

SUPPLEMENTARY ASSESSMENT REPORT
HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE	PPSHCC-142 (2017HCC012DA)
COUNCIL DA NUMBER	MOD 2022/0062 (DA 521/2017)
PROPOSAL	<ul style="list-style-type: none"> • Modifications to development staging (stages 2, 3 and 4) • Alterations to the basement, ground, ground level floor plans • Removal of hotel use and the provision of retail space and seniors housing
STREET ADDRESS	34-36 West Street, Forster NSW
APPLICANT	Enyoc Pty Ltd (Applicant) Midcoast Council (Owner) Evermore Supported Living Communities Pty Ltd (Owner)
PANEL MEETING DATE	12 July 2023
SUPPLEMENTARY ISSUES	<ul style="list-style-type: none"> • Provision of revised and updated plan sets • Clarification of compliance with development standards • Detailed comparison of car parking requirements and surplus parking • Review of compliance with SEPP 65 and SEPP Housing 2021 • Factual analysis of the degree of change from original approval • Details of controls of adjoining land and any Planning Proposals under consideration • CPTED assessment • Clarification of all applicable SEPP provisions • Further assessment detail of overshadowing impacts • Clarification of the consideration of clause 4.6 principles for modification application

Report prepared by Monteath & Powys on behalf of Midcoast Council – 5/9/2023
Prepared by IV Checked by LS

The Hunter and Central Coast Regional Planning Panel met on 12 July 2023 to consider the above application. Following an evaluation of the assessment documentation, the Panel deferred its decision on the matter and requested further information. This supplementary assessment report provides additional information in response to the Panel's Record of Deferral dated 18 July 2023 and is intended to be read in conjunction with the assessment report and supporting documentation considered by the Panel on 12 July 2023.

1. COMPARISON OF PLANS - ORIGINAL (2017) APPROVAL AND MOD 2022/0062

Item i of the Panel's request seeks further details in plan and elevation form illustrating the comparison between the development as originally approved against what is proposed in MOD 2022/0062. The Applicant has provided the following documents in response to this request which illustrates the difference between the current proposal and the original approval:

- Floor Plan overlay of the original consent (2017) in grayscale with the current proposal in red.
- Elevations and Sections overlay the original consent (2017) in grayscale with the current proposal in red.
- Floor plan analysis of the current proposal with the original consent (2017) showing additional and reduced areas.
- Elevation analysis of the current proposal with the original consent (2017) showing additional and reduced areas.

Further details comparing the originally approved building uses on each level with those proposed in MOD 2022/0062 is provided in Table 2 of Section 3.2 of the Assessment Report previously submitted to the Panel.

The above plans illustrating the comparison between the original (2017) approved development and the modified design proposed in MOD 2022/0062 are provided in **Appendix A - D** of this Supplementary Assessment Report.

2. COMPARISON OF PLANS - LAST APPROVED MODIFICATION (2021) AND MODIFICATION 2022/0062

Item ii of the Panel's request seeks further details in plan and elevation form illustrating a comparison of the changes between the last approved modification to the development in 2021 to the proposal in MOD 2022/0062. The Applicant has provided the following documents in response to this request which illustrates the difference between the current proposal and the last approved modification:

- Floor Plan overlay of the current consent (2021) in grayscale with the current proposal in red.
- Elevations and Sections overlay the current consent (2021) in grayscale with the current proposal in red.
- Floor plan analysis of the current proposal with the current consent (2021) showing additional and reduced areas.
- Elevation analysis of the current proposal with the current consent (2021) showing additional and reduced areas.

In reviewing the 2021 approved development plans and the revised design proposed in MOD 2022.0062, the proposal is considered to be generally consistent with the 2021 approved plans on the following grounds:

- The changes proposed are generally contained within the modified approved building footprint and envelope.
- The proposed design maintains the Mixed-use nature of the development and as approved with no new uses added.
- The integral design elements of the 2021 approval have been retained within the modified proposed development plans.

The above plans illustrating the comparison between the 2021 approved development and the modified design proposed in MOD 2022/0062 are provided in **Appendix E - F** of this Supplementary Assessment Report.

3. BUILDING HEIGHT COMPARISON

Item iii of the Panel's request is for clear tables comparing the height across all buildings between the original approval (2017), approved modification (2021) and the current proposal (MOD 2022/0062). This information is provided in **Table 1** below.

Table 1: Maximum Building Height Comparisons

MAXIMUM BUILDING HEIGHT COMPARISONS					
BUILDING	LEP BUILDING HEIGHT STANDARD*	APPROVED HEIGHT (2017)	APPROVED HEIGHT (2021)	CURRENT PROPOSAL (MOD 20220062)	COMPLIANCE WITH STANDARD
A	28.6m	25.9m	29.1m	29.1m	Variation approved 2021 Additional 0.5m (1.7%)
B	36.3m	36.2m	36.2m	36.2m	Complies
C	36.3m	36.2m	36.0m	36.0m	Complies
D	28.6m	28.0m	28.0m	29.1m	Variation proposed Additional 0.5m (1.7%)

*Standard applied is maximum height on the Height of Buildings Map plus 10% bonus provided in clause 4.3(2A)

As indicated in **Table 3**, MOD 2022/0062 proposed a minor variation to the LEP building height standard for Building D at its south-western extremity. As detailed in the assessment report submitted for the proposal, this variation to the building height standard is considered acceptable in the circumstances and does not result in any material or additional amenity or visual impacts. The additional built form proposed above the building height standard does not significantly change the bulk and scale of the development having regard for it being substantially the same development as that originally approved.

4. FLOOR SPACE RATIO COMPARISON

Item iv of the Panel's request is for clear tables comparing the floor space ratio (FSR) of the development between the original approval (2017), approved modification (2021) and the current proposal (MOD 2022/0062). As part of the response, the Applicant has provided details confirming the FSR of the development including the adjusted FSR to include areas of additional car parking areas of 1,044m² above the minimum car parking requirements. These details are provided in **Table 2**.

Table 2: Maximum Floor Space Ratio Comparisons

MAXIMUM FLOOR SPACE RATIO COMPARISONS				
LEP FSR STANDARD	APPROVED FSR (2017)	APPROVED FSR (2021)*	CURRENT PROPOSAL FSR (MOD 2022/0062)	COMPLIANCE WITH STANDARD
3:1	3.01:1*	3.1:1*	2.66:1 2.78:1	Complies

*The 2017 and 2021 approvals relied on the Floor Space Ratio 10% bonus provided in clause 4.4(2B) which allowed for a 3.3:1 FSR for land in the B4/MU1 Mixed Use Zone. In June 2023, the zoning of the site changed from MU1 Mixed Use to E2 Commercial Centre as part of the Statewide Employment Zones Reforms. The provisions of LEP clause 4.4(2B) no longer apply to the site.

The design changes to the built form and reconfiguration of uses have resulted in a decrease in overall gross floor area resulting in a new Floor Space Ratio of 2.66:1 for the entire development site. With the additional car parking spaces above the minimum requirements included (1,044m²) the total FSR for the development under the design submitted with MOD 2022/0062 is 2.78:1 which complies with the LEP FSR development standard.

5. CARPARKING COMPARISON

Item v of the Panel's request seeks a detailed comparison of car parking required and proposed against the original approval and last modification. In response, the Applicant provided tables showing parking requirements for the various uses in the original consent (2017), modified consent (2021) and the current proposal. Including information on total parking deficiency/surplus as presented in **Table 3**.

Table 3: Car Parking Requirements / Provision Comparison

CAR PARKING REQUIREMENTS/PROVISION COMPARISONS			
USE	APPROVED PARKING (2017)	APPROVED PARKING (2021)	CURRENT PROPOSAL PARKING (MOD 20220062)
Library	44 spaces	45 spaces	45 spaces
Community Centre	20 spaces	20 spaces	20 spaces
Customer Service Centre	-	4 spaces	4 spaces
Visitor/Tourist Centre	10 spaces	9 spaces	9 spaces
Restaurant	43 spaces	38 spaces	27 spaces
Retail/Supermarket	47 spaces	47 spaces	90 spaces
Gymnasium	13 spaces	13 spaces	-
Business Centre	3 spaces	3 spaces	-
Hotel/Serviced Apartments	61 spaces	61 spaces	-
Commercial Floor Area		14 spaces	21 spaces
Seniors Housing Units	168 spaces	106 spaces	128 spaces
1 bed Apartments	-	5 spaces	5 spaces
2 bed Apartments	-	30 spaces	30 spaces
3+ bed Apartment	6 spaces	45 spaces	42 spaces
Visitors Spaces	1 space	12 spaces	12 spaces
Total Requirement	416 spaces	452 spaces	433 spaces
Total Provision	513 spaces	507 spaces	503 spaces
Surplus	97 spaces	55 spaces	70 spaces

In accordance with **Table 3**, the total requirement for car parking for the modified development is 433. This has been calculated using the relevant requirements of Chapter 10 of the Great Lakes Development Control Plan and Part 5 of Chapter 3 (Housing for seniors and people with a disability) of *State Environmental Planning Policy (Housing) 2021*.

The modified development proposes a total car parking provision of 503, with 70 surplus spaces provided. The additional car parking provided above the minimum requirements has been included in the GFA and FSR calculations for the development as mentioned previously.

6. SEPP 65 AND SEPP (HOUSING) 2021 COMPLIANCE

Item vi of the Panel's request seeks review of compliance with the provisions of SEPP 65 and SEPP (Housing) 2021 given the changes to the residential and seniors housing components of the development.

SEPP 65 COMPLIANCE

The assessment of MOD 2022/0062 submitted to the Panel included an assessment of the proposal against the provisions of SEPP 65. The modification application was submitted with the required Design Verification Statement and a compliance table demonstrating how the Apartment Design Guide provisions have been addressed. In response to the Panel's request, further details of the proposal's compliance with the provisions of SEPP 65 are provided in **Tables 4** and **5**.

Table 4: SEPP 65 Compliance

DESIGN QUALITY OF RESIDENTIAL APARTMENT BUILDINGS COMPLIANCE TABLE		
CLAUSE	REQUIREMENTS	ASSESSMENT COMMENTS
29	<p>In determining an application for development consent modification for a residential flat building, a consent authority must consider:</p> <ul style="list-style-type: none"> Advice of design review panel (if any). Evaluation against the design quality principles. The Apartment Design Guide. 	<p>There is no design review panel in place for Midcoast Council.</p> <p>The application has been submitted with a Design Verification Statement by the project architect. Nonetheless, further consideration of the design quality principles is provided in Table 7 below.</p> <p>The application is supported by a detailed compliance table addressing the relevant considerations of the Apartment Design Guide (ADG). These aspects of the development have been assessed and are considered acceptable. The ADG compliance table forms part of the supporting documentation for the application submitted for the Panel's consideration.</p>
30	<p>Provides that if certain measures within the Apartment Design Guide are met, consent must not be refused on the basis of those matters. The relevant measures are:</p> <ul style="list-style-type: none"> Parking numbers where requirements of Part 3J are met. Internal floor space where the provisions of Part 4D are met. Ceiling heights where the requirements of 4C are met. 	<p>The proposed development meets the minimum requirements of the Apartment Design Guide with regard to parking numbers, internal floor space and ceiling heights. Refusal on these grounds is not recommended.</p> <p>Complies with Clause 30. The proposed modified development proposes 503 car parking spaces including 70 surplus spaces. Further, the proposal complies with floor space ratio requirements at 3.1 and ceiling height provisions.</p>

Table 5: SEPP 65 Design Quality Principles

SEPP 65 DESIGN QUALITY PRINCIPLES COMPLIANCE TABLE	
DESIGN PRINCIPLE	ASSESSMENT COMMENTS
<p>Principle 1: Context and Neighbourhood Character</p> <p>Good design responds and contributes to its context. Context is the key natural and built features of an area, their relationship and the character they create when combined. It also includes social, economic, health and environmental conditions.</p> <p>Responding to context involves identifying the desirable elements of an area's existing or future character. Well designed buildings respond to and enhance the qualities and identity of the area including the adjacent sites, streetscape and neighbourhood.</p> <p>Consideration of local context is important for all sites, including sites in established areas, those undergoing change or identified for change.</p>	<p>Compliance achieved. The proposal seeks to modify an approved mixed-use development and maintain the local context considerations of the original design.</p>
<p>Principle 2: Built form and scale</p> <p>Good design achieves a scale, bulk and height appropriate to the existing or desired future character of the street and surrounding buildings.</p> <p>Good design also achieves an appropriate built form for a site and the building's purpose in terms of building alignments, proportions, building type, articulation and the manipulation of building elements.</p> <p>Appropriate built form defines the public domain, contributes to the character of streetscapes and parks, including their views and vistas, and provides internal amenity and outlook.</p>	<p>Compliance achieved. The modified proposed development is generally contained within the approved building footprint. Minor reduction and additional are only proposed to facilitate changes to approved building floor plans. Changes are not proposed to the approved building scale, bulk and height considerations have been addressed above. Overall, the modified development maintains the approved building scale, bulk and height of the approved mixed-use building.</p>
<p>Principle 3: Density</p> <p>Good design achieves a high level of amenity for residents and each apartment, resulting in a density appropriate to the site and its context.</p> <p>Appropriate densities are consistent with the area's existing or projected population.</p> <p>Appropriate densities can be sustained by existing or proposed infrastructure, public transport, access to jobs, community facilities and the environment.</p>	<p>Compliance achieved. The modifications proposed are considered to maintain the amenity considerations for the original development approval by proposing a mixed-use development to cater for the existing and projected population. Further, the modified development is services by existing infrastructure and public transport are within proximity to the site to be developed.</p>
<p>Principle 4: Sustainability</p> <p>Good design combines positive environmental, social and economic outcomes.</p> <p>Good sustainable design includes use of natural cross ventilation and sunlight for the amenity and liveability of residents and passive thermal design for ventilation, heating</p>	<p>Compliance achieved. As per the application material, the modified development is considered to maintain the design principles of the originally approved development by the proposed building footprint, floor and elevation plans, finished building material and colour schemes. Further, the modified development results in increased sunlight exposure outcomes from the originally approved development as per the application material.</p>

SEPP 65 DESIGN QUALITY PRINCIPLES COMPLIANCE TABLE	
DESIGN PRINCIPLE	ASSESSMENT COMMENTS
and cooling reducing reliance on technology and operation costs. Other elements include recycling and reuse of materials and waste, use of sustainable materials and deep soil zones for groundwater recharge and vegetation.	
<p>Principle 5: Landscape</p> <p>Good design recognises that together landscape and buildings operate as an integrated and sustainable system, resulting in attractive developments with good amenity. A positive image and contextual fit of well designed developments is achieved by contributing to the landscape character of the streetscape and neighbourhood.</p> <p>Good landscape design enhances the development's environmental performance by retaining positive natural features which contribute to the local context, co-ordinating water and soil management, solar access, micro-climate, tree canopy, habitat values and preserving green networks.</p> <p>Good landscape design optimises useability, privacy and opportunities for social interaction, equitable access, respect for neighbours' amenity and provides for practical establishment and long term management.</p>	<p>Compliance achieved. As part of the modified development application material, the Applicant provided plans that demonstrate the provision of landscaping within the proposed development. The provision of landscaping is considered to integrate with the proposed mixed-use building by providing landscaping within the ground floor plans and across the building levels. Thus, enhancing the development's environmental performance via tree canopy and micro-climate stabilisation.</p>
<p>Principle 6: Amenity</p> <p>Good design positively influences internal and external amenity for residents and neighbours. Achieving good amenity contributes to positive living environments and resident well being.</p> <p>Good amenity combines appropriate room dimensions and shapes, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage, indoor and outdoor space, efficient layouts and service areas and ease of access for all age groups and degrees of mobility.</p>	<p>Compliance achieved. The modified development is considered to maintain internal and external amenities consideration of the originally approved, modified approved development by the building footprint and orientation, room dimensions and shapes and efficient layout. As per the modified proposed development plans, service areas will be screened, and access will be in accordance with the current standards.</p>
<p>Principle 7: Safety</p> <p>Good design optimises safety and security within the development and the public domain. It provides for quality public and private spaces that are clearly defined and fit for the intended purpose. Opportunities to maximise passive surveillance of public and communal areas promote safety.</p> <p>A positive relationship between public and private spaces is achieved through clearly defined secure access points and well lit and visible areas that are easily maintained and appropriate to the location and purpose.</p>	<p>Compliance achieved. As per the CPTED investigation, the modified development is considered to maintain the safety and security considerations of the originally approved and modified approved development as discussed below in Item x. Further, additional measures are proposed by the Applicant to increase safety and security and discussed further in Item x.</p>

SEPP 65 DESIGN QUALITY PRINCIPLES COMPLIANCE TABLE	
DESIGN PRINCIPLE	ASSESSMENT COMMENTS
<p>Principle 8: Housing diversity and social interaction</p> <p>Good design achieves a mix of apartment sizes, providing housing choice for different demographics, living needs and household budgets.</p> <p>Well designed apartment developments respond to social context by providing housing and facilities to suit the existing and future social mix.</p> <p>Good design involves practical and flexible features, including different types of communal spaces for a broad range of people and providing opportunities for social interaction among residents.</p>	<p>Compliance achieved. As per the development comparison plans, the modified proposal maintains a mixed of apartment sizes which is considered to cater for housing choices for different demographics and living needs. Further, the modified development also maintains the communal spaces proposed within the mixed-use building floor plans.</p>
<p>Principle 9: Aesthetics</p> <p>Good design achieves a built form that has good proportions and a balanced composition of elements, reflecting the internal layout and structure. Good design uses a variety of materials, colours and textures.</p> <p>The visual appearance of a well designed apartment development responds to the existing or future local context, particularly desirable elements and repetitions of the streetscape.</p>	<p>Compliance achieved. The integral building elements used to reflect internal layout and structures as well as the finished building materials, colours and textures are generally maintained by the modified proposal. Further, the Applicant provided a detailed compliance table addressing the relevant considerations of the Apartment Design Guide</p>

SEPP (HOUSING) 2021 COMPLIANCE

The assessment of MOD 2022/0062 submitted to the Panel included an assessment of the proposal against the provisions of Part 5 (Housing for seniors and people with a disability) of Chapter 3 of *State Environmental Planning Policy (Housing) 2021*. This included a detailed assessment of the modification application against the SEPP requirements which demonstrates compliance with the relevant requirements.

The proposal in MOD 2022/0062 reconfigures the housing mix proposed in the development resulting from the removal of the hotel and other uses from the original design. The resulting change is an increase of 66 seniors housing units (from 86 in the most recent approval to 152). With its location close to the Forster town centre, the site is considered highly suited to housing for seniors and people with a disability. The central business district and commercial precinct of Forster is within 400 metres walking distance of the site on level terrain. The Forster town centre contains a range of basic and essential services including community facilities, shopping and medical facilities. In addition, regular daily (weekday minimum) bus services pass through the town centre (including some along Lake Street at the front of the site) providing connections to additional retail and essential services provided at Tuncurry to the north and the Stockland shopping precinct to the south. For the above reasons and based on the detailed assessment provided in the main assessment report for the proposal, full compliance with the Housing SEPP provisions is achieved.

7. STATEMENT ON ANY SURPLUS CAR PARKING AND INCLUSION IN THE GFA

The Panel requested a clear statement regarding surplus car parking and its relation to GFA calculations in Item vii of request. Further details confirming the GFA/FSR and car parking calculations of the development are provided in Items 4 and 5 above.

This information clarifies that the proposed modification will result in a surplus 70 car parking spaces (above the minimum specified requirements for the various components/uses proposed). This results in an overall FSR for the development of 2.78:1 (including space occupied by surplus car parking spaces) which is compliant with the LEP FSR standard of 3:1.

8. CHANGE ANALYSIS

Item viii of the Panel's request is for a factual analysis of the degree of change from the original approval. To aid in the provision of this detail, the Applicant has provided a table detailing various development statistics included in the lodged application material to analyse the degree of change from the original approval, modified approval, and the currently proposed modification. An extract of the table of development statistics is provided in **Table 6**.

Table 6: Development Comparison Details

FLOOR PLAN CHANGE ANALYSIS			
RELEVANT STATISTIC	ORIGINAL CONSENT (2017)	APPROVED DEVELOPMENT (2021)	PROPOSED MODIFICATION
Site Area	12,153m ²	12,153 m ²	12,153 m ²
Gross Floor Area	36,541 m ²	37,626m ²	32,776m ²
Floor Space Ratio	3.01:1	3.1:1	2.78:1
Landscaped Area	21%	21%	23%
Deep Soil Areas	5%	9%	9%
Unit Numbers	245 (143 dwellings, 102 hotel rooms)	248 (146 dwellings, 102 hotel rooms)	200 (dwellings only, hotel use removed)
Basement Parking Spaces	294	295	253
Podium Residential Parking Spaces	219	218	253
Max Building Height RL	Building A – 31.2m AHD Building B – 41.8m AHD Building C – 41.8m AHD Building D – 31.6m AHD	Building A – 34.4m AHD Building B – 41.8m AHD Building C – 41.8m AHD Building D – 31.6m AHD	Building A – 34.4m AHD Building B – 41.8m AHD Building C – 41.8m AHD Building D – 32.1m AHD
Maximum Building Heights Above Existing Ground	Building A – 25.9m Building B – 36.2m Building C – 36.0m Building D – 26.0 - 28.0m	Building A – 29.1m Building B – 36.2m Building C – 36.0m Building D – 26.0 - 28.0m	Building A – 29.1m Building B – 36.2m Building C – 36.0m Building D – 26.0 - 29.1m

In comparison, the proposed modification results in a reduced overall GFA in relation to the original and modified consents. The proposed modification results in reduced FSR at 2.78:1 (including surplus car parking spaces) in comparison to 3.01:1 for the original and modified approved development consents. Moreover, the proposed modification results in increased landscaped areas by 2 per cent from the original and modified consents. Unit numbers have been reduced to 200 from 245 in the original consent and 248 in the modified consent (noting, however, the figures for the original and 2021 modification are inclusive of 102 hotel rooms which are now proposed to be removed from the development). Further, the proposed modification results in changes to the finished building height for Building D from 26m-28m in the original and modified consents to 26-29.1m. As per **Table 6**, the proposed modification is deemed to be within the parameters of the assessment conducted on the original and previous approved developments.

9. PLANNING CONTROLS

In Item ix, the Panel have requested clarification of the details of controls applying to immediately adjoining lands and the outcome of any Planning Proposals under consideration. At the date of this assessment, there are no Planning Proposals under consideration or that have been subject to public consultation and not finalised that are applicable to either the subject site or any adjoining sites.

The current planning controls and development standards in the *Great Lakes Local Environmental Plan 2014* applicable to the site and adjoining sites are identified in **Table 7**.

Table 7: Planning Controls – Adjoining Land

CURRENT PLANNING CONTROLS			
PLANNING CONTROLS	SUBJECT SITE (4 LAKE STREET)	6-8 LAKE STREET	3 MIDDLE STREET
Land Zoning	E2 Commercial Centre	R4 High Density Residential	E2 Commercial Centre
Minimum Lot Size	1000m ²	1000m ²	1000m ²
Height of Buildings	33m/26m	30m	18m
Floor Space Ratio	3:1	N/A	2:1

Since the original determination of the application by the Panel on 20 September 2017, several LEP amendments have taken effect that apply to both the subject site and adjoining land. These are summarised as follows:

- On 23 November 2021 the land use zoning, floor space ratio and height of buildings standards were amended for adjoining land to the east along Lake Street (from the site's eastern boundary to Macintosh Street). These changes were made based on a planning proposal to facilitate greater density in the area and included a zoning change from R3 to R4, floor space ratio increased from 1:1 to 1:2 and an increase in height of buildings from 12m to 18m.

- On 26 April 2023 as part of the Department of Planning and Environment's Employment Zone Reforms the name of the B4 Mixed Use Zone in the Great Lakes LEP was changed to MU1 Mixed Use Zone. No changes to the essence of the zone provisions were changed as part of the reforms.
- On 9 June 2023 as part of follow up changes resulting from the Employment Zone Reforms resulted in the change of the site's zoning from MU1 Mixed Use Zone to E2 Commercial Centre Zone. This change also applied to the adjoining land at 3 Middle Street. No changes to the existing Floor Space Ratio or Height of Buildings standards were made.

10. ASSESSMENT AGAINST CPTED PRINCIPLES

Item x of the Panel's request is for an assessment of the proposal against CPTED principles - specifically, access through the carpark to other proposed uses. The information submitted with the modification application includes a report assessing the proposed modified design against the key CPTED principles and with recommendations to achieve the desired outcomes. With specific regard to the car parking areas, the submitted CPTED assessment recommends the following:

- Access to carparking areas should be controlled. The residential parking areas (located at Levels 1 and 2 and in the basement) will have automatic doors which can be operated by a card or similar system, as well as from units to allow legitimate guests of residents to obtain access as allowed by the resident. Access to the basement carparking area is required to allow public access during community and commercial uses; however, outside of normal hours, access should be restricted and it is suggested that access/egress to and from the carpark should be restricted by security doors during night-time hours (such as between 11pm and 6am), with access only available via card or similar system for on-site users such as business owners.
- The lifts for the residential uses should operate on a card system or similar so that they can only be operated and used by residents, etc., who have an access card. Public lifts connecting the public basement carpark to the plaza should be locked down between the same hours as the basement carpark and only useable by a card system after lockdown hours.

As requested by the Panel, with specific regard to the public areas of the car park, the proposed modification and supporting documentation has been assessed against the principles of CPTED as follows:

Surveillance

The basement level car park that contains the shared and publicly accessible car parking areas is designed to minimise opportunities for concealment and provide for a high level of unimpeded visibility across the space. It will be reliant on adequate lighting supplemented by CCTV systems. Mirrors can also be installed (e.g. at the north-east corner) to aid in visibility for both pedestrian and vehicular movements. It is expected the majority of users of the car park accessing the retail level of the development will park close to the entrance lobby. This area has good surveillance characteristics (visibility and human movement). The north-eastern extremity of the car park is likely to have less use

and reduced vehicular movement. It also has a higher level of potential concealment. The closest access to the library and community facilities is in this area comprising lift access as well as a stairway with a small void providing access to natural light.

The CPTED submitted with the application recommends lighting of public areas, installation of CCTV systems and the preparation of a “management plan” for maintenance of public areas. Other than the recommendation for locking down/closure of the public basement car park between 11pm and 6am, the CPTED submitted does not provide any specific details of how the above recommendations will be implemented. In this regard, it is recommended that an appropriate consent condition be imposed on any development consent requiring the submission of the above management plan prior to the issue of any occupation certificate for Stage 2 detailing the extent of CPTED measures to be implemented and how these will be managed and maintained during the operation of the development.

Access Control

As identified by the Applicant, the residential car parking areas will be secured and only accessible by residents. This approach is consistent with standard practice for high density residential development of this nature.

The basement public car parking areas are to be accessible between 6am and 11pm. As noted above, it is expected that users of the retail premises are most likely to park towards the western end of the area. Access to the library and community facilities is provided via lifts and a stairway towards the north-east corner of the space while service access for library staff is provided at the southern end. During daytime hours where the use of the facilities of the site is expected to be highest, the broad use of the basement car parking area is expected with access and parking by staff, patrons and customers. Outside the operating hours of the library and community facilities (e.g. late evening) when retail/restaurant spaces may still be in use and before the car park is locked there is a potential higher risk through minimal use of the car park’s extremities. It is noted also that six (6) unsecured residential car parking spaces are provided on this level at the north-eastern corner for residents of the apartments above (Building A).

Depending on the ultimate needs of the building’s occupants, there is the opportunity to partially separate and secure the basement level car park, for example during evening hours when the library and community facilities are closed but while the retail/restaurant uses remain active. It is recommended this option be considered in the management plan recommended above and appropriate details included for management of the public car parking space during evening hours when use of the facilities may be limited.

Territorial Reinforcement

Access to the car parking spaces will be clear and legible from the public realm (street level) and, although partly accessible to the public, will convey a “threshold” of entering private/managed space. Clear signage needs to be implemented to ensure adequate directions and wayfinding measures are provided to vehicles entering the space. It is evident in the design the vehicular access ramps to the car parking levels are not intended for pedestrian access. This restriction can also be managed by appropriately placed signage. Within the public basement parking level, further clarity through signage and identification of access/egress points will assist with territorial reinforcement. It is recommended the management plan include details of the signage strategy for the parking throughout the development.

Space & Activity Management

As noted above, clear identification and wayfinding signage will aid in the accessibility and use of the car parking areas. The recommended management plan will need to identify how the various components of the car parking within the development will be managed. This will need to include details of security and access restrictions, various active and passive management measures and how these will be operated and maintained.

11. RELEVANT SEPP CONSIDERATIONS

The modification application has been evaluated against relevant SEPP provisions in section 4.1.3 of the original assessment report provided to the Panel. The modification was assessed against the applicable SEPPs with regard to the modification proposed and having regard for the previously assessed impacts and statutory compliance of both the original DA determination and subsequent modifications. Unless otherwise specified in the assessment report, the modification is considered to not significantly change the previously assessed compliance with applicable SEPP requirements. This includes compliance with the provisions of SEPP (Resilience and Hazards) 2021, SEPP (Transport and Infrastructure) 2021 and SEPP (Biodiversity and Conservation) 2021 (as translated from the now repealed previously applicable instruments).

As requested by the Panel in item xi of the notice of deferral, further assessment of the modification application against the Coastal management provisions in Chapter 2 of *State Environmental Planning Policy (Resilience and Hazards) 2021* (Resilience and Hazards SEPP) is provided below.

The site of the development is in the “coastal zone” as defined in the Resilience and Hazards SEPP and as identified on the mapping published on the NSW Planning Portal Spatial Viewer. Chapter 2 of the Resilience and Hazards SEPP provides development controls for coastal management areas including:

- Coastal wetlands and littoral rainforests area,
- Coastal vulnerability area,
- Coastal environment area, and
- Coastal use area.

The subject site does not contain coastal wetlands or littoral rainforests and is not located within any applicable buffer areas. Neither is the site located within an identified coastal vulnerability area.

The site is mapped as being within both the coastal environment area and coastal use area. The relevant SEPP provisions are addressed in **Table 8**.

Table 8 Chapter 2 Resilience and Hazards SEPP compliance

STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021		
CLAUSE	REQUIREMENTS	COUNCIL RESPONSE
2.3	Land to which Chapter applies	Complies. The site is identified as land to which this chapter 2 of the SEPP is applicable.
2.4	Identification of coastal management areas	Complies. The site meets the definition of a coastal zone and is comprised of land of the coastal environment and coastal use area.
2.10	Development on land within the coastal environment area	Complies. The amendments proposed relate to the approved building floor and elevation plans. Changes are not proposed outside of the approved building footprint as per the Applicant's proposed plans. As such impacts on environmental factors, coastal values and processes are not envisaged.
2.11	Development on land within the coastal use area	Complies. Given the existing approval and the nature of the modifications proposed, adverse impacts are not envisaged on access to key coastal features, overshadowing, visual amenities or heritage matters.

12. IDENTIFICATION AND DISCUSSION OF IMPACTS

Item xii of the additional information request under Record of Deferral seeks identification and discussion of the impact arising from the changes proposed. The impacts associated with the proposal are identified and discussed as follows.

OVERSHADOWING IMPACTS

In response to Item xii of the request, the Applicant provided further justification and shadow diagrams which show the impact of additional shadows cast in mid-winter and mid-summer for the approved development and modified development below:

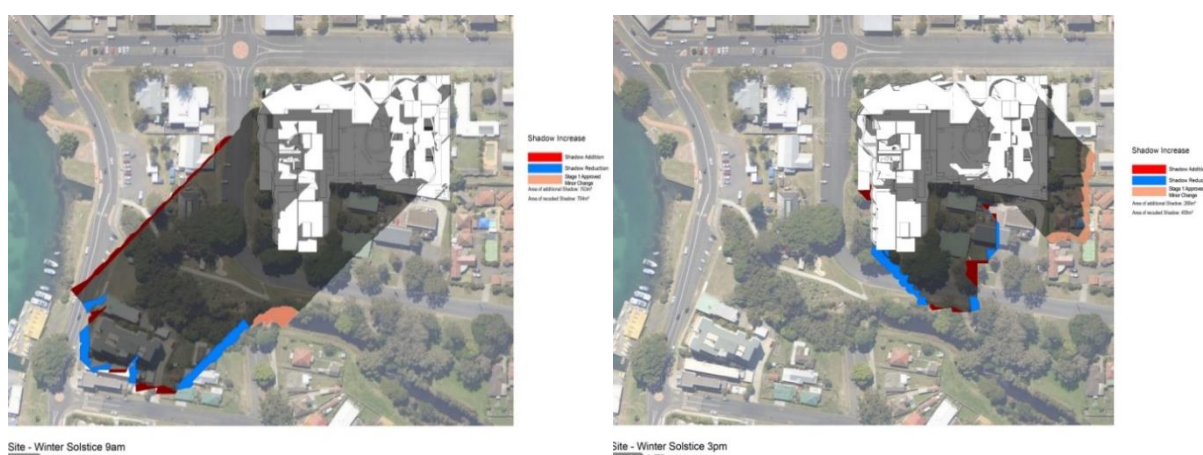


Figure 1: Winter Shadow Diagram (TVS Architects, 2023)

The shadow impacts for approved Buildings B, C and D extends over the parkland, Pennington Creek and Properties adjoining Little and Helen Street as per the diagram. In contrast, the additional shadow impacts associated with the modified proposal are illustrated by the red shading. As per the shadow diagram, minor increases to the shadow overcast are observed along the north and western aspects for Winter Solstice at 9 am.

Whilst shadow reductions are shown on the southern and western aspects. Further, the Winter Solstice 3 pm shadow diagram illustrates minimum increase in shadow additions along the south and eastern aspects of the building for the modified proposal. Extensive shadow reduction are illustrated along the south building elevation as per the shadow diagram in **Figure 2**.



Figure 2: Summer Shadow Diagram (TVS Architects, 2023)

As per the summer solstice Shadow Diagrams, the shadow impacts for the approved development extend across to the public facility zoned areas opposite West Street for summer solstice at 9 am and along the eastern building aspects for summer solstice at 3 pm.

Following the diagram, it can be noted that the modified proposal results in shadow reductions along the north, and west building aspects by 179m² for Summer Solstice 9 am. Whilst increases can be observed along the western elevation and associated with the modified plans and height provisions by 611m².

Further, the summer solstice 3 pm diagrams illustrate minor shadow addition along the west building aspects by 100m². Minor shadow impacts are observed on the building opposite the south and east side property boundaries. In contrast, the results of the modified plan show shadow reductions by 159m² along the east building aspects as per the Shadow Diagram

CONTEXT AND SETTING IMPACTS

The context and setting impact of the modified proposal have been considered. In this regard, the modified development is not considered to introduce new impacts. As per the Modified development plans, the changes proposed relate to the internal and elevation plans. Whilst reductions and additions are proposed to the approved build form, the comparison plans provided by the applicant, nonetheless, illustrate that the modifications proposed are largely contained within the approved building footprint and envelope. Additionally, the modified development is to operate as a Mixed-use development as per the original and modified approvals.

PRIVACY IMPACTS

The modified proposal has been considered in light of privacy concerns. In this regard, the modifications proposed are not anticipated to introduce new privacy impacts beyond the parameters of the original and modified approvals. Privacy impacts are mitigated by the proposal through adequate building setbacks, and building and room orientations.

VISUAL IMPACTS

As part of the application material, the applicant provided a visual impact assessment from landmarks and sensitive receivers. An overview of the modified proposals' potential visual impacts from key landmarks and immediate receivers is illustrated in **Figures 3, 4, and 5**.



Figure 3: East from Lake/Macintosh Street (Tailored Planning Solutions Pty Ltd, 2023)

Figure 3 illustrates the modified proposal visibility when viewed from east of Lake and Macintosh Street which includes the building outline for approved Towers A, B and C. As per the illustration plan, the visual qualities east of Lake and Macintosh Street are comprised of the established service station and residential buildings, public roads and street planting.



Figure 4: West – Memorial Drive (Tailored Planning Solutions Pty Ltd, 2023)

Figure 4 provides the modified proposal's visibility from West and Memorial Drive which includes approved Towers B and C. As can be seen, the visual qualities from West and Memorial Drive are comprised of existing buildings and structures, public open space and vegetation.



Figure 5: West from John Wright Park Tuncurry (Tailored Planning Solutions Pty Ltd, 2023)

The visual quality of the area west of John Write Park Tuncurry is comprised of Lake Outlook from public open space and the visual sensitivity of the area is low and dominated by existing structures, public open space, coastal developments and vegetation.

In light of the above, the modified proposal's visual sensitivity in the context of the existing visual qualities of the locality, comprised of existing structures, public open space, coastal developments and vegetation, is deemed to be low. As shown in the illustrations provided above, the modified proposal is generally consistent with the prevailing visual qualities provided by the existing built form and natural environmental areas of the locality.

Similarly, the modifications proposed to the elevation plans are also not anticipated to introduce new visual impacts. As per the modified development comparison plans, the changed development plans maintain the visual treatment components integral to the originally approved and modified approved development. Specifically, the building mass and scale, the use of façade treatments, finished building materials and colour schemes are generally consistent with originally approved and modified approved development plans.

TRAFFIC IMPACTS

The assessment of MOD 2022/0062 submitted to the Panel included an assessment of the Traffic Impacts associated with the modified proposal. It has been demonstrated that the modified development results in lower peak hour trip generation due to the removal of the hotel and unapproved uses from the development plans. Subsequently, the modified proposal is not considered to introduce new traffic impacts to that considered in the original and modified approvals.

13. CONSIDERATION OF CLAUSE 4.6 AND SECTION 4.55 MODIFICATION APPLICATION

Item xiii of the information requested seeks clarification of the consideration of clause 4.6 of the *Great Lakes Local Environmental Plan 2014* in the context of section 4.55 of the *Environmental Planning and Assessment Act 1979* relating to modification applications.

In response, the applicant provided an extract from the Statement of Environmental Effects to provide further justification. Upon review, it is acknowledged that section 4.55 is the stand-alone instrument for modification applications. As such, a formal request for a variation under clause 4.6 is not a legislated requirement as the proposal seeks consent for the modification to an existing development approval in which building height considerations were addressed as part of the original approval. Nothing in this prevents the application of clause 4.6 as a testing instrument to examine a variation having regard to these principles. As such clause 4.6 of the LEP was used to attest to the modified building height provisions for Tower D to demonstrate sufficient environmental planning grounds to justify contravening the development standard and that the proposal is significantly the same development.

14. CONCLUSION

This report has been prepared to supplement the Council Assessment report dated 30 June 2023 in light of the additional material provided by the applicant to support the Modification Application for DA 521/2017 for a mixed-use development at 34-36 West Street, Forster NSW 2428, land formally described as Lots 1-6 in DP 1270306. Following the meeting with the Hunter & Central Coast Regional Planning Panel on 12 July 2023.

In reviewing the proposal in light of the additional material provided by the Applicant, the recommendation is to approve the modification application in full. The recommendation is supported by the statement of reasons and is subject to the conditions of the development consent.