered drop off and pick up, lounge and dining areas, nurses stations, storage areas and staff amenities on each level, physio, gymnasium, day spa and hair dresser and roof top garden;
- Wellness consulting centre containing accessible amenities and staff meeting room, a reception and waiting area, pharmacy, 2 health consulting rooms;
- A basement car park containing 100 car parking spaces, kitchen, staff room, laundry, bin store;
- One shared space and 3 at grade car parking spaces;
- Vehicular access is via Beach Road.

The proposed works included in the Stage 1B works include:

- Demolition of the existing structures;
- Earthworks, installation of infrastructure including stormwater drainage works and utility installation upgrades and partial vegetation removal;
- Conversion of the existing conference centre into a temporary community centre during Stage 1B and will be accessible to residents of Stages 1B and 2B from the time of first occupation. The first floor level will involve the Rockwall Brasserie being used as an informal dining area, offering meals to residents. The conference rooms will be used as general purpose entertainment rooms, accommodating any activities as required, including residents day to day activities as well as social events coordinated by the retirement village operator. The break out room will be converted to a function room and the board room will become the Managers Office. No alterations or additions are proposed to the existing building;
- Construction of one two storey residential flat building containing 18 apartments over a partially submerged basement containing 28 car parking spaces and 18 at grade car parking with access provided off Marlin Street.
- Landscaping works will involve the retention and protection of existing trees.

Applicable Planning Controls

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

- Environment Protection and Biodiversity Conservation Act 1999
- Environmental Planning and Assessment Act 1979
- Rural Fires Act 1997
- Water Management Act 2000
- Coastal Management Act 2016
- Marine Estate Management Act 2014
- Biodiversity Conservation Act 2016
- State Environmental Planning Policy No 55 – Remediation of Land
- State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004
- State Environmental Planning Policy No 64 – Advertising and Signage
- State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development
- State Environmental Planning Policy (Coastal Management) 2018
- State Environmental Planning Policy (State and Regional Development) 2011
- State Environmental Planning Policy (Infrastructure) 2007
- State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
- Eurobodalla Local Environmental Plan 2012 (ELEP 2012)
- Greater Batemans Bay Structure Plan
- Batemans Bay Regional Development Control Plan
- Interim Coastal Hazard Adaptation Code
- Parking and Access Code
- Eurobodalla Section 94 Plan
- Eurobodalla Water supply and Sewerage Headworks Charges Policy
- Landscaping Code
- Safer by design code

S4.15 PLANNING ASSESSMENT

Acts and Regulations

Environment Protection and Biodiversity Conservation Act 1999

The UMWELT report indicates that there is no vegetation potentially meeting the diagnostic criteria for the EPBC Act listed threatened ecological communities. The site does contain patches of regenerating swamp oak identified in and adjacent to the project area. These do not fit the criteria to the EPBC listed endangered ecological community Coastal Swamp Oak (*Casuarina glauca*) Forest of New South Wales and South East Queensland. The patch is less than the minimum threshold of 0.5 hectares. UMWELT have advised that an EPBC referral is not required for this development.

A search of the Department of Environment and Energy's Protected Matters Database (PMST) did not identify any other matters of National Environmental Significance listed under the Commonwealth EPBC Act within 10 kilometres of the Project Area.

The UMWELT report indicates that there is no suitable natural habitat for native flora located on the site due to the high level of disturbance.

Twenty three threatened fauna species were identified as having a moderate to high probability of occurrence on the site, or are shorebirds located on the mud flats adjacent to the site.

Environmental Planning and Assessment Act, 1979

The proposed development is compliant with the provisions of the Environmental Planning and Assessment Act, 1979. The applicant proposes the development as a concept development application for the overall Masterplan of the site and a development application for the construction of Stage 1B. The application is supported by adequate information to make an informed decision relating to the concept proposal. Contributions will be calculated and levied on the basis on each individual stage with the subsequent development application. Please note, the applicant has not entered into any Voluntary Planning Agreement (VPA) with Council. The application has been assessed against s7.11. Contributions are applicable for the proposed development. Appropriate conditions are included in the draft conditions of consent. The proposed development attracts s7.11 contributions in accordance with Council's S94 Contributions Plan.

Local Government Act, 1993

The proposed development attracts s64 contributions under the Local Government Act, 1993 in accordance with Council's Water supply and Sewerage Headworks Charges Policy. The existing development has previously paid s64 contributions and is afforded credits by virtue of the existing land use of 31.195 Water ETs and 36.935 Sewer ETs. The proposed Stage 1B does require the payment of s64 contributions as Stage 1B is in addition to the existing development. There is no demolition proposed that demolishes any part of the existing development that would have attracted the payment of contributions. As such, it is recommended that the s64 contributions are levied at the full rate for Stage 1B. This equates to 13.75 ETs for Sewer and 11 ETs for Water. Total contributions payable for Sewer \$152,143.75 and for Water \$139,810. This means that after the construction of Stage 1B, the development still has credits available for future use.

Environmental Planning and Assessment Regulation 2000

During the assessment process Council requested additional information in accordance with clause 54 of the Regulation. The applicant submitted an amended application in accordance with clause 55 which provided the additional information and amendment to the proposed development. The application was re-exhibited for a period of 30 days from 6 March 2019 until 5 April 2019 inclusive. The amended application has been referred to the integrated and referral agencies for consideration

and concurrence in accordance with clause 59. The proposed development is compliant with the provisions of the Regulation.

Clause 92 Additional matters that consent authority must consider - The concept proposal involves the demolition of structures. A condition will be imposed requiring demolition to comply with AS 2601-2001.

The site does not contain any subdivision order, is not subject to the Dark Sky Planning Guidelines and does not involve any multi dwelling housing.

Clause 94 Consent authority may require buildings to be upgraded – The concept proposal does not require any buildings to be upgraded. Stage 1B may require the upgrade of the conference facility as the works involve a change of use of the spaces. There is no reason that the works cannot be resolved prior to the release of any Construction Certificate for Stage 1B. A condition to this effect is imposed.

Biodiversity Conservation Act 2016

The proposed development is unlikely to significantly affect threatened species as outlined in clause 7.2 of the Act. The site is not mapped on the Biodiversity Values Map. The site contains a land area of 6.2 Hectares. There is no minimum lot size nominated in the Eurobodalla Local Environmental Plan 2012. The proposed development does not trigger the BOS as the clearing of native vegetation does not exceed the 0.5 hectare threshold. A Biodiversity Development Assessment Report (BDAR) is not required for this development as the extent of clearing of native vegetation does not exceed the threshold.

A test of significance has been submitted and demonstrates that the proposed development does not result in any significant impacts to threatened species. The applicant engaged a suitably qualified consultant who provided the following commentary. This test of significance includes mitigation measures to minimise any detrimental impact on the threatened species in the vicinity of the site. Please refer to Appendix 7 for report.

The mud flats to the north of the site contain habitat for a breeding pair of Pied Oystercatchers. The Pied Oystercatcher is an endangered species in New South Wales.

An assessment of the Pied Oystercatcher which contains breeding habitat on the northern side of Hanging Rock Creek, adjacent to the project site has been undertaken by Umwelt.

The impact on pied oystercatcher is not likely to be significant under the definition of Part 7.3 of the NSW BC Act. Potential adverse impacts should be minimised through measures outlined below.

Umwelt have nominated several mitigation measures for the site these relate to the Swamp Oak Floodplain, Pied Oystercatcher and the long term management of weeds at the site. The mitigation measures have been included as a condition of consent. The proposed mitigation measures are being imposed to minimise any future risks associated with the development are minimised on the Biodiversity in the immediate locality of the site.

Coastal Management Act 2016

The site is identified as being within the coastal environment area and the coastal use area.

The proposed development does involve coastal protection works the subject of clause 27. Coastal protection works are defined as beach nourishment activities or works and activities or works to reduce the impact of coastal hazards on land adjacent to tidal waters, including seawalls, revetments and groynes. The proposed development involves the removal of the existing temporary wall and

construction of a boardwalk along the water front of the site. This boardwalk also includes the installation of a natural beach edge and rock embankment. All works are wholly located within the site.

The existing site does not provide any water front linkages from Beach Road through to the Hanging Rock Boat Ramp. The proposed development will allow for public pedestrian access during daylight hours thus improving public access to Corrigans Beach.

The proposed development involves the installation of restoration works to ensure the longevity of the site and the development. The current temporary wall is an interim solution to shoring the reclamation works. The proposed development involves the installation of permanent structures including rock revetment walls and beaches to ensure that the proposed development does not result in increased environmental degradation. These works have been considered by NSW Department of Primary Industries, Fisheries, Marine Parks and National Parks and Wildlife Service. Please see the conditions of consent. There are no coastal protection works associated with the construction of Stage 1B. This allows the concept approval to defer the detailed requirements of the Controlled Activity Permit to Stages 3B, 6C and 10A.

The applicant advises that the detailed works associated with beach restoration and maintenance works will be addressed in the DAs associated with stages 3B, 6C and 10A.

A condition is imposed that the coastal protection works are constructed in accordance with the relevant approvals prior to issue of any occupation certificate for that stage. The applicant defers the management and funding of the coastal protection works to the subsequent stages of 3B, 6C and 10A.

Rural Fires Act 1997

The NSW RFS have issued general terms of approval in accordance with clause 70 of the Environmental Planning and Assessment Regulation 2000. Please see Appendix 4 for the response. A condition has been imposed requiring that all stages of the proposed development comply with the provisions of Planning for Bushfire Protection 2006.

Water Management Act 2000

The NRAR have issued general terms of approval in accordance with clause 70 of the Environmental Planning and Assessment Regulation 2000. Please find a copy attached in appendix 4. The applicant will be required to apply for a controlled activity approval in accordance with the Water Management Act 2000. The general terms of approval are included in the draft schedule of conditions.

Marine Estate Management Act 2014

The site adjoins the special purpose zone of the Batemans Marine Park. The proposed development does involve works within the Marine Park. Clause 55 of the Act applies to the proposed development. The Department of Primary Industries (Marine Parks) is a concurrence agency as the development involves the installation of stormwater outlets below mean high water mark.

The mean high water mark was relocated when the reclamation works were completed in 2016. Advice received from Marine Parks on 8 August 2019 indicates that the current boundary of the Marine Park is located along the foreshore of the temporary block wall.

The proposed development requires stormwater infrastructure works to be located below mean high water mark. Given the location of the marine park boundary, there are no other works proposed below mean high water mark.

Marine Parks are also concerned that the proposed development will prohibit the ability for machines the access the waterfront for maintenance works. However, there are corridors within the site which will enable machines and vehicles to access the waterfront for future maintenance works. To ensure this is maintained into the future it is recommended that a condition be imposed requiring the creation of a section 88B instrument to require and permit access for maintenance works.

The coastal protection works and associated infrastructure such as the boardwalk will require input and advice from several government agencies. It is considered that the foreshore works should be dealt with as one stage and subject of a separate stage and application within the concept proposal.

This means that a condition is recommended that requires the applicant to submit a separate development application for the coastal protection works which finalises the design of the pedestrian walkway and the coastal works prior to the issue of any consent for stages 3B, 10A and 6C. The coastal protection works must be approved by all agencies, including OEH prior to the consenting to the DA for these stages. Ensuring compliance with the above will mean that the works involved are in accordance with the provisions and requirements of the Marine Estate Management Act, 2014.

Environmental Planning Instruments and Proposed Environmental Planning Instruments

All State Environmental Planning Policies have been considered as part of the assessment. If the policy is not located in this part, please refer to Appendix 2 for consideration.

SEPP 55 – Remediation of Land.

This SEPP applies to the state and the development. Clause 7 outlines the matters for consideration in determining a development application. In accordance with clause 7(1) of the SEPP the following matters are considered:

The DA is supported by a preliminary site investigation. The land is not known to have contain any contaminating land uses.

The site investigation prepared by Douglas Partners makes the following comment: *“based on the findings of the site history investigation and site walkover it is considered that the site has a low risk for significant widespread contamination to exist.”*

“The investigation comprised the excavation of ten test pits excavated to depths ranging from 1.6 to 2.5 m bgl with a hydraulic excavator with a 300mm wide bladed and toothed bucket.” The bore log locations and area of testing is shown below in Image 4.



Image 4 – Areas subject to bore log testing for contamination

The bore log testing revealed the presence of materials including brick, concrete and plastic at pits 1, 3 and 5. A fragment of fibrous cement was observed on the ground surface near Pit 1.

Douglas Partners has provided the following conclusion in response to the level of contamination at the site. *“Based on the findings of the PSI it is considered that there is a low likelihood of substantial widespread contamination at the site. There is however, potential for asbestos contamination to exist at the site given that ACM was observed on the site surface and anthropogenic items (brick, concrete, plastic) were encountered in the subsurface filling at some of the test pit locations.*

It is recommended that a detailed site investigation be undertaken to assess the potential for contamination to exist at the site. The detailed site investigation would target areas of the site where anthropogenic materials were observed in the subsurface filling, and will include a sampling grid for other contaminants across the remainder of the site in line with the recommendation of National Environment Protection Council (NEPC) (2013).

A detailed site investigation is required for Stage 1B prior to the release of any Construction Certificate. There is sufficient evidence to indicate that there are no contaminants which would prevent the proposed residential development. It is considered that given the asbestos was discovered in the area known as Stage 6C and the bore log 9 did not identify any presence of asbestos, that there is a low risk of contamination.

As such, the proposed development is consistent with the provisions of the SEPP.

SEPP 64 – Advertising and Signage.

The SEPP applies to the state. The proposed development does not include any advertising signage as defined. As such, the provisions of the SEPP do not apply. The applicant has identified the installation of three business identification signs at the entrances to the three separate zones, where one is located on Beach Road, one located on Marlin Avenue and one located on Tuna Street. The signage will be limited to a 2m wide by 1m high with the business name “The Estuary”. The signage will be subject to separate and future DAs.

The applicant does not nominate any proposed signage for the Wellness Centre and Community Facility. As such, it is recommended that a condition of consent be required for each stage that include details of signage to ensure that signs for the entire development comply with the provisions of SEPP 64.

SEPP 65 – Design Quality of Residential Apartment Development. This SEPP applies to the state. The SEPP aims to improve the design quality of residential apartment development. In accordance with clause 4, the proposed development involves the construction of 17 residential flat buildings. Eight of these are for the purposes of Seniors Housing. The remaining 9 are for residential apartments.

As mentioned previously, the proposed development consists of a concept development application and a development application for Stage 1B.

In accordance with clause 4 the proposed development involves the erection of new buildings. The buildings in Stages 1B, 5B and 7A, even though proposing only two storeys of residential living, the basement car park is located greater than 1.2m above existing ground level. As such, all 17 of the residential flat buildings are the subject of the provisions of SEPP 65.

A design review panel does not exist for Eurobodalla. As such, the clauses relating specifically to a design review panel for a development application and modification do not apply to this development application.

The proposed development is consistent with the design principles as outlined in Schedule 1 of the SEPP. An assessment has been carried out against the provisions of the Apartment Design Guide and the development achieves compliance with all requirements. It is considered that the proposed development is consistent with the principles and complies with the provisions of the SEPP.

SEPP (Building Sustainability Index) (BASIX).

The SEPP applies to the whole state. The BASIX SEPP applies to the Seniors Housing self-care residential units and the residential flat building development. The residential care facility, community centre and the wellness centre are excluded from the operation of the BASIX Certificate as these buildings are not BASIX affected development. It is recommended that a condition be included requiring the submission of a BASIX certificate for each development application containing residential dwellings.

The development application for Stage 1B is supported by a BASIX Certificate. The Certificate no. is 974387M and was issued on 14 November 2018. The certificate and requirements are nominated on the plans. The proposed development complies with the provisions of the BASIX SEPP.

The amended application did not result in any changes to Stage 1B that warranted the submission of an amended BASIX Certificate. As such, the proposed development will be conditioned to comply with the provisions of the Certificate.

SEPP (Coastal Management).

This SEPP applies to the land identified in the coastal zone. The site is identified as being within the coastal environment area and the coastal use area and is not located within any coastal wetland, littoral rainforest or coastal vulnerability area.

The applicant has submitted a detailed concept Stormwater Drainage Plan for the proposed development. It ensures that stormwater is managed to protect the environment and does not involve any impact to the biophysical, hydrological or ecological environment.

The consent for the coastal protection works along the site's northern and western foreshore boundary will be subject to a separate development application. The applicant has provided a concept plan of the proposed works. The coastal protection works will be designed to protect the site from natural coastal processes, without impacting or increasing the likelihood of coastal impacts.

The applicant has prepared and submitted an Aboriginal Cultural Heritage Report as part of the works. Council has also consulted with the local Aboriginal community and no response was received. Appropriate conditions are imposed to ensure that there are no impacts to aboriginal artefacts during construction.

The site currently does not provide any public access along the foreshore. As part of the works associated with the development, the applicant proposes the construction of a boardwalk which will be open for the public use during daylight hours. The boardwalk will provide safe access to all abilities. The proposed development will not result in any overshadowing, wind funnelling or the loss of views from public places to the foreshore.

The proposed development will not result in any detrimental visual impact to the amenity of the locality or the scenic qualities of the coast.

SEPP (Housing for Seniors or People with a Disability).

In accordance with clause 4(1), the SEPP applies to land within New South Wales. The land is zoned primarily for urban purposes and adjoins land zoned primarily for urban purposes. The Seniors housing component of the development is located wholly on land that is zoned SP3 Tourist. The eastern end of the site is zoned R3 Medium Density Residential, this part of the site is not proposed to contain any Seniors Housing. The zone boundary aligns with the existing stormwater drainage line.

Clause 4(5) nominates that land zoned for special uses can only be considered primarily for urban purposes if the consent authority is satisfied that most of the land that the site adjoins is land zoned for urban purposes. The SP3 zoned portion of the site is surrounded to the east, south and west by land zoned R3 Medium Density Residential. As such, the land is considered to be land primarily for urban purposes. Prior to the introduction of the Eurobodalla Local Environmental Plan 2012 (LEP), the land was zoned for residential purposes. As part of the drafting of the LEP the land zone was identified as an area suitable for increased development potential. The land has always been associated with urban land uses and was previously subject to the provisions of Eurobodalla Urban Local Environmental Plan. Please see below for current Land Zone Map.



Image 5 - Extract of Zoning Map

Clause 4(6)(a) nominates that land described as Environmentally sensitive land in Schedule 1 of the SEPP is excluded. Schedule 1 nominates keywords and expressions which must be contained within another environmental planning instrument to exclude the site from the provisions of the SEPP. There are no environmental planning instruments applying to the land that exclude the site from the provisions of the SEPP. The site is flood prone land and subject to sea level rise however, these are not consistent with the terms contained in the Schedule. As such, the site is not defined as environmentally sensitive land.

Clause 5(3) nominates that this SEPP prevails to the extent of any inconsistency.

The proposed development contains a residential care facility and serviced self-care housing. Serviced self-care housing consists of self-contained dwellings where the following services are available on site: meals, cleaning services, personal care, nursing care.

Clause 24(1)(a)(ii) applies to the land. The development application has been accompanied by a Site Compatibility Certificate issued by the NSW Department of Planning and Environment. The certificate was issued on 10 August 2018. The site compatibility certificate provides for a seniors housing redevelopment comprising 274 self-contained dwellings (serviced self-care housing), a 150 bed residential care facility, basement car parking for residents and associated community spaces and facilities. The development application as lodged proposes 210 serviced self-care housing units and a 150 residential care facility. A copy of the SCC can be found in Appendix 5.

The SCC has been reviewed in line with the recent *Waterbrook Bayview Pty Ltd v Northern Beaches Council* [2019] case (Waterbrook). This case was handed down on 22 March 2019. Clause 24(2)(b) of the SEPP provides that a consent authority must not consent to a development application to which this clause applies unless the consent authority is satisfied that the relevant panel has certified in a current SCC statement that in the panel's opinion development for the purposes of seniors housing "of the kind specified in the development application" is compatible with the surrounding environment.

Council does not believe that the SCC granted for this development contains any ambiguity.

Schedule 2 defers the consideration of the final layout, number of units and on-site facilities in the proposed development to the consent authority subject to being satisfied with the form, height, bulk, scale, setbacks, landscaping, access and parking arrangements, and shall be determined through the

assessment of the development application under section 4.15 of the Environmental Planning and Assessment Act, 1979.

The masterplan submitted with the application for the SCC is generally consistent with the layout of the site plan proposed by the DA.

The proposed development is consistent with the provisions of the SEPP. Please refer Appendix 2 for a more detailed discussion relating to the specific inclusions and requirements and how those provisions have been complied with.

SEPP (Infrastructure).

Clause 45 Determination of development applications – other development - The proposed development is located within 10m of an above ground power line. The proposal involves the relocation of this infrastructure. As such, the application was referred to Essential Energy in accordance with clause 45(2).

Essential Energy have been consulted and made the following comments. These comments have been reflected in the recommended conditions of consent, see Appendix 4.

Clause 104 Traffic-generating development – The proposed development is defined as traffic generating development in accordance with Schedule 3. The development contains residential accommodation consisting of more than 300 dwellings.

In accordance with clause 104(2A) the application was referred to Roads and Maritime Services (RMS) for consideration. RMS's comments are contained within Appendix 4.

RMS have delegated the responsibility of investigating the traffic implications of the proposed development to Council. Part of this review was to determine if the development would result in any impact to the phasing of the traffic signals at the Catlin Avenue and Beach Road intersection. The SIDRA analysis indicates that the proposed development will not result in any detrimental impact to the level of service required by the signals. The proposal is unlikely to result in any change to the phasing of the signals. As such, the application was not returned to RMS for review of the changes to the phasing.

Council has reviewed the proposed development and considers that the increased traffic demand is unlikely to result in any detrimental impact to the phasing of the lights and no changes to the sequencing are required at this time for stage 1B. Prior to any further development of the concept plan further traffic analysis will be required.

SEPP (State and Regional Development).

The SEPP applies to the State. The works associated with the development are not defined as State Significant development. Schedule 7 (2) of the SEPP outlines that development with a capital investment value exceeding \$30 million is regional development. The proposed development is Regionally Significant Development as the estimated value of the works associated with the development application is \$189 million. As such, the proposed development meets the threshold for being referred to the Southern Regional Planning Panel (SRPP).

In accordance with clause 21, the proposed development is a concept development application. As such, all future development applications will require referral to the SRPP in accordance with clause 21 of the SEPP.

SEPP (Vegetation in Non-Rural Areas).

The SEPP applies to land within the defined zones as listed. The SEPP applies to the proposed development as the land is zoned SP3 Tourist and R3 Medium Density Residential. The SEPP aims to protect the biodiversity values of trees and other vegetation and the preserve the amenity of non-rural areas through the preservation of trees and other vegetation. The proposed development does involve the removal of a small amount of vegetation. The proposed development is supported by an Statement of Environmental Effects that identifies how the works associated with the proposal will not result in detrimental impacts to Biodiversity values. As such, the provisions of the SEPP do apply to this development however are not enacted due to no impacts required to the vegetation.

Any clearing associated with the part of the application that is the subject of the development proposal is ancillary to the proposed development.

Eurobodalla Local Environmental Plan, 2012

Clause 1.2 Aims of Plan. The proposed development complies with the aims of the plan.

Clause 2.3 Zone objectives and Land Use Table. The site contains multiple land use zones. The proposed development involves land zoned SP3 Tourist and R3 Medium Density Residential.

The objectives in the SP3 Tourist zone are:

- *To provide for a variety of tourist-oriented development and related uses.*

The proposed development relies on a Site Compatibility Certificate issued in accordance with the provisions of the Seniors Housing SEPP. Seniors Housing and Residential flat buildings are prohibited development in the SP3 zone. The Community facility though permitted with consent in the zone, is not in accordance with the definition which *means*;

a building or place:

*(a) owned or controlled by a public authority or non-profit community organisation, and
(b) used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place or public worship or residential accommodation.*

The proposed Community facility is consistent with the definitions of a recreation facility indoor and outdoor. The upper floor levels are for exclusive use of the residents and include fitness rooms, pool areas and barbeque areas. As such, it is considered that the Community Centre is permitted in the SP3 Tourist zone with consent. Whether the spaces contained on level 1 and the rooftop are predominantly for residents or open to the public is of no relevance as the uses are permitted with development consent in the zone.

The restaurant and café proposed on the ground floor of the community facility building are permitted in the SP3 zone with consent as the land use falls under the broader term of Food and drink premises.

The permissibility of the wellness centre has been questioned. The original proposal involved a facility that is defined as a medical centre. Council does not believe that the SCC adequately nominates that the Wellness Centre forms part of the development, nor does it provide it with permissibility. The scale of the Wellness Centre indicates that it contains various components including a medical centre, retail pharmacy, amongst other uses. The fact that the Wellness Centre provides a wider public benefit indicates that the proposed facility is not entirely ancillary to the Seniors Living Development. As such, the applicant has redesigned and modified the Wellness Centre to be a single storey building containing two consulting rooms, staff rooms and a pharmacy.

The application has been amended to provide services to the residents of the seniors housing development. As such, the size and scale of the development now meets and achieves the ancillary nature of the development. The pharmacy is a shop which is prohibited in the SP3 zone. However, the applicant is relying on the wellness centre being ancillary and subordinate development to the overall seniors housing development. It will not be independent of the seniors housing.

The dominant purpose of the Zones B and C is for seniors housing consisting of serviced self-care housing and a residential care facility. This is considered to be the dominant purpose. In accordance with the Department of Planning, Planning Circular PS 13-001, an ancillary use is a use that is subordinate or subservient to the dominant purpose. It is considered that the revised wellness centre will serve the residents of the seniors housing development and is consistent with the development being ancillary.

The objectives in the R3 Medium Density Residential zone are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To encourage tourist and visitor accommodation in areas of demand subject to controls to ensure the adequate protection of a permanent residential housing supply and amenity.*
- *To encourage walking, cycling and the use of public transport.*

Residential flat buildings are permitted in the R3 zone. The proposed development involves the construction of 9 residential flat buildings containing 128 units, over a partially submerged basement containing car parking. The proposed residential flat development is permissible in the zone with development consent.

Clause 2.5 Additional permitted uses for particular land - The proposed development is on two separate lots. Item 2 in Schedule 1 nominates that lot 12, DP 124295 is the subject of an additional permitted use that allows development for the purposes of mooring pens and moorings. The proposed development does not involve the installation of any mooring pens or moorings, as such, the proposed development is not relying on this clause for permissibility.

Clause 4.3 Height of buildings. The site is nominated on the height of buildings map. The map nominates a maximum height of buildings of 11.5m across the site. The proposed development is supported by a clause 4.6 request to vary the development standard.

Clause 4.6 Exceptions to development standards. The proposed development involves a variation to the height of buildings development standard. The proposed development involves 12 of the 20 buildings with a proposed height exceeding the maximum height of building permitted of 11.5m. The development proposes a building height variation ranging from between 11.51m and 14.9m. A maximum of 3.4m or 29.5%.

Image 6 nominates those buildings which propose a variation to the height of buildings development standard.



Image 6 - Height exceedance diagram.

The proposed development is consistent with the objectives of this clause. The applicant requests the use of this clause to provide flexibility in applying the development standard of height for 12 of the buildings on site. The applicant argues in accordance with objective (b) that there are better outcomes achieved by allowing flexibility in the height of buildings across the site.

The proposed development contains a variety of building heights ranging from single storey to four storey built forms. The applicant states that by varying the building heights and arranging them appropriately within the site, the development respects the amenity and visual considerations in the locality.

The applicant has provided a written justification to support the request for variation. Please see Appendix 6. The written request demonstrates that the applicant has considered past case law in the drafting of the justification. The applicant relies on the first test outlined in the *Wehbe v Pittwater Council [2007]*. The applicant argues that the compliance with development standard is unreasonable and unnecessary due to the proposed development complying with the objectives of clause 4.3.

The objectives of the development standard and the zones are:

- 4.3 (1)(a) to ensure that buildings are compatible with the height, bulk and scale of the existing and desired future character of the locality,

The proposed development has been designed to consider and respond to the adjoining development along the southern boundary. The built form complies with the height of buildings development standard and contains a height of less than 11.5m. The scale of the proposed development has been broken into a series of buildings that are separated by extensive areas of landscaping and communal open space. The variation to the development standard is proposed on those buildings identified in Image 6. The proposed development staggers the height of buildings across the site.

The future character of the locality is such that future redevelopment may have a building height greater than those buildings currently proposed along the southern boundary. The proposed development involves the redistribution of height within the development. The proposal results

in the average height being maintained across the site and rather than resulting in detrimental impacts to adjoining properties the applicant has sought approval to provide the increased height in a position where there are no external impacts associated. Due to the size of the land, the increased height does not result in any detrimental impacts, such as overshadowing or the loss of privacy to buildings on the same land.

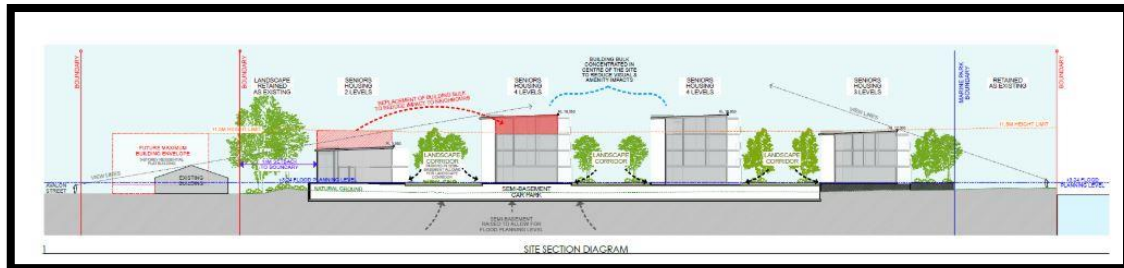


Image 7 - Cross-section showing the redistribution of building height within the site.

- 4.3(1)(b) to minimise visual impact, disruption of views, loss of privacy and loss of solar access to existing development.

The proposed development does not result in any detrimental visual impact, disruption of views or loss of privacy or solar access. The proposed development has been designed to consider the adjoining developments.

There are currently no views across the site due to height of the established landscaping. The applicant has opted to retain a significant proportion of landscaping along the southern boundary. See Image 8. Regardless of the landscaping, the built form along the southern boundary does not result in any detrimental visual impact, overshadowing or loss of privacy. As this is the southern elevation, the built form contains service rooms, etc along this elevation this protects the privacy of adjoining properties.

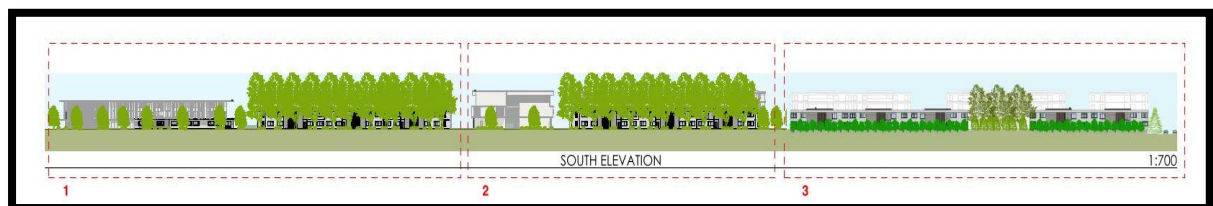


Image 8 – Combined Southern elevation including vegetation

The proposed development will not result in any disruption of views. There are currently no views across the site. Any views available are from Beach Road and rely on the view corridor along Hanging Rock Creek.

The variation in the building height proposed results in providing visual interest. The built form is not consistent in that the heights of each building vary slightly which results in variation to the visual appearance.

- *Objective SP3 Tourist - to provide for a variety of tourist-oriented development and related uses.*
While the proposed seniors housing will not provide tourist accommodation, it is submitted that the proposal is consistent with the relevant objectives of the SP3 zone. In particular, the restaurant and café, while predominantly serving the needs of the site's future residents and employees, will also be open to the local community, including visitors to the area. The proposed boardwalk along the site's waterfront will provide pedestrian linkages to community recreation spaces which currently do not exist on the site. The applicant states that the overall concept proposal will continue tourism related uses on the site, with residential apartments within the R3 zoned portion of the site being offered the ability for tourism accommodation.

As previously mentioned a SCC has been issued for the seniors housing proposal by the NSW Department of Planning and Environment, certifying that the subject site is suitable to accommodate seniors housing.

- *Objective R3 Medium Density Residential - to provide for the housing needs of the community within a medium density residential development.*
The proposed residential development provides medium density housing in a well-serviced location in proximity to the Batemans Bay town centre.
- *Objective R3 Medium Density Residential - to provide a variety of housing types within a medium density residential environment.*
The proposal will provide approximately 128, 1, 2 and 3 bedroom apartments within 9 residential flat buildings to cater for a variety of household needs.
- *Objective R3 Medium Density Residential - to enable other land uses that provide facilities or services to meet the day to day needs of residents.*
The proposed café and restaurant will be located within the SP3 portion of the site. The site contains outdoor passive recreation spaces for residents. There is direct access into Community spaces in the adjoining Hanging Rock reserve.
- *Objective R3 Medium Density Residential - to encourage tourist and visitor accommodation in areas of demand subject to controls to ensure the adequate protection of a permanent residential housing supply and amenity.*
The proposed residential development will encourage tourist and visitor accommodation, with the residential apartments expected to ultimately be used for such purposes. Tourist and visitor accommodation is a permitted land use in the zone. The proposed development is not under any obligation to provide tourist and visitor accommodation, however the SEE states that Tourist and Visitor accommodation will be offered to owners and managed by the manager of the site.
- *Objective R3 Medium Density Residential - to encourage walking, cycling and the use of public transport.*
The proposed residential development encourages walking, cycling and public transport use by positioning medium density residential development in a well-serviced location as well as providing the scope for a publicly-accessible pedestrian and cycle path along the site's water frontage.

(b) the concurrence of the Secretary has been obtained.

The concurrence of the Secretary is assumed in this instance due to the delegate for determination being the Southern Regional Planning Panel. This concurrence is assumed in accordance with Planning Circular PS 18 - 003.

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

The proposed development is the first major redevelopment since the enactment of the Eurobodalla Local Environmental Plan in July 2012. This development proposes a height variation on a large site. The Batemans Bay Structure Plan, does not explicitly nominate this site for the purpose of redevelopment. It does discuss that the Hanging Rock area is suitable for intensive development.

The applicant has appropriately designed the built form to ensure that there is no impact from the buildings in proximity to the southern boundary. The proposed height of the southern buildings reaches a maximum of 8.1m above existing natural ground level. Development of this height is compliant with Council's low density residential development where a maximum height of buildings is permitted at 8.5m. As such, it is considered that the built form along the southern boundary coupled with the setback proposed will not result in any detrimental impacts to adjoining properties.

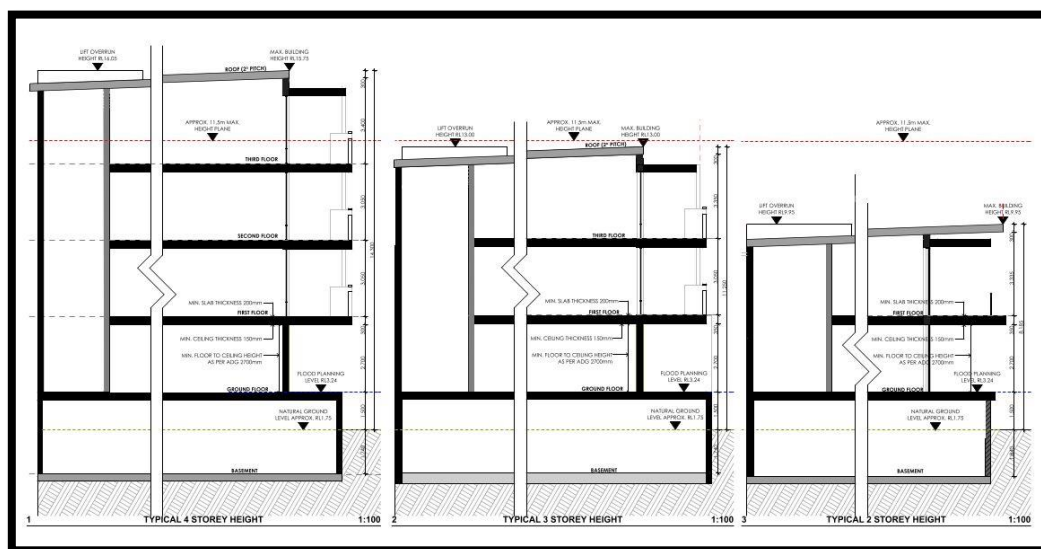


Image 9- Height Principles Diagram

(b) the public benefit of maintaining the development standard, and

This site contains the first redevelopment since the enactment of ELEP 2012. As such the standard has not been tested to ensure that the height as predicted, in the original strategic planning is what is being demanded by the market. The applicant contends that the height as nominated in the height of buildings development standard does not adequately allow for redevelopment given the implications of sea level rise and flooding.

The proposed built form contains the height variations to those buildings located along the central portion of the site. This also extends to the Residential Care Facility and the Community Facility. The public benefit received by maintaining the development standard is that the proposed development does not set a precedent to other developments within Batemans Bay.

The proposed development provides connectivity between Beach Road and the Hanging Rock boat ramp. The site has historically prevented public pedestrian access to the waterfront. The applicant proposes to provide a pedestrian thoroughfare from the Beach Road access, along Hanging Rock Creek through to the Hanging Rock reserve which links directly to Corrigans Beach. The establishment of this public pedestrian thoroughfare will increase pedestrian movements along the waterfront and assist in activating the southern side of the Marina to pedestrian activities. The placement of the Community Centre containing the restaurant and café provides a meeting place along the promenade.

(c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The proposed development will not result in a detrimental precedent as the proposal contains ample reasons to vary the development standard. The proposed variation to the development standard does not provide other reasons why Council or the Panel should support other similar developments. The proposed development complies with the relevant environmental planning instruments and does not result in circumstances that would be detrimental to the surrounding locality.

Clause 5.7 Development below mean high water mark - The proposed development does involve works below the mean high water mark. The proposed works include the installation of stormwater outlets into Hanging Rock Creek and the Marina. The basement works are proposed at a level which is not dissimilar to the mean high water mark. This clause requires development consent to carry out any works below the mean high water mark.

Clause 5.10 Heritage Conservation - Part 3 in Schedule 5 of Eurobodalla Local Environmental Plan 2012 references Hanging Rock as being a conservation area, referred to as AH2.

The site is nominated as a conservation area in Part 3 of Schedule 5. However, when reviewing the listing published on the Office of Environment and Heritage website, Hanging Rock Conservation Area, AH2 is an aboriginal place of heritage significance as defined in the ELEP 2012. As such clause 5.10(8) applies to the development. The local Aboriginal Land Council was notified about the development on 20 March 2019. No response was received within the 28 days from the Local Aboriginal Land Council. The heritage database contains the following commentary:

‘Hanging Rock’ is a highly significant meeting, teaching, resource collection and recreational place for Aboriginal people with associations to the Batemans Bay area, particularly the Walbunja people, a sub tribe of the larger Yuin group associated with the Dhurga language.

The name Hanging Rock evolved as a way to describe a tall ironstone pillar which towered over the creek below, a she oak tree grew out around the rock, making the rock appear to hang out of the tree. Hanging Rock was removed in 1997.

The ‘Hanging Rock’ area is socially and culturally significant to Aboriginal people for a number of interrelated reasons. The focal point within this area is Hanging Rock Creek, named after the iconic, Hanging Rock. Hanging Rock took on its own identity as a place of significance, primarily due to the social life that surrounded the site, which was widely recognized as a meeting place for Aboriginal people residing and passing through the area.

The surrounding landscape is closely linked to Hanging Rock Creek, in particular Joe's Creek, Corrigans Beach and Observation Point. Together, these places formed the basis of social and economic life for Aboriginal families living in the area throughout the 1900s [Donaldson 2006: 47].

The proposed development will not result in any detrimental impact to the conservation area. The proposed development is supported by a report prepared by EMM which outlines recommendations to ensure that the proposed development does not result in any detrimental impact to the conservation area.

The following recommendations have been prepared to respond to site conditions, current legislation and guidelines protecting Aboriginal cultural heritage, and in consultation with the Batemans Bay LALC who have reviewed and endorsed the archaeological assessment.

1. *No further assessment is required for the remaining project activities and it can proceed with caution in the project area.*
2. *Works in the vicinity of the Hanging Rock Aboriginal heritage conservation area should be kept to a minimum and be sympathetic to the heritage significance of the area.*
3. *Aboriginal objects and places remain protected under the NPW Act. Considering this, all workers (including contractors) should be made aware that it is illegal to harm an Aboriginal object, and if a potential Aboriginal object is encountered during activities associated with the project all work will cease in the immediate vicinity of the item and a qualified heritage professional will be contacted for advice.*
4. *In the event that known or suspected human skeletal remains are encountered during the activity, the following procedure is to be followed:*
 - *all work in the immediate vicinity will cease and the find will be immediately reported to the work supervisor who will immediately advise the Environment Manager or other nominated senior staff member;*
 - *the Environment Manager or other nominated senior staff member will promptly notify the police and the state coroner (as required for all human remains discoveries);*
 - *the Environment Manager or other nominated senior staff member will contact OEH for advice on identification of the skeletal material;*
 - *if it is determined that the skeletal material is Aboriginal ancestral remains, the Local Aboriginal Land Council will be contacted and consultative arrangements will be made to discuss ongoing care of the remains; and*
 - *if it is determined that the skeletal material is not Aboriginal ancestral remains, further investigation will be conducted to determine if the remains represent a historical grave or if further involvement of the Police is required.*

Additional measures:

1. *The Batemans Bay LALC have requested Aboriginal heritage monitoring of main excavation works associated with the proposal.*

The application was also referred to OEH for consideration of the Aboriginal Cultural Heritage. Please refer to Appendix 4.

Clause 6.3 Acid Sulfate Soils - The site is identified on the Acid Sulfate soils map as containing Class 3 acid sulfate soils. Class 3 is triggered with any works more than 1m below the natural ground surface. The application is supported by a Preliminary Geotechnical Investigation report prepared by Douglas Partners. The report indicates that the site does contain suitable conditions for Potential Acid Sulfate Soils (PASS). As such the report recommends the preparation of an Acid Sulfate Soils Management Plan if the volume of disturbed material exceeds 1000 tonne. At present the applicant has not

conducted further investigation to delineate the extent of PASS materials at the site. The report indicates that the acid sulfate soils are located in the north western part of the site. The report fails to define the volume of soils affected and the impact to the water table. As such it is recommended that a condition of consent be included to ensure that an acid sulfate soils management plan is supplied for all stages of the development. Stage 1B will be required prior to the issue of a Construction Certificate.

Clause 6.5 Flood Planning – The proposed development is located on land that is not nominated as being flood affected in any of Council's adopted flood studies. However, the site has been identified as being subject to flooding and tidal inundation outside an adopted flood study. The land is also subject to coastal inundation.

The ocean based flood event is the controlling factor in determining the Flood Planning Level (FPL) for the site.

The land surface level is currently below the flood planning level for the site. This is the status for all land within the Hanging Rock precinct. The proposed development involves the construction of habitable floor levels being constructed at a FPL of 3.24m AHD. This level has been extracted from previous site based studies.

The proposed development involves the construction of habitable levels to align with the FPL. Below this is a partially submerged basement. This basement will contain car parking and service areas for the development. The access ramps for the proposed basement are to be constructed above the FPL. The site is afforded protection from coastal erosion by the existing Council maintained sea wall. The site is to be adapted to cope with current and future ocean inundation and sea level rise by filling to above the 1%AEP level and building to the FPL of 3.24m AHD (50 year planning horizon).

The proposed development is supported by a Flood Emergency Management Plan (FEMP). The FEMP identifies that each stage requires a customised Action Plan, consent condition required.

The reports indicate that the development does not worsen flooding impacts on adjoining property and in some instances the proposal will reduce the impacts currently experienced by adjoining properties by increasing the drainage capacity of the network.

The proposed development is not likely to significantly adversely affect flood behaviour.

The proposed development is unlikely to significantly adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of the creek.

Clause 6.7 Riparian lands and watercourses - The land proposed for development does not contain any riparian lands or watercourses as contained on the Riparian Lands and Watercourses map. The riparian zone, known as Hanging Rock Creek is located to the west of the development site. The mapped watercourse terminates before the southern property boundary even though the creek line continues across the frontage of the site and into the Marina.

Please refer above to comments received from NRAR.

Clause 6.9 Stormwater Management - This clause applies to all land within residential, business and industrial zones. The proposed development contains residential and special purposes zoned land. As such, the provisions of this clause partially apply to the proposed development.

The proposed development includes an integrated approach to stormwater across the site. These will not result in any detrimental impact to the locality. The reports indicate that the development does not worsen the flooding impacts on the adjoining Hanging Rock residents and in some instances the proposal will reduce the impacts currently experienced by the adjoining properties. The proposed development is consistent with the clause.

Clause 4.15 (1)(a)(iii) Development Control Plan

Batemans Bay Regional Development Control Plan

Schedule 1 of the DCP identifies the land to which the plan applies. The site is located within the nominated area of application. As such, the provisions of the DCP apply to the proposed development.

DEVELOPMENT STANDARD	PERFORMANCE CRITERIA	ACCEPTABLE SOLUTION	COMPLIES	COMMENT
1.0 Introduction				
1.4 Land to which this plan applies	-	-		The site is located within the area identified on the map contained in Schedule 1.
	-	-		
1.8 Precinct Statements	-	-		The site is located within the Batemans Bay Marina and the R3 Medium Density Residential zoned land.
	-	-		
2.0 Site Planning				
2.1 Siting of Development	P1	A1.1	Yes	The proposed development is located on relatively flat land with a slope less than 25%. A geotechnical report has been submitted for the proposed development. This was required as part of the sea level rise requirements rather than the slope of the land.
	-	A1.2	N/A	
2.2 Setbacks	P1	A1.1	N/A	A4.1 - The proposed development involves setbacks from Beach Road greater / similar to that of the existing development on site. The nature of the site does not allow for a 20% average as there is no direct frontage to Beach Road due to Hanging Rock Creek. The sites existing setbacks from Beach Road are suitable and will not result in any detrimental impact. A4.4 & A7.3 - The proposed development does not contain any garage doors fronting any road. All
	P1.2	A1.2	N/A	
	-	A1.3	N/A	
	-	A1.4	N/A	
	P2	A2.1	N/A	
	-	A2.2	N/A	
	P3	A3.1	N/A	
		A3.2	N/A	
	P4	A4.1	complies	
	-	A4.2	N/A	
	-	A4.3	N/A	
	-	A4.4	complies	
	P5	A5	N/A	
	P6	A6	N/A	
	P7	A7.1	complies	

	-	A7.2	N/A	<p>basement doors are offset from the street frontage.</p> <p>A5 – The side boundary setback is located along the southern boundary. The proposed development contains a minimum setback of 6m for the residential apartments and 13m for the Seniors Living apartments. The wellness centre contains a side boundary setback of 9m. All proposed setbacks are in excess of the 1.5m required setback.</p> <p>A7.1 – The secondary street frontages proposed to Marlin Street and Tuna Street, are not the typical street frontages with the street alignment perpendicular to the street pavement. Buildings are setback 13m from Marlin Street and 6m from Tuna Street.</p> <p>A8.1 – The rear boundary setback is the eastern boundary. The proposed development contains a setback of 19m.</p> <p>A10.1 – The proposed development contains a foreshore setback to the reserve of 12m across the foreshore excluding the eastern building in Stage 10A. The setback proposed is 9.5m. The existing development on the site contains a setback of approximately 8m at this corner. The proposed development fails to comply with the acceptable solution. Please refer to the variation discussion in the DCP section of the report.</p>
	-	A7.3	complies	
	P8	A8.1	complies	
	-	A8.2	N/A	
	P9	A9.1	N/A	
	-	A9.2	N/A	
	P10	A10.1	No	
	-	A10.2	N/A	
	-	A10.3	N/A	
2.3 Garages, Carports & Sheds	P1	A1	N/A	
	P2	A2.1	N/A	
	-	A2.2	N/A	
2.4 Private Open Space	P1	A1.1	N/A	<p>A3 & A4 - For Stage 1B the proposed development contains balconies with an area in excess of 10m² and a minimum dimension of 2m.</p>
	-	A1.2	N/A	
	P2	A2	N/A	
	P3.1	A3	Complies	
	P3.2	-	Complies	

	P4.1	A4	Complies	P3.2 – Communal open space is provided across the site. P4.2 – There are small areas of communal open space within the area of the site zoned R3.
	P4.2	-	Complies	
2.5 Landscaping	-	A1	Condition	A1 – It is recommended that the landscaping plans be conditioned to comply with the Landscaping Code.
	-	A2	Complies	
	P3	A3.3	N/A	
		A3.2	N/A	
	P4	A4	Complies	
2.6 Parking and Access	P1	A1	No	A1 – There appears to be a significant deficiency in the car parking provided. Please refer to the DCP section of the report.
	P2	-	N/A	
	P3	-	N/A	
	P4	-	N/A	
	P5	-	N/A	
2.7 Safer By Design	P1	A1.1	N/A	A1.2 – The proposed development is compliant with the Safer by Design Code. The proposed development provides suitable measures to ensure and promote safety for all users in accordance with Crime Prevention through Environmental Design. Appropriate conditions will be imposed requiring suitable way finding around the pathway network is provided.
		A1.2	Condition	
2.8 Views	P1	A1	No	A1 – The applicant nominates that there will be view loss as a result of the proposed development. Please refer to the discussion in the DCP section of the report.
2.9 Signage	-	A1	N/A	
				A1 - The proposed development does involve the installation of new signage for the purposes of identification of the site name. The SEE states that there will be 3 business identification signs at the driveway access into each zone. The signs will be 2m in width and 1m in height. It is recommended a condition be imposed requiring the signage details be submitted as part of the application which proposes the signage. The proposed development complies with the signage code.
2.10 Footpath Trading	-	-	N/A	

3.0 Subdivision				
3.1 Subdivision Pattern and Lot Layout	-	A1	N/A	The proposed development does not involve any subdivision.
	P2.1	A2.1	N/A	
	P2.2	A2.2	N/A	
	P3	A3	N/A	
4.0 Built Form				
4.1 Building Bulk and Scale	P1	A1	Complies	A1 – Even though it is unlikely, the residential units fronting the footpath could be modified to accommodate commercial spaces on the ground floor. This only applies to the residential apartments located in Zone A.
	P2	A2	N/A	
	P3	A3	N/A	
4.2 Street Frontage and Façade Treatment	P1	A1	N/A	A3 – The site is relatively flat.
	P2.1	A2.1	N/A	
	P2.2	A2.2	N/A	
	-	A2.3	N/A	A4.1 – The pedestrian point of entry is made visible by way finding directional signs.
	-	A2.4	N/A	
	-	A2.5	N/A	
	-	A2.6	N/A	A4.2 – The proposed development adequately addresses the secondary streets. There is ample passive surveillance provided.
	-	A2.7	N/A	
	-	A2.8	N/A	
	P3	A3.1	N/A	A6.1 – The only blank facades proposed is located on the end of the buildings. This is to ensure privacy between buildings. The length of the buildings are well articulated and will not result in any detrimental impact.
	-	A3.2	N/A	
	P4	A4.1	Complies	
	-	A4.2	Complies	A6.3 – The eastern elevation presents a blank façade to the foreshore area. These elevations are adjacent to an operational boat ramp. The residential nature of the buildings will result in a detrimental impact to the amenity of the residents if windows were provided in the elevations of the buildings contained in eastern most buildings in stages 7A, 9A and 10A.
	P5	A5	N/A	
	P6	A6.1	Complies	
	-	A6.2	Complies	
	-	A6.3	Complies	
4.3 Style and Visual Amenity	P1	A1	N/A	A3.1 – The applicant has removed the proposed footpath around the foreshore. This was due to issues associated with the coastal protection works. The applicant has
	P2.1	A2	N/A	
	P2.2	-	N/A	
	P2.3	-	N/A	
	P2.4	-	N/A	

	P3.1	A3.1	Condition	advised that the coastal protection works will be completed in the future. A condition of consent is proposed. A3.2 – The proposed development mostly maintains views across the site to the waterfront. A3.3 – The proposed development contains building frontages that face onto the future pedestrian promenade. A4 – The proposed development is a modern interpretation of the existing residential units within the vicinity of the development site. This site is the flag ship for the future redevelopment of the Hanging Rock locality. P4.2 – The proposed development is positioned to minimise any impact of the existing built form. The proposed development does preserve and enhance the amenity of the surrounding environment.
	P3.2	A3.2	Complies	
	-	A3.3	Complies	
	P4.1	A4	Complies	
	P4.2	-	N/A	
4.4 Building Materials	-	A1	Condition	The application will be conditioned. The draft schedule of external colours and finishes complies with the requirements.
	-	A2	Complies	
4.5 Fences	P1	A1.1	N/A	There is no fencing proposed as part of the development.
	-	A1.2	N/A	
	P2	A2	N/A	
4.6 Adaptable Housing	P1	A1	Condition	A1 – There is no evidence of the proposed adaptable units contained in Zone A. A condition of consent is imposed requiring that adaptable housing be provided at a rate of 1:4. The adaptable units must be provided throughout the development, not located wholly within one building.
4.7 Accommodation Mix	-	A1	N/A	Applies to B4 Mixed use zone only
	-	A2	N/A	
5.0 Amenity				
5.1 Visual Privacy	P1	A1.1	Complies	A1.1 – All buildings comply with the requirements. With most buildings greater than 9m from a potential privacy issue.
	-	A1.2	N/A	
5.2 Solar Access	P1.1	A1	No	A1 – The proposed development involves the construction of two storey development along the
	P1.2	-	Complies	
	P2	A2.1	N/A	

	-	A2.2	Complies	northern boundary. There appears to be a non-compliance with the shadowing for the properties at 23 Dolphin Street and 15 & 21 Avalon Street. Technically the property at 23 Dolphin Street is to a side boundary no a rear boundary. A2.1 – There does not appear to be any solar panels.
6.0 Site Considerations				
6.1 Tree Preservation	-	A1	Complies	
7.0 Siteworks				
7.1 Sustainability	P1	A1	Complies	A1 – The proposed development will be connected to the local electricity supply. A2 – A condition will be imposed in relation to the supply of water in accordance with Council's requirements.
	P2	A2	Condition	
7.2 Earthworks/ excavation	P1	A1	No	A1 – The maximum depth of fill exceeds 1m. The proposed development involves the construction of a podium. Please refer to the DCP section of this report for discussion.
	P2.1	A2.1	N/A	
	P2.2	A2.2	N/A	
7.3 Stormwater Management	P1.1	A1.1	Condition	The proposed development is supported by a detailed stormwater plan prepared for the site given its complexity. The proposed development is the subject of detailed assessment. Please refer to the conditions imposed by Council's Development Engineers. The applicant must ensure that the existing stormwater drainage system that runs through the site does not result in any detrimental impact to the remainder of the suburb.
	P1.2	A1.2	Condition	
	P1.3	-	Condition	
	P2	A2	N/A	
7.4 Waste Management	P1	A1	Condition	The application is supported by a waste management plan. The site will be serviced by a private contractor.

This section contains discussion relating to those areas of the DCP where the proposed development doesn't strictly comply with the acceptable solutions.

2.2 Setbacks, P10 and A10.1. This part of the DCP relates to the setbacks to reserves and cliffs. The site adjoins Crown Land along the western, northern and eastern boundary. This land is waterfront land with direct access to the southern end of the Marina, Hanging Rock Creek and the Hanging Rock

Boat Ramp. As there is no adjoining development to determine a 20% average setback, the proposed development must comply with the 12m minimum foreshore setback. The site plan identifies that the proposed development complies with the 12m setback for all parts of the development excluding the eastern building of Stage 10A. The setback in this location is reduced to 9.5m. The existing building setback in this location is approximately 8.5m. As such, the proposed development is positioned at a greater setback than what is currently proposed, however, the proposal does present a variation to the 12m setback.

The performance criteria requires that *buildings are setback to minimise impacts on the public enjoyment of reserves and to minimise adverse impact on the scenic qualities of reserves and cliffs when viewed from private land, public land, waterway or the ocean*. It is considered that the proposed minor variation to the 12m required setback will not result in any detrimental impact to the scenic qualities of the coastal landscape as the area of proposed variation is located adjacent to the existing rock wall surrounding the boat ramp and entrance. As such, it is considered that the minor variation will not result in any detrimental impact to the locality. The proposal results in a more improved outcome than what is currently located on the site.

2.6 Parking and Access, P1 and A1. The proposed development requires that all development must comply with the Eurobodalla Parking and Access Code. The proposed development is supported by an assessment conducted against the relevant applicable parking rates nominated within Council's Code and also with the Seniors Housing SEPP. The proposed stage 1B development complies with the applicable car parking and it is likely that the concept proposal can provide sufficient car parking.

2.8 Views P1, A1. The SEE nominates that the proposed development currently obstructs views to the shore line. Most dwelling houses on the southern boundary do not have views due to a combination of fencing, dense vegetation and existing buildings on the site. The proposed development provides a number of view corridors towards the waterfront and through the site, thereby strengthening its visual presence in the local area. The SEE nominates that the houses along the western side of Beach Road may be impacted however, the 12m setback will result in minimal impact. Please see the view assessment below. It is considered that the proposed development is compliant and will not result in any significant detrimental impact. As a result it is considered that the proposed development is compliant with the provisions of the DCP.



Image 10 - View Loss Assessment, (Source SEE)

5.2 Solar Access, P1.1, A1. For all development except where an existing adjacent building has an east-west orientation:

- maintain solar access to the front or rear living room windows for a minimum period of 4 hours between 9am and 3pm at the winter solstice; and
- where solar access already exists to the private open space of adjacent dwellings, ensure it is maintained over a minimum of 50% of the principal private open space for a minimum period of 3 hours between 9am and 3pm at the winter solstice.

The proposed development provides suitable solar access to all adjoining properties except for one property which contains a living room window 6m from the northern/ rear boundary. The performance criteria requires *the use of natural light is maximised and the need for artificial lighting is reduced. Buildings are designed to ensure adjoining residential development maintains adequate daylight to living areas, private open space and solar panels.*

The proposed development provides suitable access to natural light. The proposed development has been designed to provide for development along the southern boundary that has a height compliant with the height of buildings map. The maximum height of the buildings along the southern boundary of the site is 8.185m above existing ground level. The permitted height is 11.5m. Please see the image below.

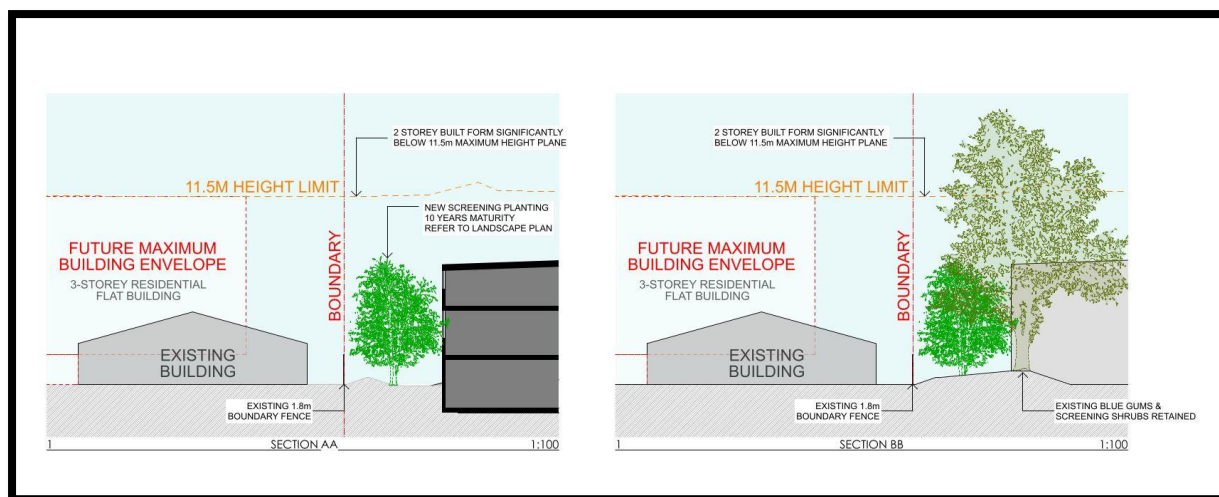


Image 11 Cross section between proposed built form and residential flat buildings in Zone A

It is considered that the applicant has made every attempt to minimise the impact of the proposed development from the existing adjoining development along the southern boundary. The height of the buildings located along the southern boundary is consistent with the height permitted for two storey residential development in an urban area. The height of the proposed development in terms of shadowing is considered appropriate and unlikely to result in any detrimental impact to the surrounding development. As such, it is considered that the proposed development complies with the performance criteria.

7.2 Earthworks/excavation, P1, A1. Beyond the external walls of the building, maximum cut is to be 1m and the maximum fill is to be 1m. The proposed development involves the construction of a podium level associated with the partially submerged basement car parks. This basement is approximately 1.5m above natural ground level. As such, the fill is contained wholly within the footprint of the proposal. The performance criteria requires that the *development is designed to ensure that excavation and earthworks are kept to the minimum required for the development without an unreasonable adverse visual impact on the site.* The proposed development has been designed to ensure that earthworks are kept to a minimum. The proposed development involves the podium level being constructed to ensure that the proposed development achieves a height above sea level to comply with Council's Interim Coastal Hazard Adaptation Code.

Eurobodalla Interim Coastal Hazard Adaptation Code

The Code provides a framework that allows Council to make a strategic response to the projected impacts of coastal hazards.

The interim code outlines the risk of sea level rise to development and the impact for that development. The site is nominated as being an area of critical utility. The applicant has chosen to comply with the sea level rise height nominated. All residential construction will be above the flood planning level for the site.

LIKELY IMPACTS OF THE DEVELOPMENT

The DA provides a detailed analysis of the likely impacts of the proposed development.

Context and Setting

The proposed development is located on a waterfront site to the south of Batemans Bay Marina. The development is to the north of the locality commonly referred to as Hanging Rock and to the east of the Hanging Rock Boat Ramp. To the south west of the site is the Catalina Country club. The site adjoins Beach Road a regional road.

Hanging Rock is an area that has been the subject strategic assessment. During the implementation of the Greater Batemans Bay Structure Plan and the Eurobodalla Local Environmental Plan 2012 the area was considered suitable for higher density living than the existing locality. The ELEP involved the increase in the height to permit 3 storey development with a maximum building height of 11.5m. The ELEP also involved the increase in the density from a general residential zone to R3 Medium Density Residential.

The existing character of the area is a mix of architectural styles and built forms. The existing housing consists predominantly on one and two storey buildings. There is a mix of single dwelling houses and multi-unit development and a few residential flat buildings. Hanging Rock has been identified for future redevelopment.

This site is unique in that it is the largest parcel of land found in this locality which is suitable for redevelopment. The majority of other lots are approximately 600 to 1000m² with this site having an area in excess of 6Ha.

The site is located in close proximity to the Batemans Bay CBD, the Marina, community facilities, sporting fields, footpaths and areas of outdoor public recreation. The proposed development involves providing pedestrian access around the waterfront, which is currently not available.

The site, though subject to sea level rise and flooding provides a good opportunity for redevelopment to a more suitable intensive land use.

This site has been used for the purposes of a holiday park since the 1970s.

The proposed development contains setbacks which ensure that there is no detrimental impact to the surrounding locality. The proposed development does not result in any detrimental impacts from over shadowing. The proposal has been designed to minimise any impacts on the adjoining properties to the south. There are limited impacts to views.

The proposed departure from the height is in a location that will only impact on itself. The height variation is proposed on buildings that are located along the northern and central part of the site. The proposed development will not result in any significant detrimental impact to the adjoining properties along the southern boundary. Along the southern boundary the existing development contains a landscaping strip with existing established vegetation. The applicant proposes to retain a significant proportion of this vegetation to assist in breaking the visual impact from Hanging Rock.

Access, Transport and Traffic

The proposed development involves the installation of four sub-basement car parks with limited at grade parking. The basements are partially submerged due to the water table being at depths whereby the site cannot accommodate complete underground parking. The upper level of the partially submerged basement is located at approximately 1.5m above the existing ground level.

As the proposed development involves a concept proposal, the development is considered to provide adequate car parking for the entire development.

Based on interpretation of the presented information the traffic generated from the proposed stage 1B will not require any change to the existing road network (including traffic signalling).

Due to the variable nature of traffic movement and staging of the development it is not possible to be certain that the development, at some future point, won't require some form of alteration to the intersection with Beach Road. This may be in the form of physical works or signal phase changing.

It is recommended that a condition be imposed requiring that complete traffic analysis be submitted with each development application to ensure that the anticipated traffic impacts of the proposed development do not result in any detrimental impact to the signalised intersection.

Any access proposed off Beach Road into stage 6C is to be left-in left-out. Council has a plan to construct a central median in this location at the Beach Road frontage. The central median is to be constructed for the property frontage along Beach Road. A condition to this effect is imposed.

Access to stages 7-10 is from Tuna Street. Only 1 adjoining property has frontage to the road reserve and currently gains access and bin service from Avalon Street. There is no benefit to Council or the community gained by the acquisition of a public road in this area. The access is to be considered a driveway servicing the property which is to be subject of an easement over the road reserve dictating the maintenance of the access is wholly the responsibility of the property owner and not Council.

A condition is required for all stages with parking requirements and service vehicle access to provide engineering certification for compliance with AS/NZS2890.1:2004 for car parking and AS2890.2:2018 for service vehicle access.

Council is uncertain as to the construction standard of the road pavement in the Marlin Avenue and Catlin Avenue. A condition of consent is required for the applicant to submit a detailed pavement analysis to ensure that the pavement is suitable of coping with the additional loads imposed by the increased numbers of vehicles.

Footpaths are to be provided along Dolphin, Marlin, Tuna and Catlin Streets connecting into Council's existing network. The proposed development is conditioned to provide plans for approval prior to release of any construction certificate.

Public Domain

The proposed development is unlikely to result in any detrimental impact to the public domain. The proposed development will increase public connectivity across the site by providing pedestrian access during daylight hours from Beach Road through to the Hanging Rock boat ramp.

A condition is imposed requiring that the proprietor of the development ensure that the public footpaths are open for public use during daylight hours. An additional condition is imposed requiring that the applicant/developer construct and maintain the public boardwalk for the lifetime of the development.

Utilities

The site contains access to all utilities. The site contains a water supply that is suitable for the intended loads proposed by the development. There will be conditions included for the upgrade of the water supply where necessary and the installation of appropriate water meters.

The existing sewer infrastructure network is capable of coping with the additional loads proposed. The proposed development involves the decommissioning of the existing sewer pump station and relocation. The works will require detailed assessment prior to the installation of the new pump station to ensure that the works can cope with the loads proposed.

The proposed development involves the upgrade of the existing stormwater infrastructure. These outlets will accommodate the overland flow from the hanging rock catchment.

The proposed development involves changes to the above ground power lines. These works have been assessed by Essential Energy and appropriate conditions imposed.

All utilities are available on the site and will provide a suitable service subject to certain conditions imposed by the relevant authority.

Heritage

The proposed development will not result in any significant detrimental impact to heritage. The development has been assessed against the applicable heritage requirements and found to be suitable subject to conditions of consent.

The proposed development is supported by Archaeological Assessment. The proposed development is waterfront land and is a known area of which was inhabited by Aboriginal persons. The Assessment was referred to Office of Environment and Heritage and they concur with the recommendations contained within the report. These recommendations have been reflected in the conditions of consent.

Other land Resources

The site currently contains urban development and will not result in any detrimental impact to productive agricultural land, mineral and extractive resources or water supply catchments.

Water

The proposed development will be connected to Council's existing water supply network. There is capacity in the network to allow for connection.

The proposed development involves the dewatering of the basement areas to construct the basement. The applicant has not provided sufficient information to enable a detailed assessment. Appropriate conditions are imposed to ensure that any water resulting from the dewatering process is appropriately stored on site or treatment without any direct discharge to the catchment of Hanging Rock Creek.

The proposed development is subject to sea level rise and flooding from Hanging Rock Creek. The main event relates to the wave run up from the ocean event. There is no information or studies been conducted which define the extent of impact for this event. The information that Council currently holds, however, the proposed development will be constructed to a height that is above the flood planning level.

The sensitivity of the waterfront land in the vicinity of the site requires appropriate conditions to be imposed to minimise any detrimental impact to this important environment.

Soils

The site contains acid sulphate soils. The report submitted with the application identifies these soils are located on the western side of the site, however there is insufficient information to define the exact location. The proposed development is to be conditioned to require a detailed assessment for

acid sulphate soils to ensure that the proposed Stage 1B development does not impact on the sensitive environment.

The site may contain contamination. A preliminary site investigation has identified that the site contains contaminants. The report indicates that the proposed development is suitable however detailed analysis is required prior to each stage.

Air and Microclimate

The proposed development will not result in any impacts to the air or microclimate. The proposed development does not involve the complete demolition of the site. The proposal involves a stage by stage concept where land will be disturbed and building demolished. A condition is proposed requiring that a detailed construction management plan is included which addresses issues such as air quality, dust emissions during construction. Upon completion of construction and establishment of vegetation it is considered that there will be no impact to the air and microclimate in the locality.

Flora and Fauna

The proposed development has been supported by a Test of Significance. The Test of Significance indicates that there are no serious and irreversible impacts to the biodiversity on and in the vicinity of the site. The site contains vegetation communities and is closely located adjacent to the Pied Oyster Catcher. The proposed development has been assessed and is unlikely to result in any detrimental impacts subject to appropriate conditions. The modifications throughout the assessment define that the proposal will ensure that there will be no serious and irreversible impacts to biodiversity populations.

Waste

The proposed development involves the installation of waste storage areas within each basement. The proposed development is supported by a waste management plan that proposes a private contractor for the servicing of waste at the site.

There is no information relating to the demolition waste generated. A condition is imposed requiring the submission of a detailed construction management plan which details the demolition waste prior to the issue of any Construction Certificate. The proposed development does not identify what will occur with the existing units on the site. A condition is imposed requiring that the dwellings are relocated rather than demolished. Stage 1B does not involve any demolition works.

The proposed development will not result in any detrimental impact from waste.

Energy

The proposed development involves every unit having direct access to a northern orientation. All units contain living spaces with a northern orientation. The development contains dwellings which are BASIX affected development. The site maximises the access for all units to ensure that they achieve appropriate natural light on the winter solstice.

The proposed development is unlikely to result in any detrimental impact.

Noise and Vibration

The proposed development does not result in any noise generation that may impact on the surrounding locality. However, the proposed development is however impacted by the noise associated with the Hanging Rock boat ramp and traffic along Beach Road. There is also the possibility of future noise associated with the Marina if it were to expand. As such, the proposed development is unlikely to result in any detrimental impact of noise on the sensitive receivers. Conditions are

included to ensure that the proposed development does not result in any noise from air conditioners, exhaust from basements, etc.

A condition is also included requiring that the development install appropriately rated glazing to minimise the effects of noise intrusion from the existing surrounding land uses. This locality is an area that contains a number of public recreation spaces, including noise generators. The proposed development must be constructed to ensure that noise generators do not result in detrimental impacts to the surrounding locality.

Natural Hazards

The hazards affecting the site include bushfire, sea level rise and flooding. The proposed development will not result in any detrimental impact to the existing hazards. The development can be conditioned to ensure that there are no additional impacts to hazards as a result of the development.

The site contains a current temporary revetment wall and the applicant proposes to replace this wall with measures that align with the requirements of Marine Parks. The new works are required to ensure that the reclamation works are appropriately retained and will not result in any detrimental impact.

The proposed development does not require any specific measures as a result of the proposed development. Conditions are included to ensure that the proposal does not result in any detrimental impact.

The proposed development has been assessed against the information we have in relation to sea level rise and flooding. The proposal involves construction of a partially submerged basement for car parking which acts as a podium to provide habitable floor spaces above the flood planning level.

The proposed development is unlikely to result in any detrimental impact to existing natural hazards. The proposed development can be accommodated without detrimental impact from natural hazards.

Social and Economic Impact in the Locality

The proposed development is unlikely to result in any detrimental impact to the social welfare of the community. The proposed development provides a multi-generational development with transition from no care, through to serviced self-care accommodation and then into a residential care facility. This type of development is not currently available in the Shire. The scale of the development and the indoor and outdoor community spaces promotes a sense of place and community for residents. The proposed development provides a housing type not currently available in this market.

The proposed development is unlikely to result in any detrimental impact as the proposed development will be available for all members of the community. It will not result in any significant social disadvantage.

The proposed development will result in wider economic benefits to the community. There will be long term future jobs which are not seasonal and dependent of the tourism trade. This will assist in attracting and retaining residents rather than moving on for more varied career opportunities. The proposed development will not result in any detrimental economic impact.

Technological Hazards

The proposed development does not pose any risks to people or property or the biophysical environment from technological hazards. The proposed development will be required to comply with the current standard of the National Construction Code.

Safety, security and crime prevention

The proposed development is supported by a design that ensures that the principles of safer by design are achieved. Due to the nature of residents, appropriate conditions are included which require the applicant to maintain the development to meet the safer by design principles which also have crossover in the SEPP Seniors Housing.

The applicant proposes appropriate lighting, security appropriate landscaping, etc. The proposed development is unlikely to result in any detrimental crime issues.

Site Design

The lot is an irregular shaped lot with waterfrontage to the northern and western boundaries. The current site contains a mixture of one and two storey detached buildings providing tourist and visitor accommodation. Currently along the southern boundary, the site contains a landscaping berm which was installed to prevent overland flow issues from stormwater but to also act as a screen from the adjoining currently low and medium density residential receivers. The existing development is located along the northern side of the site maximising waterfront presence. The existing site is well landscaped and contains a significant amount of native and non-native vegetation.

The proposed development responds to the irregular shaped site by creating three separate zones. These zones address the different orientations of the site and the access points proposed.

The proposed development has a floor space ratio of 0.78:1. The proposal involves a network of internal footpaths linking the development to the communal and open spaces. The proposed development also includes providing public connectivity through a footpath to the Hanging Rock Boat Ramp and Corrigan's Beach.

The proposed development involves works that are suitable and do not present an overdevelopment of the site. The applicant has opted to increase the height of the built form of 12 of the buildings to provide greater separation from the neighbouring properties and increase the green space. The green space between buildings will be constructed on top of the basement podium. Existing established vegetation will be partially retained along the southern boundary whilst small areas of other more significant vegetation will be retained along the northern elevation where the site contains a pocket of swamp oak flood plain vegetation.

The proposed development involves the construction of a Seniors living development which is required to ensure that appropriate accessibility is maintained throughout the site. The building construction will be required to comply with the National Construction Code.

Cumulative Impacts

The proposed development is unlikely to result in any detrimental cumulative impacts. The development is conditioned to ensure that there are no environmental impacts as a result of the proposal.

SUITABILITY OF THE SITE FOR THE DEVELOPMENT AND THE PUBLIC INTEREST

There are no physical constraints, heritage, biodiversity, mineral or extractive resource impacting on the development. The development has been assessed as providing suitable outcomes in terms of flooding, sea level rise, environmental impact, biodiversity impacts and impacts associated with the long term use of the site. The development will ensure that appropriate facilities are contained for the Seniors Living Development and access is provided to residents.

The site is suitable for redevelopment in accordance with Council's local environmental plan and structure plan. The redevelopment as proposed in its concept form is unlikely to result in any detrimental impact to the surrounding locality. Any impact can be conditioned to ensure that there are no long term impacts as a result of the development.

AGENCY SUBMISSIONS

The proposed development has been referred to numerous agencies. The responses are discussed below.

NSW Rural Fire Service

The RFS is an integrated agency under s100B of the Rural Fires Act. RFS have issued General Terms of Approval (GTAs) in accordance with the provisions of the Environmental Planning and Assessment Act, 1979. The response can be found in the Appendix 4. Conditions have been included to reflect the GTAs.

Natural Resource Access Regulator

Natural Resource Access Regulator (NRAR) is an integrated referral agency under the Water Management Act. They have issued GTAs for the proposed development. These can be viewed in Appendix 4.

Department of Primary Industries (Fisheries & Marine Parks)

The proposed development has been assessed against the provisions of Marine Estate Management Act 2014. The works require concurrence in accordance with section 55 of the Act. Department of Primary Industries (Fisheries & Marine Parks) (DPI) have provided their concurrence for works below mean high watermark and comments in relation to the proposed development. Please refer to Appendix 4 for comments.

Roads and Maritime Services

The application was referred to Roads and Maritime Services (RMS) in accordance with the provisions of State Environmental Planning Policy (Infrastructure) 2007 as traffic generating development. RMS provided a written response indicating that unless the proposed development was to result in changes to the signalised intersection at Catlin Avenue and Beach Road, they entrusted the assessment of the traffic impacts to Council for determination. A copy of their response can be found in Appendix 4.

Office of Environment and Heritage

The proposed development was referred to NSW Office of Environment and Heritage (OEH). Please refer to comments in Appendix 4. OEH in their initial response raised issues associated with biodiversity, Aboriginal Cultural Heritage and flooding. The proposed development has been conditioned in line with the provisions of the Aboriginal and Cultural Heritage Assessment.

In the second response OEH confirmed that the Biodiversity issues have been resolved subject to conditions as outlined in the test of significance submitted as part of the application. This response also encouraged Council to delay the processing of the DA until resolution of the Flood Study currently being prepared for the Hanging Rock Creek.

PUBLIC NOTIFICATION AND SUBMISSIONS

The proposed development was advertised and notified on two occasions. The first was from 23 November 2018 until 7 January 2019. The amended application was placed on public exhibition for 30 days from 6 March 2019 until 5th April 2019.

During the exhibition period a total 126 submissions were received from the public. 25% of the total number of submissions were in favour of the development. They raised positive benefits to the local community including:

- the development will attract further development to the area;
- there will be a creation of additional jobs, employment and as a result a decrease in unemployment;
- the demand for this type of tourism accommodation is being phased out by the introduction of air b n b and cheap overseas holidays;
- brings about a new development type not currently seen in this market;
- there is a large number of retirees moving from outer areas into the CBD, this style of development will result in a better outcome for those seeking housing opportunities without the need for transport;
- benefits to the existing population by the provision of the wellness centre and additional doctors;
- the proposed development will stimulate the local economy;
- the development will introduce competition providing a different type of aged care living;
- the development will result in a significant shift in the future prospects of Batemans Bay; and
- the development is visionary, will create a stable long term employment opportunities needed to build an economic future.

Those submissions that objected to the development raised the following issues. These are discussed in order of importance to the Community.

Issue: Impact on built form on the locality.

The submissions raise issues including overshadowing and loss / lack of natural light, setbacks, why does the proposal contain residential flat buildings, poor architectural merit, over development of the site, the scale of the development, ignores the character of the existing community, height, privacy, amenity and suitability of the site.

Response: The proposed development involves the construction of 20 buildings across a 6.239Ha lot. The site area is significant in comparison with other existing lots in the Hanging Rock locality. The average lot size being approximately 600m². The minimum lot size permitted in suburb of Hanging Rock is 550m². The site does not have any minimum lot size.

The proposed development has been designed to minimise any impact on adjoining properties. Of the 14 properties that adjoin the southern boundary of the site, all properties, excluding one, will comply with the shadowing requirements outlined in the Batemans Bay Regional Centre DCP. The development proposes setbacks of greater than 6m and in some cases as large as 13m from the southern boundary. The design also proposes a built form along the southern boundary that is well within the maximum allowable height limit permitted. The building heights proposed along the southern elevation are approximately 8.1m measured from existing ground level.

The setbacks proposed exceed Council's requirements and comply with other applicable environmental planning instruments.

The buildings are located so as to minimise any impact on privacy. The floor plan of the proposed development orientates living spaces and balconies to the north of the site, away from the southern boundary.

The proposed development is the first redevelopment in this locality since the introduction of the ELEP 2012. The ELEP 2012 permitted an increase in the height and the area was identified in the Greater Batemans Bay Structure Plan as an area that would be subject to development pressure due to the close proximity to community facilities, the Batemans Bay CBD and Batehaven.

The proposed development presents a floor space ratio of 0.73:1. The proposed development does not present an overdevelopment of the site. The basements result in a podium type construction to ensure that appropriate habitable floor levels are achieved. The proposal achieves compliance with the deep root zone requirements for developments as outlined in the Apartment Design Guide. The proposed development contains open space compliant with the planning requirements. The proposal increases the height of the built form to allow for increase open space at ground level.

The proposed development involves a design that is an innovative approach to a site that is constrained by sea level rise, flooding, and an obscure shape. The applicant has opted for a development that does not involve strict compliance, however, it does include innovative approaches to deal with the site constraints and proposes a suitable design response to address those issues affecting the locality. The proposal has considered the neighbouring properties with significant increased setbacks which are well above what is currently required in Council's DCP. The applicant has opted to keep the built form along the southern boundary as low as possible to ensure that the development does not result in any detrimental impact to the residential receivers to the south of the site. The proposed development responds to the site constraints and is considered to be a suitable outcome for the site as it aligns with Council's future plans for the area.

Issue: Traffic

The submissions raise issues including the access is insufficient, increased traffic congestion, the high traffic volume being added to an already substandard signalised intersection, access should avoid the residential streets and be maintained from Beach Road, insufficient car parking generally and for larger and ancillary vehicles, lack of public transport, useability of visitor parking provided within the basement, lack of footpaths and street lighting.

Response: The proposed development does increase the amount of vehicular movements expected from the site. The applicant has opted to have three separate vehicular access points to align with the Zones. Zone A will be accessed off Tuna Street. Zone B is accessed off Marlin Avenue and Zone C will be accessed off Beach Road.

The current development contains all access from Beach Road with ancillary entrances for service vehicles located via gated access off Marlin Avenue and Tuna Streets.

The proposed development will result in increased traffic demand in the locality. However, the applicant has opted to propose multiple access points to minimise all vehicles movements being provided via the one access. It is acknowledged that Zones A and B both culminate at the Catlin and Beach Road intersection. This intersection is a signalised intersection and is under the jurisdiction of RMS. The proposed development is unlikely to result in any detrimental impact to traffic. The current level of service achieved by the intersection is suitable and will not result in any detrimental impact.

The proposed development involves the inclusion of car parking prepared in accordance with Council's Car Parking Code. There will be sufficient car parking available at the site for the development.

In accordance with Council's Footpath Strategy the proposed development is conditioned to require the installation of footpaths along Marlin, Tuna and Catlin Streets which connect into Council's existing footpath network.

Issue: Proposal fails to comply with applicable legislation

The submissions raise issues including, non-compliances with SEPP Seniors Living, SEPP 55 and SEPP 33, ELEG 4.6 variation fails to adequately justify the proposal, permissibility of the wellness centre and community facility, EPBC referral required, contravenes Council's planning controls, proposal fails to comply with the Site Compatibility Certificate, Marine Parks and boardwalk and land should be secured with a VPA, the height variation requires a Local Strategic Planning Statement, provision of services for Seniors Housing from stage 1B.

Response: The proposed development complies with the applicable planning requirements. Please refer to the assessment contained in this report.

A review of the report submitted by UMWELT indicates that an EPBC referral is not required for the proposed development.

The applicant has submitted a detailed analysis against the provisions of SEPP 33. The size of the LPG tank is well below the relevant screening threshold contained in the Hazardous and Offensive Development Application Guidelines (i.e 10 tonne) with a capacity of only 1 tonne. As such, no formal assessment is required.

The permissibility of the community centre has been resolved. The proposed development though being called a community centre is not defined as a community centre but aligns with the definitions of restaurant and café and recreation facility. The land uses are all permitted in the SP3 Tourist zone.

The wellness centre has been redesigned to be a single storey building and is only for the use of the Seniors Living Residents. The applicant claims that the reduction in the scale of the wellness centre now makes it ancillary to the seniors living development.

The applicant has submitted a request to vary clause 4.6 of the ELEG 2012 to enable a height variation for the development. Please refer to the clause 4.6 assessment.

In Council's opinion, in accordance with the provisions of clause 29 of the Seniors Housing SEPP the proposed development is a development of a kind that is consistent with the SCC issued for the proposed development. Council's is of the opinion that the proposed development is consistent with the natural environment and known hazards, that appropriate services are available to meet the demands arising from the development and that the bulk, scale and built form of the development is consistent with the future desired character for the locality.

The proposed boardwalk has been included in the plans and forms part of Stages 3B, 6C and 10A. The concept proposal contains conditions relevant to the proposed boardwalk and maintenance into the future. Council has not received any formal request to consider entering into a Voluntary Planning Agreement.

The submissions have raised concern that the proposed development must be firstly considered through a planning proposal. A review of recent case law indicates that there have been recent cases where the use of clause 4.6 is used to vary development standards relating to height which are far more significant than what is proposed in this case. Council is of the opinion that the extent of proposed variation to the development standard does not in this case warrant the need for a planning proposal. It can be adequately assessed through the assessment against clause 4.6.

As per the draft conditions of consent, the proposed development will be conditioned to require the services outlined in the SEPP from the first occupation of Stage 1B. The applicant has nominated this is the proposal in the SEE.

Issue: Economic viability of the project including the loss of tourism

The submissions raise issues including questioning the demand for this type of the development, feasibility, no provision or inclusion for a low cost option to suit the needs of the current community, no economic study provided, impact on property values, who pays for road upgrades, is there adequate staff available to service the development, loss of tourism, is the proposal in foreign ownership and “we do not need another retirement village at the expense of tourism”.

Response: A review of the available land for tourism related development between the site and the Batemans Bay CBD indicates that the loss of this site equates to a loss of 6% of the land available for tourism related development. This is not significant when the R3 Medium Density Residential zone also permits tourism related development.

There is no requirement for the applicant to provide a low cost housing option.

All upgrades to infrastructure will be at the expense of the developer.

The applicant states that *“the proposed multigenerational masterplan for the site was carefully developed and refined based upon the economic and social influences of the local region. Eurobodalla Shire is currently in a technical economic recession and faces in-excess of 13% unemployment. To address these sliding economic conditions, Eurobodalla Shire Council has developed an Economic Development Strategy (EDS) with a stated vision to:*

“foster economic growth and improve the socio-economic wellbeing of the community by taking advantage of our valued natural assets to build a vibrant economy.”

The proposed development will enhance economic activity by:

- a direct investment of approximately \$180 million of direct economic activity over a four year period;
- creating significant jobs within the Construction and Services industry, providing additional employment opportunities for local workers with up to 250 jobs through construction;
- delivering permanent employment for up to 70 full-time and 45 part-time workers across health, hospitality and building services post construction;
- conversion of seasonal employment into permanent year-round employment, providing further consistency in employment flow-on economic activity to the locality;
- offering local skilled labour important experience of a larger-scale project, enhancing workforce development;
- delivery of improved coastal infrastructure through the public boardwalk from Beach Road to Corrigans Beach;
- improving accommodation options for residents and assisting the LGA to meet state based multi-dwelling target ratios;
- delivering a new multigenerational community, providing an opportunity for residents to access an ageing in place community experience;
- enabling greater access for residents to live and breathe the natural beauty of the Batemans Bay waterfront;

- providing enhanced accommodation for visitors to Batemans Bay through the delivery of waterfront residential accommodation with the option for short-term accommodation utilisation.

Council's EDS notes that while tourism provides a significant contribution of \$85m to Gross Regional Product, the health care and social assistance services (which includes Retirement and Aged Care) provides \$156m to GRP. This indicates that the proposed use of a significant portion of the subject site is aligned with the largest contributor of GRP.

The applicant has also provided an analysis of the loss of tourist accommodation which provides the following information.

"Tourism accommodation is seen as a significant contributor to the economy of Batemans Bay and the broader Shire. The site has operated as a tourist facility for over 40 years. During this time, no significant capital works have been undertaken to the accommodation facilities. The site is currently tired and has experienced diminished occupancy."

The annual occupancy rate for the last 12 months of park operations has dropped to 35%, down from the heights of over 55% over the past ten years. In data recently published by Destination NSW, the Eurobodalla Shire closed 2016 with an average occupancy rate of 48.8%.

In addition to the initial activity generated, the 128 residential apartments will be sold with a short-term accommodation letting scheme option, allowing owners to rent their properties to tourists visiting the Shire. Currently, there are several operators that will undertake these services, such as Mantra, Oaks and Wyndham. While Global Living is yet to determine the most suitable operator of this program, it is anticipated that the name recognition provided by these brands will result in many incoming tourists choosing to stay within the residential apartments for their accommodation needs.

Issue: Flooding

The submissions raise issues including impact of sea level rise impact of fill, impact on groundwater levels, no modelling of groundwater has taken place, fails to comply with Council's Sea Level Rise Policy, impact of additional stormwater during storm events, maintenance and protection of drainage easement, flood mitigation measures for basement parking.

Response: The proposed development will be constructed above the sea level rise flood planning level. Council's future planning for this locality is to raise the ground level to minimise any future impacts from sea level rise. This approach will ensure that as the area redevelops, the ground surface level will be raised to be immune to the effects of sea level rise.

The proposed development is supported by numerous professional reports which document and justify that the proposed development will not result in a more detrimental impact to the surrounding locality.

Issue: Ecological Impact

The submissions raise issues including the impact to flora and fauna, loss of wildlife connectivity between Beach Road and the ocean, retention of existing trees, protection of the pied oyster catchers, impact of boardwalk and pedestrian footbridge on pied oyster catcher, loss of existing well established vegetation, retention of vegetation corridor to the east of Marlin Avenue.

Response: The proposed development is supported by a test of significance. The proposed development will not result in any detrimental impact to threatened species. Appropriate conditions are imposed to ensure that development occurs to minimise any detrimental impact to the local ecology.

The application has been referred to NSW Office and Environment and Heritage and also National Parks and Wildlife. The proposed development is conditioned to ensure that there are no detrimental impacts to biodiversity in the locality.

Issue: Visual impact of Development and view loss

The submissions raise the following issues including view loss to the waterfront, detracts from the nature coast, visual impact of form, the design fails to reflect the architectural sensitivity of the location and foreshore positioning, issues associated with the LPG tank, bushfire.

Response: The proposed development is a concept development application for the purposes of section 4.22 of the Environmental Planning and Assessment Act, 1979. As such, the concept proposal seeks to generally establish features such as building bulk and scale, with the opportunity for variation in architectural character being developed further during subsequent DA stages. All buildings proposed form part of this concept application.

Stage 1B presents a two storey form on a podium which does not interrupt any views.

The existing development on the site currently restricts water front views from a number of properties. The proposed development is unlikely to significantly alter this outcome.

The site contains an existing LPG tank. The tank is being relocated. The LPG tank contains an estimated capacity of 1 tonne. The assessment against SEPP 33 provides that the proposed development is not a hazardous or offensive development in accordance with the guidelines. The SEPP applies to development where the capacity is 10 tonnes or greater. The LPG tank will be required to be installed in accordance with the provisions of the relevant applicable Australian Standards.

The application was referred to NSW RFS as integrated development due to the development containing special fire protection purpose.

Issue: Insufficient details in the application

The submissions raise the following issues, environmental and social impact assessment, fails to take into consideration environmental constraints and justifies it by increasing FFL and filling the site, traffic impact assessment availability, cultural heritage assessment required, inconsistency between the documents submitted.

Response: The application involves two components. The first being the concept development application for the entire development. The second involves the construction of Stage 1B, 18 units accessed off Marlin Avenue. Stage 1B involves the use of an existing building for the purposes of a community centre associated with the seniors self-care housing. The application involves sufficient details to allow a complete assessment to be undertaken. There is also sufficient details to ensure that the proposed development can be assessed as a concept. There are certain elements that require further assessment and study but these assessments can be undertaken as part of the Development Application for the construction of the proposed development.

The applicant has opted for the installation of partially submerged basements to allow for the construction of habitable floor levels outside the appropriate sea level rise and flood planning level. The installation of fill across the site in line with Council's requirements would result in a detrimental impact on the neighbouring properties to the south. This is because the landform would result in a wall preventing the natural flow of water through Hanging Rock. The installation of the partially submerged basements and the construction of a podium are viewed as a more appropriate outcome to enable the transition of redevelopment in the locality.

The application has been supported by an SEE which provides written justification outlining the social and economic impacts of the proposal. A formal study is not required for submission as outlined in Part 1 of Schedule 1 of the Environmental Planning and Assessment Regulation 2000.

A cultural heritage assessment has been submitted to the satisfaction of the Office of Environment and Heritage. Appropriate conditions are to be imposed to ensure that there are no impacts as a result of the proposal.

The proposed development is supported by adequate information to enable the assessment to be completed. The assessment has identified where there is a need for conditions of consent. These have been included in the draft schedule of conditions.

Issue: insufficient exhibition period

The time for the exhibition period was insufficient to allow for review of documentation, there was no prior community consultation and persons requested an extension of time. These issues were all raised primarily during the first exhibition. The only issue raised during the second period related to the lack of any prior community consultation.

Response: The original exhibition period occurred from 23 November 2018 through until 7 January 2019. There were a number of submissions received stating that this period was insufficient due to the Christmas close down period. The amended application was placed on exhibition for a second period. This second exhibition did not result in any additional submissions relating to the length of exhibition period.

There is no onus on any developer to conduct prior community consultation. It is always recommended, however there is no mandatory requirement.

Issue: social impact of the proposal

The submissions raise the social and economic implications as a result of the increasing demographic to over 55s, resulting in future impact on emergency services, the siting of the aged care facility and wellness centre on the busy road is contrary to good aged care design practice, lacks integration into the overall development and adjacent community, the design of the overall development fails to ensure that there will be no antisocial behaviour including drug/alcohol consumption, graffiti, etc. The 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.

Response: It is widely known and understood that there is an increasing number of over 55s nationally and the Eurobodalla is also known to have a significantly higher number of residents over the age of 55. That coupled with the Baby Boomer generation, there will always be a need and a demand for this type of development. This development is unique to Eurobodalla in that it houses the seniors or people with a disability in residential flat buildings rather than the ground level villas which have been

seen in the past. This type of development will ensure that the residents are catered for in accordance with the Seniors Housing SEPP. Appropriate facilities and services will be provided from the time the first residents move in.

The social impact assessment indicates that Eurobodalla Shire is a hot spot for retirees. The SEE states:

“Statistics for the area show that 56% of the population is above the age of 55 years, compared to the NSW regional average of 28%. This is a significant proportion of the population within an age bracket that requires unique housing and amenities to ensure quality of life is maintained.”

The demographic profile of the region is anticipated to remain a progressive retirement area well into the future.

Consideration is then given to the older demographics requiring assisted living within Batemans Bay and the surrounding Shire. The Shire experienced a 377% growth in residents requiring living assistance between 2011 and 2016 (census data). Given the forecasted growth in total population and the retained apportionment of residents aged over 55 years, it can be assumed that the future growth in residents requiring assisted living will achieve similar percentage increases. This in turn, will create further demand on current seniors housing facilities in the area.”

The overall design of the development means that the proposal will have suitable pathways and access ways throughout the site. These will be compliant in terms of AS1428. The proposal will result buildings in residential flats that allow for increased open space. If the development were converted to single storey, the site coverage would be greater than what is currently proposed. The overall development provides a different form to what has been seen previously, but provides benefits to the local community and also residents on the site.

The site will be managed by caretakers to ensure that facilities and landscaping do not promote any anti-social behaviour. The applicant has suggested that the site will be locked after dark.

The proposed development involves the installation of a boardwalk along the northern and western boundaries to connect to the existing Beach Road footpath.

Issue: suitability of available infrastructure

The submissions raised the issues that the infrastructure does not have the ability to handle effluent and provide suitable water for the development, impact the wider infrastructure and its inability to cope.

Response: The proposed development has been assessed by Council’s Engineering section. The proposed development proposes the installation of a new sewer pump station and relocation of the existing pump station. The pump station tank well capacity will be sized to comply with the demands of the development.

The applicant has also sought advice from Council in terms of the provision of a suitable water supply to the development. The network contains adequate supply to support the new development.

It is considered that the proposed development will not have any detrimental impact on the existing water, sewer or stormwater infrastructure.

Issue: precedent that development sets for wider community

The submissions raise the concern that the proposal sets an unreasonable precedent to the locality.

Response: The proposed development does not result in any undesirable precedent. The proposed development is compliant with the majority of provisions applying to the site. The non-compliance relates to the height of buildings as required in the LEP. The proposed development is the subject of provisions that are complied with. It is not considered that the proposed development will result in any undesirable precedent in the locality. This site is the subject of redevelopment and will not result in any undesirable precedent as the opportunity to use the provisions of clause 4.6 to vary a development standard is open to anyone proposing development as long as they meet the terms and criteria required.

Council's strategic planning nominates that *the Batemans Bay (Marina) is appropriate for more intensive development for numerous reasons. It is immediately adjacent to the town centre, which offers the area's best access to services.*

The Batemans Bay (Hanging Rock) area is appropriate for more intensive development for numerous reasons. Hanging Rock is in close proximity to the town centre. It borders on recreation reserves and substantial community facilities (such as the University of Wollongong Campus, library, skate park and other sporting facilities). It already has a mix of single dwellings and residential flats, is on flat land and does not impact on scenic values.

For the reasons listed above it is considered that the proposed development will not result in any detrimental precedent to the surrounding locality.

Issue: environmental impact

The submissions raise the issue of oil and other pollutants from the underground car park on the local waterways and environments.

Response: Council has reviewed the proposed development and requires the installation of a liquid trade waste device within each basement. The liquid trade waste devices will be located within each required location to protect waterways from spills associated with oils, etc.

CONCLUSION AND RECOMMENDATION

The proposed development is a Concept Development Application for the purposes of the Environmental Planning and Assessment Act, 1979. The proposed development also involves the construction works associated with Stage 1B.

The concept proposal consists of:

- Demolition of the existing resort accommodation and all ancillary developments on the existing site, including landscaping and infrastructure;
- Installation of ancillary services and infrastructure to the site including:
 - Temporary relocation of the existing LPG tank and then installation of a new LPG tank
 - Play ground
 - Boardwalk
 - Decommissioning and installation of a new pump station
- Construction of three separate zones across the site:
 - Zone A – Residential Flat Buildings:
 - 9 buildings, containing 128 apartments consisting of 78 two bedroom and 50 three bedroom apartments with basement car parking for 256 car parking spaces and 26 visitor car parking spaces;
 - Vehicular access is via Tuna Street;
 - Zone B – Serviced Self-Care Seniors Housing:
 - 8 buildings, containing 210 apartments consisting of 18 one bedroom, 120 two bedroom and 72 three bedroom apartments with two separate basement car parking areas;
 - Vehicular access is via Marlin Street;
 - Each basement will contain 141 car parking spaces and 21 visitor spaces
 - Car parking on grade for 18 vehicles, including 2 accessible spaces;
 - A community building consisting of a public restaurant and café, services and facilities for the seniors living including a fitness centre, administration and office, two multi-purpose rooms with kitchen and store room, balcony, swimming pool, deck and barbeque areas at the first floor level; and
 - Zone C – Residential care facility and Wellness centre:
 - A residential care facility containing 150 beds, covered drop off and pick up, lounge and dining areas, nurses stations, storage areas and staff amenities on each level, physio, gymnasium, day spa and hair dresser and roof top garden;
 - Wellness consulting centre containing accessible amenities and staff meeting room, a reception and waiting area, pharmacy, 2 health consulting rooms;
 - A basement car park containing 100 car parking spaces, kitchen, staff room, laundry, bin store;
 - One shared space and 3 at grade car parking spaces;
 - Vehicular access is via Beach Road.

The proposed works included in the Stage 1B works include:

- Demolition of the existing covered barbeque area and tennis court;
- Vegetation removal;
- Earthworks, installation of infrastructure including stormwater drainage works and utility installation upgrades;
- Removal of the existing power pole and above ground electricity system. Installation of a new electricity substation and underground connection to the existing power pole in Marlin Street;

- Installation of an LPG bulk storage tank with enclosure near Tuna Street;
- Installation of hydrant boosters, stormwater pump, water/pump and fire/pump stations;
- Conversion of the existing conference centre into a temporary community centre during Stage 1B and will be accessible to residents of Stages 1B and 2B from the time of first occupation. The first floor level will involve the Rockwall Brasserie being used as an informal dining area, offering meals to residents. The conference rooms will be used as general purpose entertainment rooms, accommodating any activities as required, including residents day to day activities as well as social events coordinated by the retirement village operator. The break out room will be converted to a function room and the board room will become the Managers Office. No alterations or additions are proposed to the existing building;
- Construction of one residential flat building over 2 levels containing 18 apartments;
- A sub-basement containing 28 car parking spaces and 18 at grade car parking with access provided off Marlin Street. The sub-basement carpark will accommodate approximately 6 bicycle storage racks, turning bays, a carwash bay, bulk waste storage, bin and service rooms, and stair and lift access to the building's upper levels;
- Landscaping works will involve the retention and protection of existing trees. Norfolk Island Pine Trees accentuating the site's access point from Marlin Avenue. Potential for differentiating paving treatment and the communal gathering space. The installation of retaining walls and fencing around private terraces.

The proposed development has been assessed against the relevant planning controls applying to the development and the site.

The proposed development is recommended for approval subject to conditions included below.

CONDITIONS OF CONSENT

APPENDIX 1

Environmental Planning and Assessment Act, 1979

1.3 Objects of the Act

The proposed development has been assessed against the objectives outlined in clause 1.3. The proposed development is consistent with the provisions of (a) through (j).

Part 4 Development Assessment and consent

4.13 Consultation and concurrence

4.14 Consultation and development consent – certain bush fire prone land. The site is identified as being bushfire prone land for the purposes of this clause. The development is integrated development as it is a special fire protection purpose development. General Terms of Approval have been issued by the NSW Rural Fire Service.

Division 4.4 Concept development applications

4.22 Concept development applications

The applicant has requested that the development application be treated as a concept application. The development application as lodged has been submitted in accordance with 4.22(2). The staged concept development application includes the first stage of development.

(5) The consent authority, when considering under section 4.15 the likely impact of the development the subject of a concept development application, need only consider the likely impact of the concept proposals (and any first stage of development included in the application) and does not need to consider the likely impact of the carrying out of development that may be the subject of subsequent development applications.

Note. The proposals for detailed development of the site will require further consideration under section 4.15 when a subsequent development application is lodged (subject to subsection (2)).

Division 4.8 Integrated Development

The applicant has nominated that the proposed development is integrated development in accordance with clause 4.46. The site is partially bushfire prone land. The application is integrated development in accordance with s100B of the Rural Fires Act, 1997. The Seniors Living and Residential Care Facility are considered special fire protection purpose.

The applicant nominated that the proposed development is also integrated under the Water Management Act, 2000.

Refer to Act section of this report for discussion relating to the General Terms of Approval issued for the proposed development.

In accordance with clause 69 of the Environmental Planning and Assessment Regulation 2000, submissions were referred to the integrated agencies on 18 November 2019.

4.15 Evaluation

Please refer to the detailed assessment contained within the body of this report.

Environmental Planning and Assessment Regulation 2000

During the assessment process Council requested additional information in accordance with clause 54 of the Regulation. The applicant submitted an amended application in accordance with clause 55 which provided the additional information and amendment to the proposed development. The application was re-exhibited for a period of 30 days from 6 March 2019 until 5 April 2019 inclusive. The amended application has been referred to the integrated and referral agencies for consideration and concurrence in accordance with clause 59.

In accordance with 61 submissions received during the exhibition period have been forwarded to the concurrence agencies.

In accordance with clause 62 a notice of the decision will be forwarded to the concurrence agencies upon finalisation of the decision.

The application was referred to the NRAR and NSW RFS as integrated development in accordance with clause 4.46 of the Act.

Clause 69 requires that all submissions are referred to approval bodies. The submissions were referred during the original round on 18 January 2019.

70b relates to concept development applications for residential apartment development. It requires that if the application sets out detailed proposals for the development then the requirements for submission in accordance with clause 50(1A) and 50(1AB) apply. The applicant has submitted a design verification statement that indicates that the Architect oversaw and directed the design process. The statement also indicates that the development achieves the design quality principles in SEPP 65.

The requirements outlined in Part 1 of Schedule 1 apply. Outlined in Part 2 clause (5) of Schedule 1 the following requirements have been met:

(a) an explanation of how:

(i) the design quality principles are addressed in the development, and

The applicant has provided a written document that addresses the design quality principles for the concept development and the stage 1B development.

(ii) in terms of the Apartment Design Guide, the objectives of that guide have been achieved in the development,

The proposed development achieves compliance with the Apartment Design Guide.

(b) drawings of the proposed development in the context of surrounding development, including the streetscape,

The proposed development is supported by a site analysis plan.

(c) development compliance with building heights, building height planes, setbacks and building envelope controls (if applicable) marked on plans, sections and elevations,

The proposed development is supported by plans as required above.

(d) drawings of the proposed landscape area, including species selected and materials to be used, presented in the context of the proposed building or buildings, and the surrounding development and its context,

The proposed development is supported by a landscaping master plan.

(e) if the proposed development is within an area in which the built form is changing, statements of the existing and likely future contexts,

Council's past planning, including the Greater Batemans Bay Structure Plan, involves the acceptance that the Hanging Rock area is suitable for redevelopment. The original structure plan did not nominate this site, however, the same planning controls, such as height have been afforded to the site. As such, the locality has always been ear marked for redevelopment to a higher density of living.

(f) photomontages of the proposed development in the context of surrounding development,

The application includes photomontages for the residential flat buildings.

(g) a sample board of the proposed materials and colours of the facade,

Each different type of building has been supported by a sample board.

(h) detailed sections of proposed facades,

The plans include detailed sections of proposed facades.

(i) if appropriate, a model that includes the context.

A model has not been included as part of the application. It is unnecessary to provide a model with this proposed development.

APPENDIX 2

Environmental Planning Instruments

SEPP 1 – Development Standard. This SEPP does not apply to the proposed development as the development is being assessed under a Standard Instrument LEP which uses clause 4.6 for the purposes of variation of a development standard. Please refer to the Eurobodalla Local Environmental Plan 2012 for the assessment against clause 4.6.

SEPP 19 – Bushland in Urban Areas. This SEPP does not apply to the proposed development. Schedule 1 does not indicate Eurobodalla as an area that is subject to the provisions of the SEPP.

SEPP 21 – Caravan Parks. The SEPP is applicable to Eurobodalla. The SEPP permits the creation of caravan parks to suit a number of outcomes including low cost housing. The proposed development does not involve the creation of a new caravan park. As such, the SEPP does not apply to the proposed development.

SEPP 30 – Intensive Agriculture. This SEPP was repealed by State Environmental Planning Policy (Primary Production and Rural Development) 2019. However, in accordance with clause 9 of the SEPP, SEPP 30 still applies due to the development application being made prior to the commencement of the Primary Production and Rural Development SEPP on 28 February 2019. This SEPP applies to the whole state only where the land use involves intensive agriculture. The proposed development does not involve any intensive agriculture. As such the SEPP does not apply to the proposed development.

SEPP 33 – Hazardous and Offensive Development. This policy applies to the whole state. The proposed development does not involve any hazardous or offensive land uses as defined in the Eurobodalla Local Environmental Plan 2012. It is not considered that the works associated with the development will form a hazardous industry. As such, this SEPP does not apply.

SEPP 36 – Manufactured Homes Estates. This SEPP applies to the whole state. The proposed development does not involve the creation of any new manufactured estate as per the definition.

SEPP 44 – Koala Habitat Protection. This SEPP applies to Eurobodalla. The land the subject of this development application consists of two lots which have a combined site area of 6.239Ha.

The SEPP aims to conserve natural vegetation that provide habitat and food for koalas.

Clause 7 requires Council to determine if the site provides potential koala habitat. The definition of potential koala habitat *“means areas of native vegetation where the trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component”*.

The application is supported by a report prepared by UmWelt dated February 2019. This report discusses the application of SEPP 44 relevant to the site. The report states *the site contains a single planted forest red gum (Eucalyptus tereticornis), a primary koala feed species. Fourteen Sydney blue gum (Eucalyptus saligna) planted secondary koala feed species were present in the project area.*

The Project Area was likely to have been the PCT1232 – Swamp Oak floodplain swamp forest, Sydney Basin Bioregion and South East Corner Bioregion prior to vegetation clearance and urban development. Koalas are not known to have occurred in this PCT due to the lack of suitable feed species. Previous mapping have shown the probability of koala has been present within the Project Area is non-existent.

The current context of the Project Area is highly urban and potential movement corridors for koalas to access the Project Area are absent. The potential for the urban plantings in the Project Area to provide potential koala habitat is highly unlikely due to the urban context of the Project Area and the lack of connectivity. Further assessment of koala habitat is not warranted and was not undertaken.

As the land is not identified as being core koala habitat there is no requirement for the submission of a plan of management.

SEPP 47 – Moore Park Showground. This SEPP does not apply to the site. As such, this SEPP does not apply to the proposed development.

SEPP 50 – Canal Estate Development. This SEPP applies to the whole state. The proposed development is not defined as Canal Estate Development. As such, the provisions of the SEPP do not apply.

SEPP 52 – Farm Dams and Other Works in Land and Water Management Areas. This SEPP was repealed by State Environmental Planning Policy (Primary Production and Rural Development) 2019. However, in accordance with clause 9 of the SEPP, SEPP 30 still applies due to the development application being made prior to the commencement of the Primary Production and Rural Development SEPP on 28 February 2019. The proposed development is not located within any area marked in the map in Schedule 1. As such, the provisions of the SEPP do not apply to the proposed development.

SEPP 62 – Sustainable Aquaculture. The SEPP applies to the state. This SEPP was repealed upon commencement of the State Environmental Planning Policy (Primary Production and Rural Development) 2019 on 28 February 2019. However in accordance with clause 9 of the Primary Production and Rural Development SEPP, as this application was made on 28 November 2018, the application must be determined as if the SEPP had not commenced. As such, the provisions of SEPP 62 still apply to this development application.

The proposed development does not involve any water based aquaculture. Part 3A requires consideration of the effects of proposed development on oyster aquaculture. Clause 15A makes it clear that this part applies to all development on all land.

In accordance with clause 15B Council must consider whether because of the nature and location of the development if the development will have an adverse impact on the oyster industry in the Clyde River. In the event that Council considers it may have an effect, the application must be forwarded to the Director-General of the Department of Primary Industries. This application has been referred to the Department of Primary Industries Fisheries and Marine Parks. Fisheries and Marine Parks are assessing the application against clauses 55 and 56 of the Marine Estate Management Act 2014. Please refer to the Marine Estate Management Act section of this report for further information.

In accordance with clause 15B(2) Council has considered the comments from Department of Primary Industries. These comments relate to the Marine Park rather than the impact on oyster aquaculture. The proposed development is located approximately 2.4kms from the nearest oyster lease. It is considered that the proposed development must minimise any impacts on the Marine Park located along the northern boundary of the site. As such, the proposed development is unlikely to result in any adverse effect on the local oyster industry. Measures outlined in the Marine Parks response have been included in the draft conditions of consent.

SEPP 70 – Affordable Housing (Revised Schemes). This SEPP applies to the whole state. The site is not located within the Greater Metropolitan region as defined in the Government Gazette No 142 of 11 October 1991. As such, this SEPP does not apply to the proposed development. It should be noted on 28 February 2019, this SEPP was amended to align with clause 7.32 of the Act. The modifications involve opening the SEPP to all Local Government Areas within the State. Eurobodalla Council has not prepared any affordable housing contributions scheme. The modifications to the SEPP were exhibited between 30 November 2018 and 19 December 2018, as such, the modifications are not considered a draft policy for the purposes of clause 4.15 of the Act.

The Ministerial Direction issued by the Minister on 28 February 2019 requires Council, if negotiating the terms of a proposed planning agreement to include provisions for affordable housing. The applicant is not proposing to enter into any planning agreement and the proposed development will be the subject to the provisions of the existing Section 94 and 64 Contributions Plans.

SEPP (Aboriginal Land). This SEPP came into effect on 6 February 2019. The SEPP applies to the land mapped. Clause 5 calls up the Land Application Map. The development site is not identified on the map for the purposes of the SEPP. As such, even in a draft form, this SEPP does not apply to the proposed development.

SEPP (Affordable Rental Housing). This SEPP applies to the whole state. The proposed development is not subject to the provisions of the SEPP as the proposed development does not include any of the defined land uses as outlined in the SEPP.

SEPP (Educational Establishments and Child Care Facilities). This SEPP applies to the whole state. The proposed development does not involve any works that are defined within the SEPP. As such, the provisions of the SEPP do not apply to the proposed development.

SEPP (Exempt and Complying Development Codes). The SEPP applies to the whole state. The proposed development is not defined as exempt or complying development. As such, the provisions of the SEPP do not apply to the proposed development.

SEPP (Housing for Seniors or People with a Disability). Clause 26 requires certain services and facilities to be in the vicinity of the development. The site is centrally located between the Batemans Bay and Batehaven Town Centres. The site is located greater than 400m from the services. In accordance with 26(c) the applicant proposes a mini bus to transport residents to nearby shops and services. The bus will be available both to and from the site and Batemans Bay Town centre at least once between 8am and 12pm, and at least once between 12pm and 6 pm daily.

The application has been referred to NSW RFS as the site is nominated as being partially bushfire prone land under Council's current Bushfire Prone Land Map. The eastern end of the site is nominated as being bushfire prone land. This area contains coastal scrub and is unlikely to result in any detrimental bush fire threat as the vegetation does not contain any connectivity to a greater threat. Under Council's mapping, currently being reviewed by NSW RFS the site is not mapped on the bush fire prone land map. The area that is mapped will be landscaped and contain an LPG tank. The application was been referred to NSW Rural Fire Service as Integrated Development in accordance with s100B of the Rural Fires Act, 1997. General terms of approval have been granted for the proposed development. These terms are included in the conditions of consent.

The proposed development contains adequate means of egress if a bush fire threat was to approach the site. The proposed development contains separate entry and egress points, including Tuna Street, Marlin Avenue and Beach Road. The proposed development includes emergency egress routes within the site, to ensure that appropriate access can be provided during the event of emergency.

In accordance with clause 28, the proposed development will be connected to reticulated water and sewer systems. Council is the water and sewer authority. The existing services are adequate for the additional demands proposed as a result of the development. The sizing of the new pump station will accommodate any future growth as a result of the development and increase in development potential in the catchment that it serves.

Clause 32 Design of residential development - requires the consent authority to give due consideration to the principles set out in division 2.

Clause 33 Neighbourhood amenity and streetscape – The current location consists of a mismatch of housing and development styles. Hanging Rock developed in the 1960s and 1970s with a variety of styles including beachside cottages and residential flat buildings. There have been minor redevelopments since but the character typically is consistent with that of a coastal seaside location. The Greater Batemans Bay Structure Plan states that the area is appropriate for more intensive redevelopment for numerous reasons including, the proximity to the town centre, proximity to recreation reserves and community facilities. As much of the existing housing stock would not comply with the flood planning level, redevelopment will ensure that new developments take into account the flooding risks. The proposed development is the first redevelopment since the enactment of Eurobodalla Local Environmental Plan 2012. As such, the proposed development may not align with the existing neighbourhood character, amenity and streetscape.

The development proposes a 13m setback from the southern boundary to minimise any impact from overshadowing, bulk, scale, etc. The proposed development has been designed to ensure that there are no privacy issues with the proposed development containing a height consistent with a two storey dwelling house.

The proposed development is supported by a landscaping plan. The applicant has also retained the existing established vegetation along the southern boundary.

Clause 34 Visual and acoustic privacy – The proposed development will not result in any detrimental impact on privacy.

Clause 35 Solar access and design for climate – The proposed development involves suitable access to natural light as a result of the development.

Clause 36 Stormwater – The proposed development will not result in any detrimental impact from stormwater. The proposal will not result in any issues that result in the impact of stormwater to the surrounding Hanging Rock locality.

Clause 37 Crime Prevention – The applicant has ensured that the safety of residents can be maintained. The proposed development contains ample passive surveillance and complies with the crime prevention through environmental design requirements.

Clause 38 Accessibility – The proposed development has safe obvious linkages for pedestrians and will have suitable access for car parking which is obvious to residents and visitors.

Clause 39 Waste Management – The application is supported by a waste management plan. All waste will be stored in the basement. Garbage bins will be serviced by a private contractor.

Clause 40 Development Standards – minimum sizes and building height

(2) The site area exceeds 1000m².

(3) The frontage to Beach Road exceeds 20m.

(4) The Seniors Housing development is proposed in a special purpose tourism zone. This clause relates to the height of buildings in a residential zone where residential flat buildings are not permitted. As the proposed development is not located in a residential zone, this clause does not apply to the proposed development. As such, the provisions of the Eurobodalla Local Environmental Plan 2012, height of buildings apply to the site.

The proposed development involves buildings adjoining the residential zone on another site as having a height maintained at 2 storeys. This height is 8.7m above ground level.

Schedule 3 Requirements		
Clause	Requirements	Comments
2	<i>Siting Requirements</i>	The proposed development involves the construction of a podium under the dwellings. This will allow for a flat site. The dwellings will all have access for wheel chairs.
3	<i>Security</i>	Pathway lighting will be conditioned to avoid glare for pedestrians and adjacent dwellings and must provide at least 20 lux at ground level.
4	<i>Letterboxes</i>	The proposed development includes letterboxes at the front of the entry off Marlin Street. A condition will be included requiring compliance with the standard.
5	<i>Private car accommodation</i>	The car parking has been provided in accordance with the requirements. A condition is proposed requiring power operated garage doors to Zones B & C.
6	<i>Accessible entry</i>	The site is designed to allow for all abilities to move around the site. There is a question over whether the southern entrances comply with the accessible requirements. The width of a podium at this location does not allow suitable access for a wheelchair. A condition is imposed.
7	<i>Interior: general</i>	The proposed development has been designed to ensure compliance with the requirements of this part. A condition is included.
8	<i>Bedroom</i>	A condition will be imposed requiring that the bedroom contains the requirements. The size of the bedrooms allows for the installation of a queen size bed.
9	<i>Bathroom</i>	The proposed development complies with the requirements. A condition is imposed requiring that the bathroom complies with the requirements.
10	<i>Toilet</i>	The proposed development contains at least one toilet within each dwelling.
11	<i>Surface Finishes</i>	A condition is imposed that all outdoor surface have slip-resistant surfaces.
12	<i>Door Hardware</i>	A condition is imposed requiring that door hardware complies with AS4299.
13	<i>Ancillary items</i>	A condition is imposed that switches and power points must be provided in accordance with AS4299.
14	<i>Application of standards in this part</i>	The proposed development contains seniors self-contained dwellings. As such, this part applies to the development.
15	<i>Living room and dining room</i>	The standards for a living and dining room will be conditioned.
16	<i>Kitchen</i>	The proposed development will be conditioned to ensure that the kitchens are constructed in accordance with the requirements.
17	<i>Access to kitchen, main bedroom, bathroom and toilet</i>	All units are single storey. All facilities are located on the one level.
18	<i>Lifts in multi-storey buildings</i>	The proposed development contains multi-storey buildings. All buildings contain lift access.

19	<i>Laundry</i>	A condition is imposed requiring the laundry achieves the standards.
20	<i>Storage for Linen</i>	The plans for Stage 1B indicate that all units contain a linen cupboard in accordance with AS4299. A condition is imposed.
21	<i>Garbage</i>	A garbage storage area is proposed within the basement.

Clause 42 Serviced self-care housing - (1) requires the provision of home delivered meals and personal care and home nursing, and the assistance with housework. The Statement of Environmental Effects (SEE) indicates that from the time of first occupation, meals, cleaning services, personal care and nursing care will be available to residents. Conditions are included to ensure that for the life of the development these services are provided to all residents in the serviced self-care housing.

Clause 43 Transport services to local centres - The SEE indicates that a minibus will be provided at the site for residents with at least one trip between 8am and 12pm and one trip between 12pm and 6pm to and from the Batemans Bay town centre, daily. The SEE does not nominate how many passengers the minibus will accommodate. In accordance with (1) a condition is recommended that the bus carry at least 10 passengers.

Clause 44 Availability of facilities and services - The proposed development involves the staging of the development. As part of Stage 1B, the applicant proposes to repurpose one of the existing function centres for the purposes of the restaurant for residents. This will be required to remain operational until the completion of construction of Stage 3B when the purpose built community facility will be made available for the site.

Clause 45 Vertical Villages - The proposed development does not involve the construction of any vertical village.

Clause 46 Inter-relationship of Part with design principles in Part 3 – The proposed development is consistent with the principles in Schedule 3. Conditions of consent are proposed to ensure compliance.

Clause 47 Part does not apply to certain development applications relating to heritage affected land – This clause does not apply to the proposed development.

Clause 55 Residential care facilities for seniors required to have fire sprinkler systems – A condition of consent is imposed requiring the installation of a fire sprinkler system in accordance with this clause.

SEPP (Kosciuszko National Parks – Alpine Resorts). The proposed development is not located within the mapped area. As such, the provisions of the SEPP do not apply to the proposed development.

SEPP (Kurnell Peninsula). The SEPP applies to land within the Shire of Sutherland. As such, the provisions of this SEPP do not apply to the proposed development.

SEPP (Mining, Petroleum Production and Extractive Industries). This SEPP applies to the whole state. The proposed development is not located in the vicinity of any mining, petroleum production or extractive industries. The proposed development does not involve any mining, petroleum or extractive industry. As such, the SEPP does not apply to the proposed development.

SEPP (Miscellaneous Consent Provisions). This SEPP applies to the whole state. The proposed development does not include any temporary structures as defined. As such, the provisions of the SEPP do not apply to the proposed development.

SEPP (Penrith Lakes Scheme). This SEPP applies to land that is mapped. The proposed development is not located within the mapped land. As such, the provisions of the SEPP do not apply to the proposed development.

SEPP (Primary Production and Rural Development) 2019. This SEPP commenced on 28 February 2019. In accordance with clause 9 savings and transitional, the development application was made on 28 November 2018. As such, this SEPP is considered as a draft only for the purposes of this application. The original draft was exhibited from 23 October 2017 through until 15 January 2018. As such, the SEPP is a draft for the purposes of clause 4.15(1)(a)(ii) of the Act.

SEPP (Rural Lands). This SEPP applies to the whole state, excluding the Local Government Areas nominated in clause 4. Eurobodalla is not excluded from the operation of the SEPP. The proposed development is not located on land identified in a rural or an environment protection zone. It should be noted that this SEPP was repealed on 27 February 2019. However, in accordance with the provisions of clause 9 of the SEPP (Primary Productions and Rural Development) 2019, the provisions of the Rural Lands SEPP apply as the DA was made on 28 November 2018.

SEPP (State Significant Precincts). The SEPP applies to the State. The proposed development is not located on land that is defined as being associated within or in the vicinity of any state significant precincts. As such, the provisions of the SEPP do not apply to the proposed development.

SEPP (Sydney Drinking Water Catchment). This SEPP applies to land within the Sydney Drinking Water Catchment as mapped. Eurobodalla is not identified on the maps. As such the proposed development does not apply to the proposed development.

SEPP (Sydney Region Growth Centres). This land applies to all land as identified in a Growth Centre. The proposed development is not located within a defined growth centre. As such, the provisions of the SEPP do not apply to the proposed development.

SEPP (Three Ports). This SEPP applies to the three ports known as Port Botany, Port Kembla and the Port of Newcastle. The proposed development is not located within any of these mapped areas. As such, the SEPP does not apply to the proposed development.

SEPP (Urban Renewal). This SEPP applies to land within a potential precinct as identified on the maps as defined. The proposed development is not located within any urban renewal area. As such, the SEPP does not apply to the proposed development.

SEPP (Western Sydney Employment Area). This SEPP applies only to land identified on the maps. The proposed development is not located on land that is identified on the maps. As such, the provisions of the SEPP do not apply to the proposed development.

SEPP (Western Sydney Parklands). This SEPP applies to land identified as the Western Parklands. The proposed development is not located on land that is identified on the maps. As such, the provisions of the SEPP do not apply to the proposed development.

Eurobodalla Local Environmental Plan 2012. This LEP applies to the land. Only the clauses not required to be discussed in the report are included in this section. Please refer to main report for the remainder of the assessment.

Clause 1.9A Suspension of covenants, agreements and instruments - The site is not believed to be burdened by covenants imposed by the developer. The proposed development does not involve any proposed works that contravene the covenants.

Clause 2.5 Additional permitted uses for particular land – The site is nominated as containing additional permitted uses in Schedule 1. These uses permit mooring pens and moorings with consent. The proposed development does not include any mooring pens or moorings. As such the proposed development does not rely on this clause to enable permissibility.

Clause 2.6 Subdivision - consent requirements. The proposed development does not involve any subdivision.

Clause 2.7 Demolition requires development consent – The proposed development involves demolition of the existing structures. As such, consent is required for demolition. The proposed development involves all structures on the site being demolished. The applicant has advised that this demolition will take place in line with the staging of the proposed development.

Clause 2.8 Temporary use of land – The proposed development does not rely on the provisions of this clause.

Part 3 Exempt and Complying Development – The proposed development does not involve any exempt or complying development.

Clause 4.1 Minimum subdivision lot size - The site is not nominated as having a minimum lot size. The proposed development does not involve any subdivision. As such, this clause does not apply to the proposed development.

Clause 4.1AA Minimum subdivision lot size for community title schemes – This clause does not apply to the proposed development.

Clause 4.1A Minimum subdivision lot size for strata plan schemes in certain rural, residential and environmental zones – The proposed development does not involve any subdivision.

Clause 4.1 B Subdivision in Zone RU5 Village – The proposed development does not involve any subdivision in zone RU5 Village.

Clause 4.1C Exceptions to minimum lot sizes for certain residential development – The proposed development does not rely on this clause for permissibility.

Clause 4.1D Subdivision in environmentally sensitive areas – This clause does not apply to the proposed development.

Clause 4.1E Lot averaging subdivision in Zone R5 Large Lot Residential and Zone E4 Environmental Living – This clause does not apply to the proposed development.

Clause 4.1F Minimum lot sizes for certain split zones – This clause does not apply to the proposed development.

Clause 4.2 Rural subdivision – This clause does not apply to the proposed development.

Clause 4.2A Erection of dwelling houses or dual occupancies on land in Zone RU1 Primary Production – This clause does not apply to the proposed development.

Clause 4.2B Dual occupancies on land in rural zones – This clause does not apply to the proposed development.

Clause 5.1 Relevant acquisition authority – This clause does not apply to the proposed development.

Clause 5.2 Classification and reclassification of public land – This clause does not apply to the proposed development.

Clause 5.3 Development near zone boundaries – This clause permits the use of land within certain zones to enable the use of a neighbouring zone within 20m for uses permitted on adjoining land. The proposed development does not rely on this provision to allow for the proposal to proceed.

Clause 5.4 Controls relating to miscellaneous permissible uses – The proposed development does not involve any uses listed within this clause.

Clause 5.6 Architectural roof features – The proposed development does not rely on this clause.

Clause 5.7 Development below mean high water mark – The proposed development does not involve any works below the mean high water mark.

Clause 5.8 Conversion of fire alarms – The proposed development does not rely on this clause.

Clause 5.11 Bush fire hazard reduction – The proposed development does not involve any hazard reduction works.

Clause 5.12 Infrastructure development and use of existing buildings of the Crown – The proposed development does not rely on this clause.

Clause 5.13 Eco-tourist facilities – The proposed development does not rely on this clause.

Clause 5.16 Subdivision of, or dwellings on, land in certain rural, residential or environment protection zone – The proposed development does not rely on this clause.

Clause 5.18 Intensive livestock agriculture – The proposed development does not rely on this clause.

Clause 5.19 Pond-based, tank-based and oyster aquaculture – The proposed development does not rely on this clause.

Clause 6.1 Public utility infrastructure – This clause does not apply to the proposed development.

Clause 6.2 Development control plans for land release areas – This clause does not apply to the proposed development.

Clause 6.4 Earthworks - The proposed development involves excavation across the site to construct the basements. The proposed development involves the construction of 4 basements across the site which are partially submerged. The earthworks proposed are ancillary to the construction of the development. As such in accordance with 6.2(2)(b) the earthworks do not require separate consent under this clause.

Clause 6.6 Biodiversity - The site is not nominated as containing any extant native vegetation, endangered ecological community or biocorridor. This clause does not apply to the proposed development.

Clause 6.8 Wetlands - The land is not nominated on the Wetlands Map. This clause does not apply to the proposed development.

Clause 6.10 Minimum street frontage of land for buildings – This clause does not apply to the proposed development.

Clause 6.11 Active street frontages – This clause does not apply to the proposed development.

Clause 6.12 Location of sex services premises – This clause does not apply to the proposed development.

Clause 6.13 Public infrastructure buffer – The land is not nominated on the map. This clause does not apply to the proposed development.

Clause 6.14 Design excellence in Batemans Bay – The land is not located on land zoned B4 Mixed Use. This clause does not apply to the proposed development.

Clause 6.15 Short-term rental accommodation – This clause does not apply to the proposed development.

Clause 6.16 Development of land at Kyla Park – The land is not nominated on the map. This clause does not apply to the proposed development.

APPENDIX 3

Concept Development Plans and Stage 1B Plans

APPENDIX 4

Responses from State Government Agencies

APPENDIX 5
Site Compatibility Certificate

APPENDIX 6

Clause 4.6 Request for Variation to Height of Buildings Development Standard

APPENDIX 7

Ecological Assessment

APPENDIX 8

Preliminary Site Contamination Report

APPENDIX 9

Statement of Environmental Effects

APPENDIX 10

Applicants response to Public Submissions