

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-261– 16-2023-685-1
PROPOSAL	Construction of a Shop (supermarket), 5 x Commercial Premises, a Medical Centre, Signage, Sewer Extension and Demolition of existing dwelling
ADDRESS	Lot 14 DP 258848 42 Fullerton Cove Road, Fullerton Cove
APPLICANT	CANAAN PD 2 PTYL LTD
OWNER	CANAAN PD 2 PTYL LTD
DA LODGEMENT DATE	04/12/2023
APPLICATION TYPE	Nominated Integrated
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as the development has a capital investment value of more than \$30 million.
CIV	\$ 34,181,686.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Yes – Clause 4.3 Height of Buildings
KEY SEPP/LEP	<ul style="list-style-type: none"> • State Environmental Planning Policy (Biodiversity and Conservation) 2021 • State Environmental Planning Policy (Industry and Employment) 2021 • State Environmental Planning Policy (Planning Systems) 2021 • State Environmental Planning Policy (Resilience and Hazards) 2021 • State Environmental Planning Policy (Transport and Infrastructure) 2021 • State Environmental Planning Policy (Sustainable Buildings) 2022 • Port Stephens Local Environmental Plan 2013
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES SUBMISSIONS	5

DOCUMENTS SUBMITTED FOR CONSIDERATION	Attachment A: Draft Conditions of consent Attachment B: Clause 4.6 Request Attachment C: Architectural Plans Attachment D: Civil Engineering Report and Plans Attachment E: Landscape Plans Attachment F: Traffic Impact Assessment Attachment G: Noise Impact Assessment Attachment H: Contamination Attachment I: Biodiversity Development Assessment Report and associated RFI responses Attachment J: Crime Prevent through Environmental Design Report Attachment K: Sewer Connection Plans Attachment L: Addendum to Aboriginal Cultural Heritage Assessment Report Attachment M: Aboriginal Due Diligence Assessment – Sewer Connection Attachment N: Statement of Environmental Effects Attachment O: Bushfire Report Attachment P: Applicant 4.6 Variation Request Attachment Q: Acid Sulfate Soils Management Plan Attachment R: Arborist Report Attachment S: Sewer Alignment Ecology Response
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (\$7.24)	N/A
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	13 November 2024
PLAN VERSION	27/06/2024 Revision C
PREPARED BY	Courtney Sargent – Senior Development Planner
DATE OF REPORT	4 November 2024

EXECUTIVE SUMMARY

This development application (16-2023-685-1) seeks consent for the Construction of a Shop (supermarket), 5 x Commercial Premises, a Medical Centre, Signage, Sewer Extension and Demolition of existing dwelling.

The site is located at 42 Fullerton Cove Road, Fullerton Cove, legally known as Lot 14 DP 258848. The site is located within the Port Stephens Local Government Area (LGA), has an area of 6.86 hectares and frontage to Fullerton Cove Road to the west and Nelson Bay Road to the south east. The suburb of Fern Bay is directly adjacent to the site and the suburb of Stockton is approximately 6km to the south (within the Newcastle LGA).

The proposal was notified and advertised twice during assessment of the application in accordance with the Port Stephens Council's Commutation and Engagement Strategy. The

The key issues in respect of the assessment of this application related to ecological impacts, traffic impact, permissibility of signage, traffic impacts, contamination and pedestrian connectivity. To address the ecological impacts, specialist studies were submitted in support of the application, including a Biodiversity Development Assessment Report. The other key issues have been addressed through the assessment of the application and recommended conditions of consent.

The development has been assessed under Section 4.15 of the EP&A Act and is considered satisfactory. Accordingly, pursuant to Section 4.16(1)(b) of the *EP&A Act*, it is recommended that the application be approved subject to conditions of consent contained in **Attachment A**.

1.1 The Site

1.



Figure 1. Site Aerial

Site Inspection

A site inspection was carried out on 9 February 2024. The subject site can be seen in the photos below:



Photograph 1. Site frontage to Fullerton Cove Road looking south west



Photograph 2. Site frontage from 21 Fullerton Cove Road



Photograph 3. Site frontage to the existing round-a-bout



Photograph 4. Location of proposed pylon sign on the corner of Fullerton Cove Road and Nelson Bay Road



Photograph 5. Lifestyle village located adjacent to the site at 21 Fullerton Cove Road and the existing shared footpath

1.2 The Locality

The proposal is located within the Port Stephens Local Government Area (LGA) within the suburb of Fullerton Cove. The suburb of Fern Bay is directly adjacent to the site and the suburb of Stockton is approximately 6km to the south (within the Newcastle LGA).

The site is surrounded by a mixture of land uses with Seaside residential estate and The Cove over 55's lifestyle village located within close proximity. A caravan park (over 55's lifestyle village) is currently under construction to the sites north west across Fullerton Cove Road which is approved to contain 122 long term and 2 short term sites. Land uses to the sites north and north east are largely used for rural or rural residential purposes. The locally heritage listed 'Stanley Park House' is also located on Fullerton Cove Road, approximately 400m to the north of the site.

The closest commercially zoned land is approximately 2km from the site and currently contains a health services facility and a take away food and premises. The next closest commercially zoned land is located within Stockton. This area contains a number of services including a small neighbourhood shop and other business and retail premises.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for the following:

- Demolition of the existing dwelling house and ancillary outbuildings and structures.
- Vegetation removal.

- Earthworks and civil works to achieve minimum flood immunity and establish a flood free building footprint.
- Rising sewer main extension to the nearest sewer pump station located southwest of the premises and parallel to Nelson Bay Road.
- Construction of commercial premises and a medical centre in the northern corner of the site. There is proposed to be one medical centre and six commercial tenancies, a loading dock and amenities, refer to **Figure 2**.
- Provision of 280 outdoor car parking spaces (including 12 accessible and 5 direct to boot spaces) and 16 motorbike spaces.
- Landscaping internally within the site, along the lot boundaries and within the car parking areas.
- Business identification signage on the proposed building, throughout the site and two pylon signs. One pylon sign is proposed to front Fullerton Cove Road and the other is proposed to front Nelson Bay Road.



Figure 2. Proposed Site Plan

The key development data is provided in **Table 1**.

Table 1: Key Development Data

Control	Proposal
Site area	6.86 hectares
GFA	6,304m ²
Clause 4.6 Requests	Yes

	The maximum height of building is 9.75m which represents an 8.33% variation to the 9m building height limit.
Max Height	9.75m
Landscaped area	4,243m ²
Car Parking spaces	280 including 12 accessible spaces and 5 direct to boot spaces associated with the supermarket tenancy.
Setbacks	North eastern – 19.86m (from awning) South eastern – 20.43m (from awning) South western – 56m (from forecourt awning) North western – 13.68m (from awning)

Ecology

The site overall has an area of 6.85 hectares. A total of 2.46 hectares of the site is zoned E1 Local Centre and 4.40 hectares is zoned C2 Environmental Conservation. In accordance with the Biodiversity Development Assessment Report (BDAR) prepared by Anderson Environment & Planning, the proposal will require the removal or modification of 2.242 hectares of native vegetation. The native vegetation on the site was found to contain four (4) plant community types (PCTs), which are present in varying conditions. Six (6) vegetation zones were assessed within these PCTs.

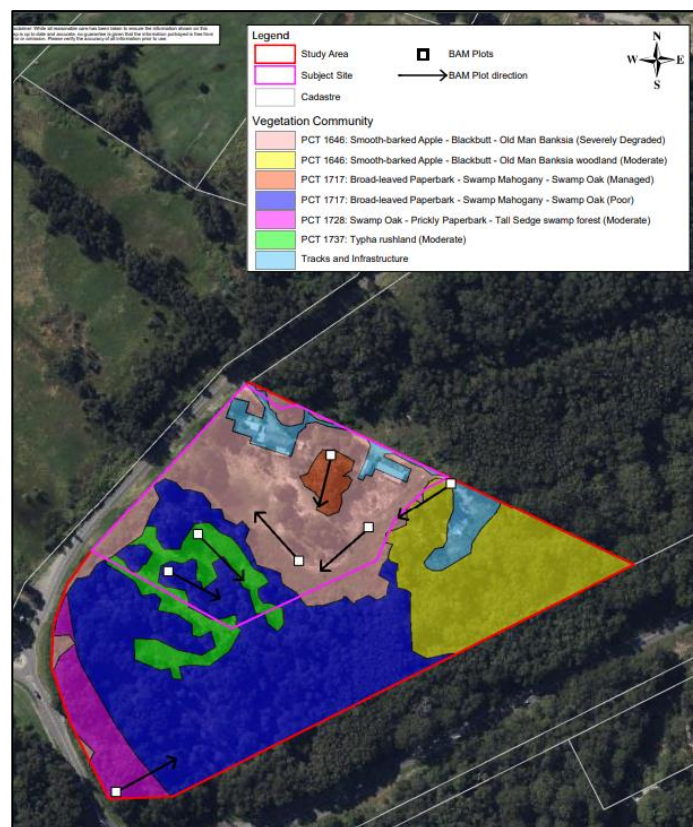


Figure 3. Vegetation zone areas

A number of threatened fauna species were recorded or assumed present on the site including:

- Southern Myotis (*Myotis macropus*);
- Common Planigale (*Planigale maculata*)
- Eastern False Pipistrelle (*Falsistrellus tasmaniensis*)
- Eastern Coastal Free-tailed Bat (*Micronomus norfolkensis*)
- Little Bent-winged Bat (*Miniopterus australis*)
- Yellow-bellied sheath-tail Bat (*Saccolaimus flaviventris*)

The impacts from the proposal will generate the requirement for both ecosystem and species credits to offset the residual impact of the proposed development.

Earthworks and Retaining Walls

Earthworks are proposed to raise the building platform to the flood planning level and to ensure adequate fall across the site. There is proposed to be 7,920m³ of cut and 6,039m³ fill.

Compensatory cut is proposed in the south west of the site to provide additional flood storage to limit flood impacts of the development.

Retaining walls are proposed along the north, east and southern boundaries of the development area and range in height from 0.3m to 1.55m in height. All retaining walls are proposed to be located wholly within the sites boundaries. Typical sections between the development area and C2 zoned land have been provided within the Civil Engineering Plans prepared by Northrop Consulting Engineers and Landscape Plans prepared by Terras Landscape Architects. **Figure 4 and 5** below are sections of the south of the site which includes the compensatory flood storage area. **Figure 6 and 7** below are sections of the eastern portion of the site.

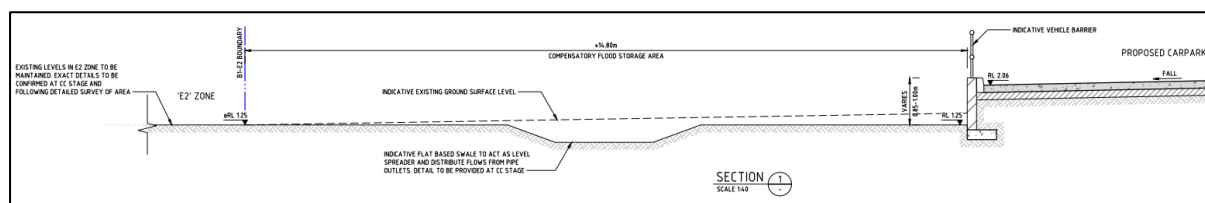


Figure 4. Section along the southern portion of the development site.

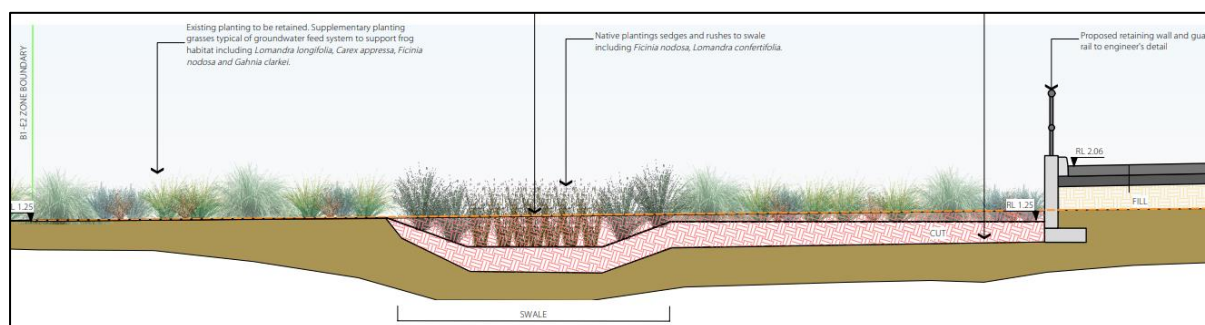


Figure 5. Section along the southern portion of the development site.

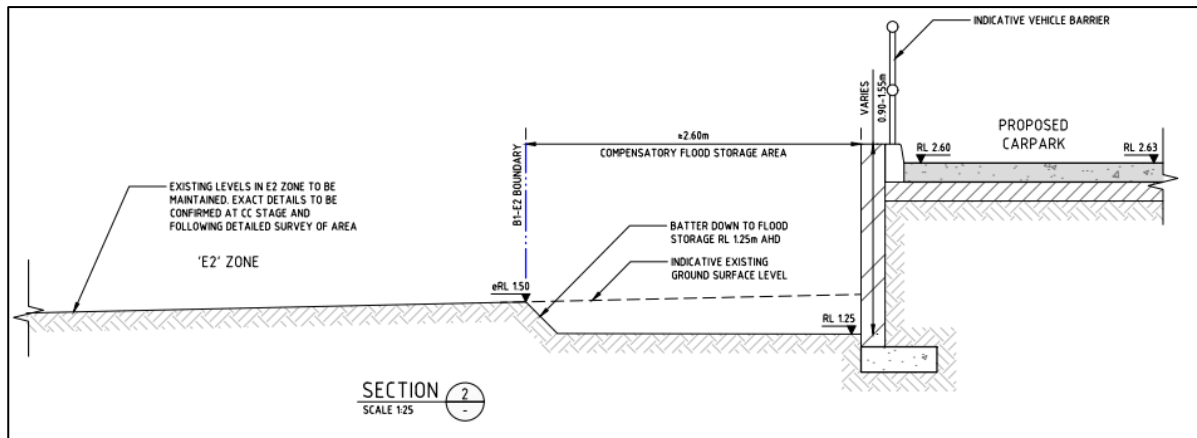


Figure 6. Section along eastern portion of the development site.

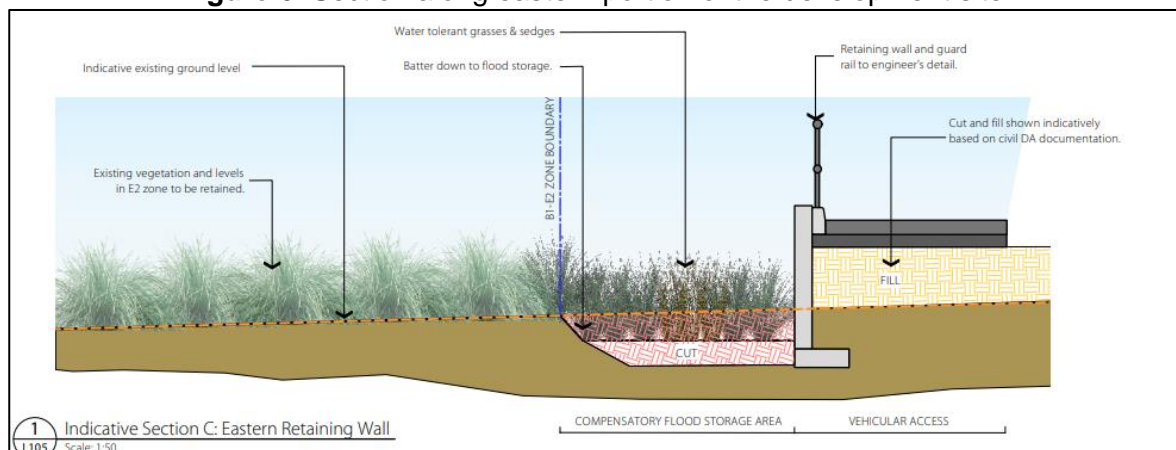


Figure 7. Section along eastern portion of the development site.

Sewer Main Extension

The site is not currently connected to reticulated sewer. The proposal therefore involves works associated within connecting the site to the nearby reticulated sewer network. The proposal includes the construction of a sewer pump station on the site, which will connect to a private sewer line that extends approximately 743m between the site and an existing sewer pump station located to the south west of the site in the road reserve, refer to **Figure 8**, with the proposed sewer line identified by the purple dotted line.

The sewer line is proposed to be constructed directly adjacent to the sewer line that was recently constructed to support the over 55s development at 21 Fullerton Cove Road. This recently constructed sewer line is identified by the pink dotted line in **Figure 8**. The proposed sewer line will be contained within the road reserve of Nelson Bay Road and Fullerton Cove Road. The applicant has obtained concurrence from Transport for NSW for the works within the road reserve.

A letter prepared by MJD Environmental dated 30 October 2023, identified much of the land where the sewer main extension is proposed is characterised by disturbed habitat containing exotic vegetation. The report notes that underbores will be utilised under Fullerton Cove Road and in areas where native vegetation is located as to avoid impact to or removal of native vegetation. The location of underboring is also shown in **Figure 8** below.

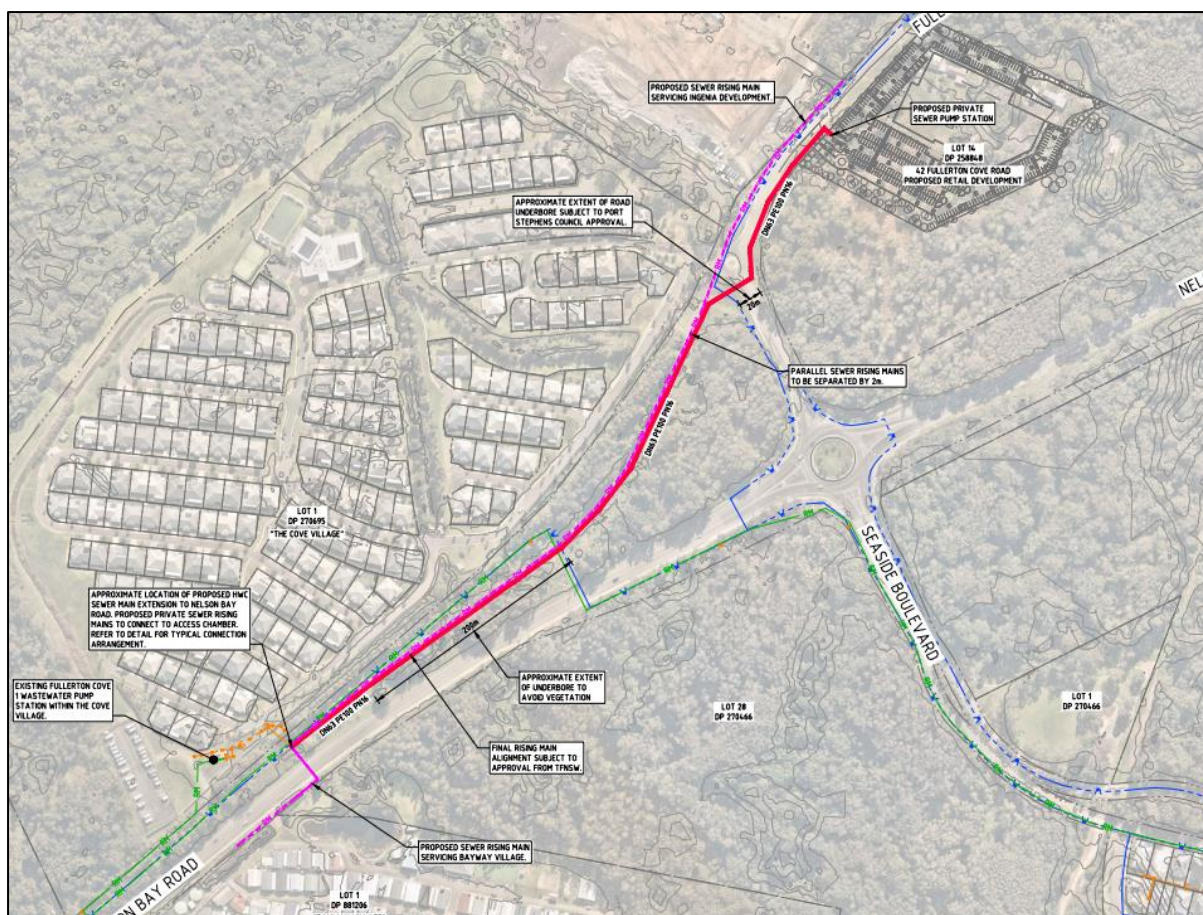


Figure 8. Proposed sewer main extension

Commercial Premises

The proposal involves the construction of a commercial premises containing a shop (supermarket), liquor store and four commercial tenancies, refer to **Figure 9**. The shop will contain a 2,485m² trading area, a loading dock, non-trading area (1,085m²) and a direct to boot service (130m²).

The remaining tenancies have the following floor areas:

- Liquor store: 170m²
- Tenancy 1: 413m²
- Tenancy 2: 459m²
- Tenancy 3: 553m²
- Tenancy 5: 70m²

Pedestrian access is provided from the forecourt area. Amenities are also provided within the development.

All tenancies are proposed to operate from 7:00am – 10:00pm, 7 days a week. Deliveries are proposed to occur between 5:00am – 10:00pm, 7 days a week.

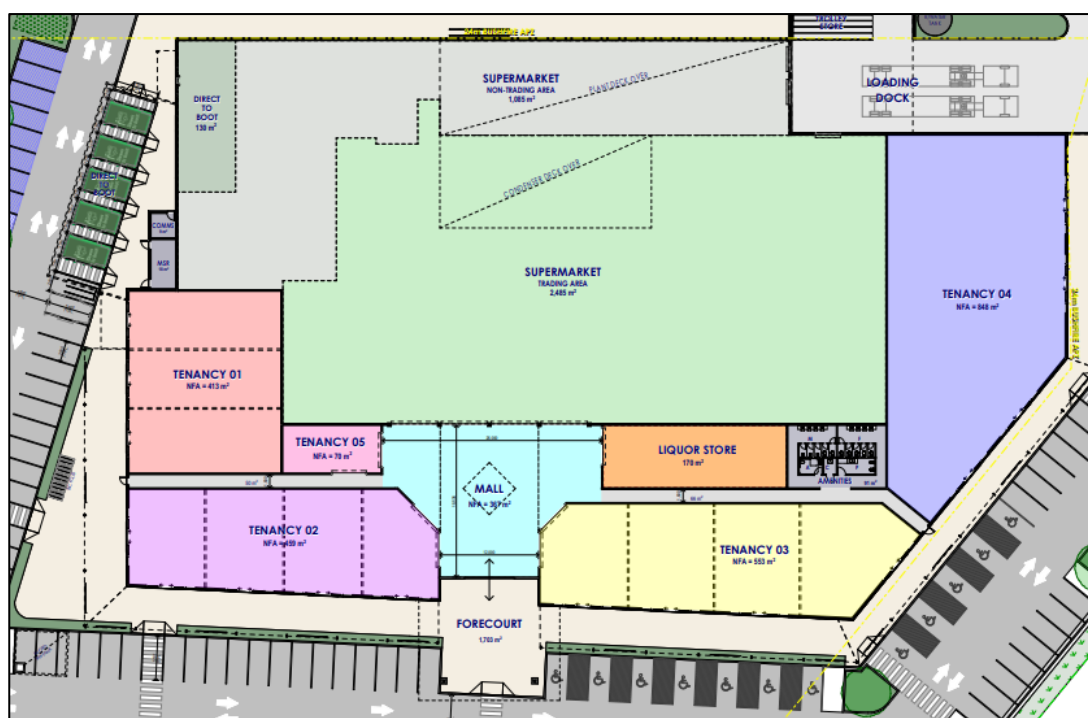


Figure 9. Proposed floor plan

Medical Centre

The proposal includes the construction of a medical centre which is proposed to be located within Tenancy 4 and has a total area of 848m². The medical centre has the same operational hours as the commercial premises.

Signage

The application also seeks consent for two building identification signs, a number of business identification wall signs and two pylon signs. The signage is proposed to be internally illuminated.

Both pylon signs are proposed to be 8m in height and 2.14m wide, refer to **Figure 10**. The pylon signs will be used for business identification and direction purposes.

Given most of the proposed tenancies do not currently have tenants, the content of the signage has not been identified on the plans, with the exception of the shop (supermarket). **Figures 11** and **12** below show montages of the business and building identification signs proposed. The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 permits the content of tenancy signage to be modified post approval of the development.

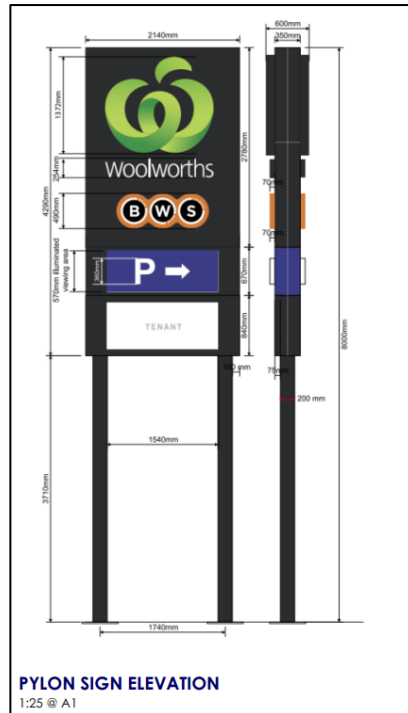


Figure 10. Proposed pylon sign elevation



Figure 11. South western elevation montage showing building and business identification signage



Figure 12. South eastern elevation montage showing business identification signage

Access and Parking

Two new crossovers from Fullerton Cove Road are proposed. One crossover is proposed for standard vehicles only, whilst the other is proposed to be utilised by both standard and service/delivery vehicles.

Pedestrian crossings are proposed throughout the site to ensure safe pedestrian movement from parking areas to the commercial premises. One crossing is proposed to be provided from the forecourt area in the south western corner which will connect to a pedestrian footpath and refuge to allow for the safe crossing along Fullerton Cove Road. The footpath on the western side of Fullerton Cove Road provides pedestrian access to bus stops located to the south of the site.

The proposal will provide 280 at grade car parking spaces (including 12 accessible and 5 direct to boot spaces). A total of 16 motorbike spaces and 10 bicycle spaces are proposed as well.

2.2 Background

Two pre-lodgement meetings were held prior to the lodgement of the application on 31 October 2022 and 3 May 2023. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- *Floor Area Restriction* – It was advised during the meeting that the site is subject to a floor area restriction for commercial premises and neighbourhood supermarkets of 5,500m² in accordance with s7.24 of the PSLEP. The commercial premises and neighbourhood supermarket on the site have a total floor area of 4,456m² and is therefore compliant. This is discussed further against cl.7.24 of the PSLEP.
- *Aboriginal Heritage* – It was noted that three Potential Archaeological Deposit (PAD) sites were identified during the Planning Proposal (PP) for the site and should the proposed development seek to impact any PAD an updated Aboriginal Cultural Heritage Assessment Report (ACHAR) would be required to be provided with the application needing referral to Heritage NSW to obtain an AHIP as per s90 of the National Park and Wildlife Act 1974. An updated ACHAR was prepared for the proposal by Biosis Pty Ltd and the application was referred to Heritage NSW accordingly. Heritage NSW issued General Terms of Approval dated 8 May 2024. Aboriginal heritage is discussed further against s5.10 of the PSLEP.
- *Traffic* – It was advised that a Traffic Impact Assessment (TIA) would be required and that the development would likely trigger traffic generating development and require referral to Transport for NSW (TfNSW) in accordance with s2.122 of the State Environmental Planning Policy (Transport and Infrastructure) 2021. A TIA was prepared for the proposal by Seca Solution. The application was considered traffic generating development and therefore referred to TfNSW. TfNSW issued a number of requests for further information throughout the assessment process, but ultimately supported the proposal. This is discussed further against s2.122 of the Transport and Infrastructure SEPP.
- *Bushfire* – Noting the sites bushfire prone nature, it was requested that a bushfire assessment report (BAR) be provided with a future application. A BAR was prepared by Bushfire Planning Australia. This is discussed further in the assessment under s4.14 of the Act.
- *Watercourse* – It was noted that there was a watercourse to the north of the site on Lot 19 DP 606361 (78 Fullerton Cove Road, Fullerton Cove) and that any works within 40m of the watercourse and may require a controlled activity approval as per s91 of the Water Management Act 2000. It was noted that this would make the development

nominated integrated development. The proposed development involves works within 40m of the mapped watercourse and therefore was referred to the Department of Planning and Environment-Water as nominated integrated development. General Terms of Approval were issued by DPE – Water, dated 9 April 2024. This is discussed further under s4.46 of the Act.

- *Ecology* – It was noted that much of the areas of highest biodiversity value on the site have already been avoided through the zoning of the land under the Planning Proposal (PP). It was noted that a number of surveys hadn't been done during the PP ecological study (BDAR) and were requested to be undertaken as a part of a updated Biodiversity Development Assessment Report (BDAR). An updated BDAR was prepared as part of the development application by Anderson Environment and Planning. This is discussed further against Chapter B2 of the DCP.
- *Landscaping* - It was requested that an expanded landscaping buffer be provided along the Fullerton Cove Road frontage as well as additional landscaping provided throughout the carpark to soften the hardstand space whilst also providing car park shading. Additional landscaping has been provided along the road frontage and throughout the carpark. Shade sails have also been provided throughout the car park to provide additional shading.
- *Servicing* – It was noted that the site was not connected to reticulated sewer and sewer servicing would need to be addressed with application. The proposal now involves works associated within connecting the site to the nearby reticulated sewer network. This is discussed further against s7.6 of the PSLEP.
- *Pedestrian Connectivity* – It was noted that pedestrian connectivity to adjoining sites should be considered. The development provides an internal pedestrian crossing, connecting to a proposed footpath and pedestrian refuge provided connectivity to developments on the eastern side of Fullerton Cove Road.

The development application was lodged on 4 December 2023. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
4 December 2023	DA lodged
6 December 2023	DA referred to external agencies and internal staff
12 December 2023 – 1 February 2024	Exhibition of the application
16 January 2024	Preliminary briefing with the panel
30 January 2024	Request for Information from Council to applicant
26 March 2024	Response to request for information received
27 March 2024	DA re-referred to internal staff and external agencies
2 May 2024 – 16 May 2024	Application re-exhibited with updated information
3 May 2024	Request for Information from Council to applicant
29 May 2024	Assessment briefing with applicant
5 July 2024	Response to request for information received

23 July 2024	Request for Information from TfNSW to applicant
8 August 2024	Request for Information from Council to applicant
15 August 2024	Response to TfNSW request received
19 August 2024	Response to Council request received
23 September 2024	Request for Information from TfNSW to applicant
3 October 2024	Response to TfNSW request received.
16 October 2024	Supportive referral from TfNSW received.
6 November 2024	Council Assessment Report finalised.

2.3 Site History

The site was rezoned in 2022, with the rezoning being approved by Council on 13 September 2022 and later gazetted in October 2022. The site was previously zoned RU2 Rural Landscape being rezoned to a mixed zoning with one portion being zoned E1 Local Centre and the other portion being zoned C2 Environmental Conservation. The intended outcome of the Planning Proposal was to enable a local centre, with a supermarket, for local day-to-day retail convenience and services within the Fern Bay area.

The rezoning was as a result of the Fern Bay and North Stockton Commercial Lands Study 2017 prepared by HillPDA for Newcastle City Council and Port Stephens Council. The study prepared by Hill PDA identified the Stockton Residential Centre as the preferred location to accommodate a larger new town centre (of 4,000-6,500m²). The subject site was also identified as a potential future location for a new (smaller) town centre. According to the study, the demand for additional retail floor space in 2017 was 2,300m², indicating the area is currently underserved.

The Planning Proposal originally sought to restrict the ground floor area (GFA) of retail development on the subject site to 1,500m². It was found through an addendum to the study prepared by HillPDA that the 1,500m² not be viable in the longer term and recommended that the GFA be reviewed. With the consideration of this, and other factors, the GFA was subsequently increased to 5,500m² to allow for a full format supermarket and additional retail to support a local centre.

The site was previously the subject of a similar planning proposal which was refused at Gateway in 2013.

3. STATUTORY CONSIDERATIONS

3.1 Section 1.7 Environmental Planning and Assessment Act 1979 - Application of Part 7 of Biodiversity Conservation Act 2016 and Part 7A of Fisheries Management Act 1994

Section 6.12 of the BC Act requires a Biodiversity Development Assessment Report (BDAR) to be prepared in accordance with the Biodiversity Assessment Method (BAM). The proposal seeks consent for the removal of native vegetation that exceeds the Biodiversity Offset Scheme (BOS) clearing threshold. As such, a BDAR was prepared for the proposal in accordance with the BAM by Anderson Environment & Planning.

Section 7 of the BAM sets out the considerations for avoidance. Demonstrable exploration of reasonable avoid and minimise measures on developable land is necessary to meet the avoid and minimise provisions of the BAM and BC Act. Reasonable measures will vary with the circumstances of each proposal and may be subjective. The BAM requires impacts to be avoided, regardless of the type and scale of the development or size of the site. On some highly constrained or small sites, it may be challenging or prohibitively costly to undertake some types of development, particularly if the biodiversity values of the subject land are high.

The BAM identifies key areas to site the development to avoid and minimise impacts, including:

- lacking biodiversity values;
- where the native vegetation or threaten species habitat is in the poorest condition;
- that avoids habitat for species that have a high biodiversity risk weighting;
- outside of the buffer area around breeding habitat features such as nest trees or caves (hollow bearing trees);
- where connectivity for species between areas of adjacent or nearby habitat is maintained proposal design – retaining biodiversity values through design features that limit vegetation clearing or reduce the amount of development within the footprint.

The development footprint has been designed and informed through a comprehensive rezoning assessment followed by a development design that has positioned the commercial development and associated impact on the lowest value biodiversity area of the site, much of which was identified as being highly degraded. The proposed design avoids high value habitat and corridors for threatened species. Interface and edge impacts have been addressed in the design, along with the measures in a Biodiversity Management Plan.

Whilst extensive avoidance has been achieved at the rezoning stage to satisfy the BAM and BC Act 2016, the design, as part of the subject development application, has been amended to further increase avoidance impacts on vegetation in the E1 zoned footprint of the site. This amended design satisfies the principles of the *Planners North v Ballina Shire Council* [2021] decision in that suitable avoidance, on a proportional and impact basis in accordance with the provisions of the BAM, has been provided to satisfy the BC Act avoidance requirements and mitigation hierarchy. This is discussed further against the assessment of Chapter B2 of the DCP.

3.2 Section 4.15 Environmental Planning and Assessment Act 1979

When determining a development application, the consent authority must take into consideration the matters outlined in Section 4.15(1) of the *Environmental Planning and Assessment Act 1979* ('EP&A Act'). These matters as are of relevance to the development application include the following:

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*

- (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
- (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be (which are considered further in this report):

- Nominated Integrated Development (s4.46)
- Requiring concurrence/referral (s4.13)

3.3 Other Statutory considerations - Section 4.14 – Consultation and development consent (certain bushfire prone land)

Section 4.14(1) provides that development consent cannot be granted for the carrying out of development for any purpose (other than a subdivision of land that could lawfully be used for residential or rural residential purposes or development for a special fire protection purpose) on bush fire prone land (being land for the time being recorded as bush fire prone land on a relevant map certified under section 10.3(2)) unless the consent authority—

(a) is satisfied that the development conforms to the specifications and requirements of the version (as prescribed by the regulations) of the document entitled Planning for Bush Fire Protection prepared by the NSW Rural Fire Service in co-operation with the Department (or, if another document is prescribed by the regulations for the purposes of this paragraph, that document) that are relevant to the development (the relevant specifications and requirements), or

(b) has been provided with a certificate by a person who is recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment stating that the development conforms to the relevant specifications and requirements.

The site is mapped as bushfire prone land, category 1 and 3, and as such requires assessment against the NSW RFS Planning for Bushfire Protection (PBP) 2019. A Bushfire Assessment Report (BAR) was prepared by Bushfire Planning Australia which assessed the proposal against PBP 2019. The report was prepared by a person recognised by the NSW Rural Fire Service as a qualified consultant in bush fire risk assessment and therefore subclause (1)(b) applies and the proposal meets s4.14. Notwithstanding, a summary of the findings of the BAR have been provided below.

The BAR noted that the National Construction Code (NCC) does not provide for any bush fire specific performance requirements for the subject development type and that the general fire safety construction provisions of the NCC are taken as acceptable solutions in this instance.

The BAR found that the site is exposed to a moderate to high bushfire hazard as a result of remnant vegetation located to the east and south of the development area. It was concluded that the hazards identified can be appropriately mitigated by applying the requirements of PBP

2019. A number of recommendations were made to ensure that the development complied with PBP 2019 including the following:

- Requiring the entire development site to be managed as an Inner Protection Area.
- Establishment of Asset Protection Zones.
- Access to the site to be compliant with PBP 2019
- Vegetation within road verges and stormwater basins to be consistent with a grassland vegetation classification with tree canopy less than 10% at maturity
- Future building to have due regard for the NCC requirements.
- Development to be connected to a reliable water supply network and that suitable fire hydrants are located throughout the development site

The final recommendation stated that consideration should be given to landscaping on site to ensure it does not contribute to fire hazards. An addendum letter was provided by Bushfire Planning Australia which reviewed that landscape plan and confirmed that it satisfies the requirements of PBP 2019. A condition has been recommended that requires the development to comply with the recommendations of the BAR.

The proposal is consistent with the requirement of this section.

3.4 Environmental Planning Instruments, proposed instrument, development control plan, planning agreement and the regulations

The relevant environmental planning instruments, proposed instruments, development control plans, planning agreements and the matters for consideration under the Regulation are considered below.

(a) Section 4.15(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Biodiversity and Conservation) 2021*
- *State Environmental Planning Policy (Industry and Employment) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *Port Stephens Local Environmental Plan 2013*

A summary of the key matters for consideration arising from these State Environmental Planning Policies are outlined in **Table 3** and considered in more detail below.

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<p>Chapter 2: Vegetation in non-rural areas The proposal requires to removal of or impact to 2.242 hectares of native vegetation.</p> <p>Chapter 4: Koala Habitat Protection 2021 The site is mapped partly as mainly cleared and partly as supplementary koala habitat. The BDAR prepared for the proposed development by Anderson Environment and</p>	Y

	<p>Planning (AEP) found three koala feed trees (3 x Swamp Mahoganies) within the development area. One is proposed to be removed, the other two which are located along the east of the development area are proposed to be retained. The BDAR noted that the swamp mahogany to be removed is disjunct from other vegetation and is largely surrounded by cleared land and therefore its removal will not have an adverse impact on the local koala population.</p>	
State Environmental Planning Policy (Industry and Employment) 2021	<p>Chapter 3: Advertising and Signage Section 3.6 – The proposed signage is consistent with the requirements of this clause.</p>	Y
State Environmental Planning Policy (Planning Systems) 2021	<p>Chapter 2: State and Regional Development Section 2.19(1) and Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as the development has a capital investment value of more than \$30 million.</p>	Y
SEPP (Resilience & Hazards)	<p>Chapter 2: Coastal Management Section 2.10(1) & (2) - The proposal is largely consistent with requirements of this section. An Aboriginal Cultural Heritage Assessment Report (ACHAR) has been submitted and General Terms of Approval from Heritage NSW has been received.</p> <p>Section 2.13 - Development in coastal zone generally - No certified coastal management plan currently applies to the site.</p> <p>Chapter 4: Remediation of Land Section 4.6 – As a part of the rezoning of the site, a Preliminary Contamination Assessment was prepared by Qualtest dated 16 November 2020. The report recommended that additional assessment, comprising soil sampling in the areas of environmental concern identified, be carried out after removal of buildings and stored equipment and materials. An addendum letter dated 4 June 2024 was prepared by Qualtest and provided to Council. The letter concluded that the site can be made suitable for the proposed development subject to a number of recommendations being met. This is discussed further below.</p>	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	<p>Chapter 2: Infrastructure Section 2.122(4) - The application was referred to Transport for NSW as traffic generating development. During assessment of the application TfNSW issued a number of requests for information. The matters raised by TfNSW were resolved, and the development was ultimately supported.</p>	Y

	Section 2.126 – The proposed sewer connection works are permitted under s2.126(7) which states that: <i>development for the purpose of sewage reticulation systems may be carried out with consent on any land.</i>	
State Environmental Planning Policy (Sustainable Buildings) 2022	Chapter 3: Standards for non-residential development Given the proposal involves the erection of a new building with an estimated development cost of \$5 million or more this chapter applies.	
Proposed Instruments	N/A	N/A
LEP	<p>Port Stephens Local Environmental plan 2013</p> <ul style="list-style-type: none"> • Clause 2.3 – Permissibility and zoning objectives – The proposal is permissible under the PSLEP 2013. • Clause 4.3 – Height of buildings – The subject site has a maximum building height of 9 metres. The proposal exceeds this height limit with a maximum height of 9.75 metres. A clause 4.6 variation request has been submitted to Council. • Clause 4.6 – Exceptions to development standards – A request to vary the height limit has been received. • Clause 5.10 – Heritage conservation – There are no local or state heritage listed items on the site. There have been Aboriginal Heritage items identified on the site including shell middens and a hearth site. An Aboriginal Heritage Assessment Report has been prepared for the proposal. The ACHA found that an Aboriginal Heritage Impact Permit (AHIP) would be required to allow for harm and salvage to two AHIMS listed sites being part of AHIMS 38-4-0333 and total harm of AHIMS 38-4-2140. The ACHAR recommended that an AHIP be obtained for harm of AHIMS 38-4- 0333 and salvage of AHIMS 38-4-2140 through excavation and community collection prior to harm. It was noted that the salvage methodology should be developed in consultation with RAPs Given the requirement for an AHIP, the application was referred to HNSW under s90 of the National Parks and Wildlife Act 1979. General terms of approval from HNSW have been received. • Clause 5.21 – Flooding planning – The site is flood prone land. The relevant flood planning level (FPL) for the site is 2.9m AHD. The site is proposed to be filled to meet the FPL. Council's Development 	Y

	<p>Engineer has supported the proposal from a flooding perspective.</p> <ul style="list-style-type: none"> • Clause 7.1 – Acid sulfate soils – The site is mapped as containing potential Class 2 and 4 Acid Sulfate Soils (ASS). The cut and fill plan prepared by Northrop consulting engineers shows that cut is proposed with in areas mapped as containing potential Class 2 ASS. An Acid Sulfate Soils Management Plan has been prepared for the proposal by Qualtest. • Clause 7.2 – Earthworks – The earthworks are considered to be ancillary to the proposed development and not considered likely to impact neighbouring properties. • Clause 7.6 Essential services – The site has connection to reticulated electricity and water but not sewer. The proposed development involves sewer connection works. The applicant has obtained concurrence from TfNSW for works required in the road reserve and the application was also referred to Hunter Water Corporation (HWC). HWC advised that they had issued a development requirements letter to the applicant in June 2023. This letter advised that the water main would need upgrading and that the sewer servicing would be done through a non-standard service agreement. In regard to access, the development is proposed to be accessed via two new cross overs from Fullerton Cove Road. The stormwater design was supported by Council's Development Engineer. • Clause 7.9 Wetlands – Much of the site is mapped as an LEP wetland. The site as a whole contains forested wetlands with a portion being located within the development area. Council's Environmental Planner raised concern with regard to impacting the forested wetlands on the site noting that targeted surveys hadn't been undertaken. As a result, Council's Environmental Planner attended the site on a number of occasions to determine whether the threatened species Wallum Froglet or Mahony's Toadlet would occur on the site. Based on the site visits and PH data collected it was determined that they would not be likely to occur on the site. It was also noted that given the extent of forested wetlands to be retained, the proposed development is considered unlikely to remove a substantial area of potential breeding habitat for frogs. As such, it is considered that the proposal is consistent with this Clause. 	
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	<ul style="list-style-type: none"> • Clause 7.24 Maximum gross floor area for commercial premises and neighbourhood supermarkets at Fullerton Cove – This section specifically applies to the subject site and restricts consent being granted where the GFA of a commercial premises exceeds 5,500m². The proposed GFA is under the maximum 5,500m² being 5,456m². Noting that tenancy 4 is proposed to be used a medical centre which is not a type of commercial premises. 	
DCP	<p>Port Stephens Development Control Plan 2014 Section B – General Controls</p> <ul style="list-style-type: none"> • B1 – Tree management – Tree removal is required and therefore this chapter applies. • B2 – Natural resources – The site is located within proximity to items of environmental significance and triggers the requirement for biodiversity offsets. This is discussed in detail under Section 3.2(c) of the report. • B3 – Environmental Management – The proposal involves earthworks in the form of both cut and fill. These works are not considered likely to have a significant impacts on the site or adjoining sites. An Acoustic Assessment was prepared for the proposal by Rapt Consulting. The assessment considered the impacts from both construction and operational noise and found the proposal to be compliant with relevant noise criteria subject to recommendation. • B4 – Drainage and Water Quality – A storm management plan was prepared by Northrop Consulting Engineers. The plan was designed to capture all stormwater via a pit and pipe network through the site which would then be conveyed to a treatment device before being discharged off the site into the drainage network/existing watercourse. Overall, Council's Development Engineer supported the stormwater design. <p>B5 – Flooding - The site is flood prone land. The development area is proposed to be constructed to 2.9m AHD which is consistent with the FPL. The proposal is not expected to significantly impact the flood behaviour.</p> <p>B7 – Heritage –There are no local or state heritage listed items on the site. An Aboriginal Cultural Heritage Assessment Report (ACHA) was prepared by NGH Pty Ltd in 2022 which included consultation with Registered Aboriginal Party's (RAPs) who</p>	Y

	<p>attended the field investigation. Given the requirement for an AHIP, the application was referred to HNSW under s90 of the National Parks and Wildlife Act 1979. General Terms of Approval have been received from HNSW.</p> <ul style="list-style-type: none"> • B8 – Road Network and Parking – There are no significant impacts expected to the surrounding road network from the proposed development. The frontage to Fullerton Cove Road was identified as needing to be upgraded to facilitate the proposed development. The upgrade includes the provision of a right-hand turning lane into the development and formation of a pedestrian refuge to connect to the existing shared footpath to the sites west. The TIA found that no other upgrades are required including to the nearby roundabouts. The proposal was supported by TfNSW and Council's Traffic Engineer. <p>A total of 280 car parking spaces including 12 accessible spaces and 16 motorbike spaces are proposed. This is consistent with Figure BU of the DCP with a parking surplus of 13 spaces being provided.</p> <p>Section C – Development Types</p> <ul style="list-style-type: none"> • C2 Commercial – Chapter C2 of the DCP applies to the proposal. The proposal is not built to the front property line nor the side boundaries as required by this Chapter. This non-compliance is considered suitable when considering the surrounding land uses not being off a commercial nature. These DCP controls are also more aligned to informing high street type commercial premises. The proposed setback will allow for landscaping to be provided along the boundaries of the development which is more in line with surrounding development. <p>A Crime Prevention through Environmental Design (CPTED) Assessment has been prepared for the proposal by Monteath and Powys. The assessment of the proposal identified a number of design parameters and recommendation's to address the CPTED principles.</p> <p>A footpath from the site and a pedestrian refuge are proposed to be constructed as a part of this proposal. The pedestrian refuge will connect to an existing shared pathway. This pathway provides pedestrian connection to the approved and existing residential villages to the sites west and south west as well as the Seaside residential estate to the sites south east. Awnings are provided over pedestrian entries.</p>	
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	The proposed signage is not the type of signage listed as not being supported in the DCP.	
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Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2: Vegetation in non-rural areas

This chapter aims to protect the biodiversity values and preserve the amenity and other vegetation in non-rural areas of the State. This chapter applies to the proposed development as the site is zoned E1 Local Centre and C2 Environmental Conservation.

The chapter further provides that Council may issue a permit for tree removal if it does not exceed the Biodiversity Offsets Scheme (BOS) threshold. If a development does seek to exceed the BOS threshold, clearing must be approved by the Native Vegetation Panel. The development requires the removal of vegetation that exceeds the BOS clearing threshold, although no referral to the Native Vegetation Panel is required as the removal is proposed as part of a Development Application. Therefore, native vegetation removal for this development is assessed against the provisions of the Biodiversity Conservation Act 2016 and B2 of the DCP which is outlined elsewhere in this report.

A Biodiversity Development Assessment Report (BDAR) was prepared for the proposal by Anderson Environment & Planning. The BDAR identified that a total of 2.242 hectares of native vegetation requires removal to facilitate the proposed. The native vegetation on the site includes four (4) plant community types (PCTs) being PCT 1646, PCT 1717, PCT 1728 and PCT 1737. The vegetation to be removed was also found to/assumed to include habitat for a number of threatened fauna species.

The proposed removal of the above vegetation and the associated impacts to threatened species requires offsetting. The BDAR calculated the offsets required. A condition has been recommended requiring the applicant to retire biodiversity credits prior to the issue of a construction certificate on site in order to offset the residual impact on biodiversity values. The removal of vegetation is discussed further against Chapter B2 of the DCP.

Chapter 3: Koala Habitat Protection 2021

This chapter aims to encourage the conservation and management of areas of natural vegetation that provide habitat for koalas to support a permanent free-living population over their present range and reverse the current trend of koala population decline.

The site is mapped partly as mainly cleared and partly as supplementary koala habitat. Section 4.8 of the policy applies to land where there is an approved koala plan of management and states that Council's determination of a development application must be consistent with the plan of management that applies to the land. Port Stephens Council has an approved koala plan of management being the Comprehensive Koala Plan of Management (CkPoM) which includes performance criteria for development applications.

The Biodiversity Development Assessment Report (BDAR) assessed the proposal against the CkPoM's performance criteria. The BDAR identified three koala feed trees (3 x Swamp Mahoganies) within/in proximity to the development footprint. One of these koala feed trees requires removal to facilitate the proposed development. It was determined that the removal of this tree would not result in adverse impacts as it is disjunct from other vegetation and is

largely surrounded by cleared land. Notwithstanding, Council's Biodiversity Technical Specification requires that koala feed trees are replaced at 1:8 ratio. A condition has been recommended accordingly. Overall, the BDAR concluded that given sites small size, low levels of koala records in the immediate vicinity, the presence of the retained native vegetation on site, and connectivity in the locality, the proposed development is not likely to impact on existing koala population within the region making the development consistent with the CKPoM and therefore this policy. Council's Environmental Planner supported the assessment against the CKPoM. The proposal is therefore consistent with this policy.

State Environmental Planning Policy (Industry and Employment) 2021

Chapter 3: Advertising and Signage

This chapter sets out planning controls for advertising and signage in NSW. The policy requires signage to be compatible with the future character of an area, provide effective communication in suitable locations and be of high quality design and finish.

The proposal includes a number of business identification signs on the façade of the proposed development. The application also seeks consent for two 8 metre high business identification pylon signs. One is proposed to be located at the combined entry and exit point in the south western portion of the site fronting Fullerton Cove Road and the other is proposed to be located in the south eastern corner of the site fronting Nelson Bay Road.

Section 3.11 of this policy provide matters for consideration. The proposal is consistent with the matters for consideration as follows:

- The proposal is consistent with the objectives of this chapter as set out in section 3.1(1)(a) in that the proposal signage is compatible with the desired amenity and visual character of an area, will provide effective communication in that it will identify the businesses operating on site and subject to conditions, will be constructed of a high quality design and finish.
- The development has been assessed in accordance with the Assessment Criteria set out in Schedule 5 of the policy, refer to **Table 4** below.
- The proposal satisfies relevant requirements of this chapter.

Schedule 5 of the policy provides an assessment framework to determine if the proposed signage scheme is acceptable in terms of its impacts. An assessment of the proposed signage scheme against the assessment criteria is provided in **Table 4** below.

Table 4: I&E SEPP Schedule 5 Assessment

Assessment Criteria	Assessment	Comply (Y/N)
<p><i>1 Character of the area</i></p> <p>Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?</p> <p>Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?</p>	<p>The site is surrounded by a mixture of land uses which include residential, rural residential and rural land. Given the sites zoning, the signage has been assessed with the desired future character in mind. Noting this, it is considered that the proposed signage is consistent with the desired future character of the area which based on the zoning which seeks to provide a local centre.</p> <p>There is no theme for outdoor advertising in the area.</p>	Y

<p><i>2 Special areas</i></p> <p>Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?</p>	<p>The proposed signage is not considered to detract from the amenity or visual quality of any special areas.</p> <p>The pylon signage located in the south eastern corner of the site fronting the corner of Fullerton Cove Road and Nelson Bay Road is located within the C2 zoned area. It is not considered that the pylon sign detract from the visual quality of the environmentally sensitive area noting it will only occupy a small portion of the frontage. The remainder of the signage proposed will be located on the E1 zoned area of the site.</p>	<p>Y</p>
<p><i>3 Views and vistas</i></p> <p>Does the proposal obscure or compromise important views?</p> <p>Does the proposal dominate the skyline and reduce the quality of vistas?</p> <p>Does the proposal respect the viewing rights of other advertisers?</p>	<p>Most of the signage is proposed to be located on the façade of the building and therefore will not obscure or compromise important views or dominate the skyline.</p> <p>The two pylon signs are not considered to be in a location or of a scale that would compromise important views.</p> <p>The signage is considered to be respectful of viewing rights of other advertisers.</p>	<p>Y</p>
<p><i>4 Streetscape, setting or landscape</i></p> <p>Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?</p> <p>Does the proposal contribute to the visual interest of the streetscape, setting or landscape?</p> <p>Does the proposal reduce clutter by rationalising and simplifying existing advertising?</p> <p>Does the proposal screen unsightliness?</p> <p>Does the proposal protrude above buildings, structures or tree canopies in the area or locality?</p> <p>Does the proposal require ongoing vegetation management?</p>	<p>Considering the sites zoning and the development proposed, it is considered that the signage is of an appropriate scale, portion and form.</p> <p>The signage will contribute to the visual interest of the streetscape and will appropriately identify the businesses on site.</p> <p>Give the number of businesses proposed on the site, the number of signs is considered appropriate.</p> <p>The signage does not screen unsightliness.</p> <p>The signage does not protrude above the building.</p> <p>No ongoing vegetation management is required for much of the signage. Minor management around the base on the pylon signage fronting the corner of Fullerton Cove Road and Nelson Bay Road may be required. A condition has been included requiring the Biodiversity</p>	<p>Y</p>

	Management Plan (BMP) to consider the ongoing vegetation management for this sign.	
<p><i>5 Site and building</i></p> <p>Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?</p> <p>Does the proposal respect important features of the site or building, or both?</p> <p>Does the proposal show innovation and imagination in its relationship to the site or building, or both?</p>	<p>The proposed signage is compatible with the scale of the building and site it is located and respects important features of the building.</p> <p>The sign is located part of the building that will allow for the business to be appropriately identified.</p>	Y
<p><i>6 Associated devices and logos with advertisements and advertising structures</i></p> <p>Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?</p>	No.	N/A
<p><i>7 Illumination</i></p> <p>Would illumination result in unacceptable glare?</p> <p>Would illumination affect safety for pedestrians, vehicles or aircraft?</p> <p>Would illumination detract from the amenity of any residence or other form of accommodation?</p> <p>Can the intensity of the illumination be adjusted, if necessary?</p> <p>Is the illumination subject to a curfew?</p>	<p>All signage is proposed to be internally illuminated, it is not considered likely to result in unacceptable glare or result in adverse safety or amenity impacts.</p> <p>A condition has been recommended requiring that signage only be illuminated during operating hours to reduce potential impacts.</p>	Y
<p><i>8 Safety</i></p> <p>Would the proposal reduce the safety for any public road?</p>	The proposal would not reduce safety along Fullerton Cove Road or Nelson Bay Road.	Y

Would the proposal reduce the safety for pedestrians or bicyclists?		
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?		

State Environmental Planning Policy (Planning Systems) 2021

Chapter 2: State and Regional Development

The proposal is regionally significant pursuant to Section 2.19(1) as it satisfies the criteria in Clause 2 of Schedule 6 of the Planning Systems SEPP as the proposal has a capital investment value of more than \$30 million. Accordingly, the Hunter Central Coast Regional Planning Panel is the consent authority for the application.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2: Coastal Management

The aim of this Chapter is to promote an integrated and co-ordinated approach to land use planning in the coastal zone in a manner consistent with the objects of the *Coastal Management Act 2016*.

The site is mapped as being within a coastal environment area and therefore s2.10 of this policy applies. As per s2.10(1), development consent must not be granted for development within the coastal environment area unless the consent authority has considered whether the development will cause adverse impact to the integrity of the biophysical and ecological environment, the values and natural coastal processes, marine vegetation, native vegetation and fauna, existing public open space and access to and along the foreshore and Aboriginal cultural heritage, practices and places.

It is considered that the proposed development has been designed, sited and will be managed to avoid an adverse impact referred to in s2.10(1) as follows:

- The integrity and resilience of the coastal environment will be managed during construction through compliance with the ASSMP, provision of erosion and sediment control measures and preparation of a Construction Management Plan. In addition, the development has been designed with appropriate stormwater measures in place to ensure of runoff from the development meets relevant water quality requirements prior to being discharged into the drainage network.
- The proposal does not result in adverse impacts on the coastal environment values particularly given its significant separation to the waterbody.
- As noted above, the stormwater design includes stormwater quality measures to ensure that runoff from the development meets the appropriate stormwater quality requirements prior to being discharged into the drainage network and therefore is not considered likely to cause an adverse impact on the water quality of the waterbody.
- As assessed throughout the report, the proposed development is noted considered likely to cause adverse impacts to native vegetation and fauna. An assessment of the impacts from the proposed development is undertaken in detailed under Chapter B2 of the DCP. Notwithstanding, the areas of high biodiversity vale on the site will be managed through a BMP in the future will improve the state of the vegetation and therefore habitat for native fauna.

- The proposal is not sited in a way that impacts public open space and safe access to the waterfront.
- The proposal does impact Aboriginal heritage items. The impacts on these items are not considered to be adverse with salvaging and community collection of the items proposed under an endorsed ACHAR by HNSW.
- The site is not in a surf zone.

Section 2.12 notes that development consent must not be granted to development on land within the coastal zone unless the consent authority is satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. The proposed development has been designed and sited in a way that would not increase the risk of coastal hazards on the land or other land.

Section 2.13 notes that development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land. The Port Stephens LGA does not have a certified coastal management program (CMP) and therefore this section does not apply. A draft Port Stephens CMP has been prepared and is currently in the process of gaining certification. However, this CMP does not apply to the subject site. Rather, the Hunter River Estuary CMP that is still being prepared would apply. Noting this, s2.13 does not apply.

Chapter 4: Remediation of Land

The provisions of Chapter 4 of *State Environmental Planning Policy (Resilience and Hazards) 2021* (*the Resilience and Hazards SEPP*) have been considered in the assessment of the development application. Section 4.6 of Resilience and Hazards SEPP requires consent authorities to consider whether the land is contaminated, and if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out.

As a part of the rezoning of the site, a Preliminary Contamination Assessment was prepared by Qualtest dated 16 November 2020. The report recommended that additional assessment, comprising soil sampling in the areas of environmental concern identified, be carried out after removal of buildings and stored equipment and materials. An Addendum Letter dated 4 June 2024 was prepared by Qualtest and provided to Council. The letter concluded that the site can be made suitable for the proposed development subject to a number of recommendations being met prior the issue of a Construction Certificate including:

- Preparation of a Detailed Site Investigation (DSI);
- Preparation of a Remediation Action Plan (RAP) (if required); and
- Preparation of a Validation Report should remediation be required which clearly stated that the site is suitable for the proposed development.

Council's Environmental Health Officer supported the findings of the contamination studies subject to the imposition of conditions requiring that a Detailed Site Investigation be undertaken following the demolition of buildings and provided to Council for review and endorsement. Noting the above, it is considered that the proposal meets the requirements of this chapter subject to conditions which have been recommended accordingly. The proposal is not for a highly sensitive land use, such as residential or a childcare premises, on this basis the findings and recommendations of the Contamination Assessment are suitable for the consent authority to be satisfied that the land can be made suitable to support the proposed commercial use.

Chapter 2: Infrastructure

Section 2.122 of this chapter identifies that development that is considered traffic generating is required to be referred to Transport for NSW (TfNSW). Schedule 3 of this policy identifies what development types are considered to be traffic generating development. The proposal is considered traffic generating as it has a gross floor area exceeding 2,500m² and is located on a site that has an access that connects to a classified road, being Nelson Bay Road.

The application was referred to Transport for NSW (TfNSW). TfNSW assessed the traffic impacts from the proposed development including the potential impacts to the functioning of the small roundabout between the site and Nelson Bay Road as well as the functioning of the larger roundabout on Nelson Bay Road. TfNSW also considered active transport planning as part of the referral. A number of requests for information (RFI) were issued by TfNSW during assessment of the application which related to:

- The findings of the Traffic Impact Assessment (TIA) and the associated SIDRA modelling and analysis.
- Provision of a footpath on the same side of the road to reduce potential conflict between vehicles and pedestrians.

Following a number of responses to the RFI's issued, TfNSW ultimately supported the proposal and the findings of the TIA prepared by Seca Solutions dated 3 October 2024. The TIA concluded that the road network including the two nearby roundabouts would continue to operate satisfactorily without the need for upgrades.

TfNSW did note that Council needs to consider the provision for a footpath. The provision of a footpath is discussed in further detail elsewhere in this report, however, it is noted that a footpath is proposed to be provided which will connect to the existing shared path across the road. The location of the proposed footpath was supported by Council's Development Engineer noting it avoided sensitive features (Aboriginal Artefacts) that would otherwise be impacted should the pathway be required along the sites entire frontage.

Section 2.126 identifies when consent is and is not required for sewerage systems. S2.126(1) defines 'prescribed circumstances' as development that is:

- (a) is carried out by or on behalf of a public authority, or*
- (b) consists of the construction or operation of water industry infrastructure, within the meaning of the Water Industry Competition Act 2006, and a scheme approval under that Act is required before the development may be carried out.*

The proposed sewer works are not being carried out by or on behalf of a public authority and therefore the development is not a 'prescribed circumstance' meaning the works cannot be carried out without consent as per s2.126(6). Therefore, s2.126(7) applies which states that in any other circumstances, development for the purpose of sewage reticulation systems may be carried out with consent on any land.

Given the proposed sewer line will connect to the Hunter Water sewer network, Design and Development Requirements were provided by Hunter Water which notes that a Routine Major Works Deed is to be entered into following the issuing of development consent. As a part of the Major Works Deed, the applicant is required to engage an accredited design consultant to prepare the construction detail design and an accredited construction contractor to undertake the works. A condition has been recommended requiring that a Certificate of Compliance under s50 of the Hunter Water Act 1991 be obtained prior to the issue of an Occupation Certificate. It is noted that the sewer line is intended to remain in private ownership. A condition

has been recommended that maintenance procedures relating to the sewer line be included in the operational plan of management.

State Environmental Planning Policy (Sustainable Buildings) 2022

Chapter 3: Standards for non-residential development

This policy encourages the design and construction of more sustainable buildings to meet NSW climate change targets and adapt to more extreme weather, including hotter and drier summers.

Chapter 3 applies to non-residential development that has an estimated development cost of \$5 million or more. As such, this chapter applies to the proposed development.

Section 3.2(1) of the policy states that the consent authority must consider *whether the development is designed to enable the following—*

- (a) the minimisation of waste from associated demolition and construction, including by the choice and reuse of building materials,*
- (b) a reduction in peak demand for electricity, including through the use of energy efficient technology,*
- (c) a reduction in the reliance on artificial lighting and mechanical heating and cooling through passive design,*
- (d) the generation and storage of renewable energy,*
- (e) the metering and monitoring of energy consumption,*
- (f) the minimisation of the consumption of potable water.*

An assessment against each consideration is provided in Table 5 below.

Table 5: Assessment against matters of consideration

Matters for Consideration	Assessment
The minimisation of waste from associated demolition and construction, including by the choice and reuse of building materials	A demolition, construction and operational waste management plan has been prepared by Monteath and Powys which will limit waste during these stages of the proposed development.
A reduction in peak demand for electricity, including through the use of energy efficient technology	<p>The applicant has advised that the following options will be explored as part of the detailed construction plans to reduce peak demand for electricity which demonstrates energy-efficient technology for the proposed development (noting that the development will be subject to a Section J report):</p> <ul style="list-style-type: none"> - LED lighting is proposed to be used within the retail development and landscaping areas as opposed to incandescent or fluorescent lighting. - High-efficiency HVAC systems are proposed to be used for heating, ventilation and air conditioning systems with advanced controls for the development. - Smart building management systems (BMS) are proposed to be implemented within the development to integrate all building systems

	<p>(lighting, HVAC, security, etc.) and utilise data analytics to optimize energy use in real time. Further, the BMS will monitor occupancy levels, outdoor temperature, and other factors to adjust energy usage dynamically. For example, during peak shopping hours, the system can intelligently manage HVAC and lighting to reduce overall electricity demand.</p> <ul style="list-style-type: none"> - Consider the opportunity for the development to install solar panels on the roof or parking structures to generate renewable energy on-site. - Consideration will be given to demand response programmes offered by utility providers to temporarily reduce electricity usage during peak periods when demand on the grid is exceptionally high. This will help alleviate strain on the grid. - Encourage future tenants to use energy-efficient appliances and equipment within their stores and restaurants.
A reduction in the reliance on artificial lighting and mechanical heating and cooling through passive design	<p>To reduce reliance of artificial lighting, the development has been designed and orientated in a fashion that optimises solar access including through the strategic placement of windows and the inclusion of the entrance atrium without exacerbating the need for mechanical cooling of the development.</p> <p>The proposed materials and finishes are not considered to exacerbate the developments reliance on artificial lighting and mechanical heating. Noting that the roof, walls and ceilings are to be insulated as per the relevant building standard which will be subject to a Section J Report.</p>
The generation and storage of renewable energy	<p>The applicant has acknowledged that there is opportunity to install solar pv panels on the roof of the building shade structures. It was noted that this would be investigated further as apart of the detailed design. A condition has been recommended requiring that solar pv panels be provided on the roof of the building.</p>
The metering and monitoring of energy consumption	<p>Metering and monitoring of energy consumption is required by Section J.</p>
The minimisation of the consumption of potable water	<p>Water collected from the rainwater tanks on site is proposed to be used for toilet flushing and landscape irrigation.</p>

Section 3.2(2) provides that development consent must not be granted to non-residential development unless the consent authority is satisfied the embodied emissions attributable to the development have been quantified. A NABERS Embodied Emissions Materials Form was provided with the development quantifying the embodied emissions.

Section 3.3 applies to large commercial development. Large commercial development is defined in this policy as:

large commercial development means non-residential development that involves—
(a) the erection of new prescribed office premises, prescribed hotel or motel accommodation or prescribed serviced apartments, or
(b) alterations, enlargement or extension of prescribed office premises, prescribed hotel or motel accommodation or prescribed serviced apartments, if the development has an estimated development cost of \$10 million or more.

The proposed development is not considered a 'large commercial development' and therefore this section does not apply.

Section 3.4 applies only to development that is state significant.

Port Stephens Local Environmental Plan 2013

The relevant local environmental plan applying to the site is the *Port Stephens Local Environmental Plan 2013* ('the LEP'). The aims of the LEP are:

- (a) to cultivate a sense of place that promotes community well-being and quality of life,
- (b) to provide for a diverse and compatible mix of land uses,
- (c) to protect and conserve environmental values,
- (d) to facilitate economic growth that contributes to long-term employment,
- (e) to provide opportunities for housing choice and support services tailored to the needs of the community,
- (f) to conserve and respect the heritage and cultural values of the natural and built environments,
- (g) to promote an integrated approach to the provision of infrastructure and transport services,
- (h) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts.

The proposal is consistent with these aims as the proposal contributes to the provision of diverse land uses, facilitating economic growth whilst not impacting environmental values.

Zoning and Permissibility (Part 2)

The site is located within the E1 Local Centre and C2 Environmental Conservation zones pursuant to Clause 2.2 of the LEP, refer to **Figure 13** below.

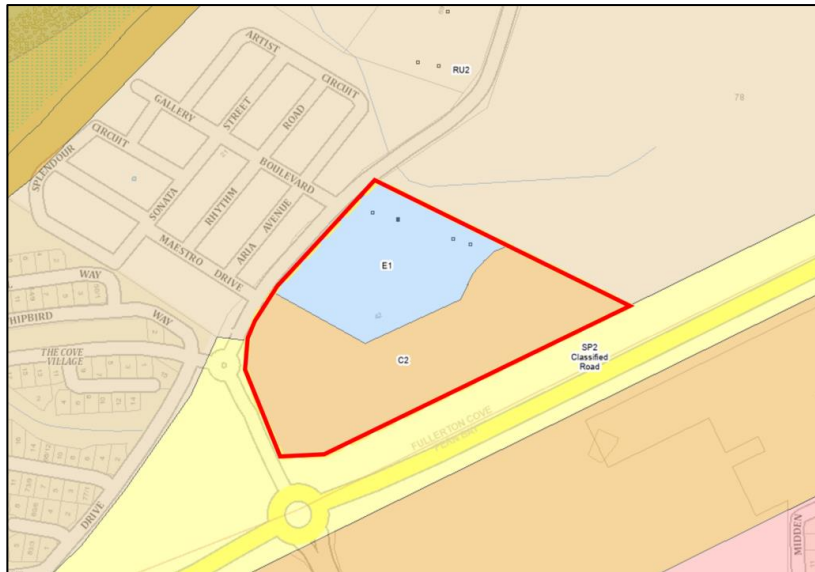


Figure 13. Zoning map

The proposed development seeks consent for a number of uses on the site being a shop (supermarket), 5 x commercial premises and a medical centre. All proposed uses are located within the E1 zoned land. The proposed uses are permissible uses with consent in the Land Use Table in Clause 2.3.

The objectives of the E1 Local Centre zone include the following (pursuant to the Land Use Table in Clause 2.3):

- *To provide a range of retail, business and community uses that serve the needs of people who live in, work in or visit the area.*
- *To encourage investment in local commercial development that generates employment opportunities and economic growth.*
- *To enable residential development that contributes to a vibrant and active local centre and is consistent with the Council's strategic planning for residential development in the area.*
- *To encourage business, retail, community and other non-residential land uses on the ground floor of buildings.*

The proposal is considered to be consistent with these zone objectives for the following reasons:

- The proposal will provide a range of commercial premises within the area which has been found to be lacking.
- The proposal will generate employment opportunities and economic growth in the area.

The proposal includes some minor works in the C2 zone for the installation of a business identification sign (pylon sign) associated with the proposed development. Business identification signs are a permissible use with consent in the Land Use Table in Clause 2.3.

The objectives of the C2 Environmental Conservation zone include the following (pursuant to the Land Use Table in Clause 2.3):

- To protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- To prevent development that could destroy, damage or otherwise have an adverse effect on those values.

The proposal is considered to be consistent with these zone objectives for the following reasons:

- The location of the proposed signage is not within an area of high ecological value.
- The remaining areas of high ecological value have been avoided with no other development proposed to occur in the C2 zoned area of the site.
- A condition has been recommended requiring the preparation of a Vegetation Management Plan (VMP) for this area of the site. The VMP will ensure that areas that are already of high ecological value will continue to be managed and protected and those that are of lower ecological value be restored. It also includes the requirement for ongoing vegetation management surrounding the sign.

As previously noted, the sewer connection works are permitted under s2.126(7) of the Transport and Infrastructure SEPP.

General Controls and Development Standards (Part 2, 4, 5 and 6)

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 6** below.

Table 6: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Height of buildings (CI 4.3(2))	9m	The proposal exceeds the height limit, proposing a maximum building height of 9.75m, accordingly, a Clause 4.6 request has been provided with the application.	No
Exception to development standards (CI 4.6)	Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.	The proposal does not comply with the height of buildings development standard in Clause 4.3 of the LEP and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the maximum building height. The Clause 4.6 assessment is at Attachment B .	Yes

Heritage (CI 5.10)	Clause 5.10 specifies the requirements for consent and associated assessment requirements for impacts relating to European and Aboriginal heritage.	<p>There are no local or state heritage listed items on the site.</p> <p>An Aboriginal Cultural Heritage Assessment Report (ACHA) was prepared by NGH Pty Ltd in 2022 which included consultation with RAPs who attended the field investigation. During the preparation of this report and the associated field investigations, four Aboriginal sites were identified on the land and are now registered with the Aboriginal Heritage Information Management System (AHIMS). It was recommended that if impacts to these sites could not be avoided by the future development of the study area, then an AHIP to undertake test excavations would be required. An addendum to the ACHA has since been prepared for the proposal by Biosis Pty Ltd which found that the development would have the potential to directly impact two AHIMS sites (AHIMS 38-4-2140 and 38-4-0333). An Aboriginal Heritage Impact Permit (AHIP) was obtained to undertake test excavations. Testing found shell middens and a hearth site at one the registered sites. Salvage of this site via further excavation and community collection was recommended.</p> <p>The other site was identified as being highly disturbed with no further archaeological assessment considered necessary. On this basis, it was identified that an AHIP would be required to allow for harm to part of AHIMS 38-4-0333 and total harm of AHIMS 38-4-2140, following the completion of salvage and community collection. Given the requirement for an AHIP, the application was referred to HNSW under s90 of the National Parks and Wildlife Act 1979. General Terms of Approval have been received from HNSW.</p> <p>It is noted that as per Addendum Aboriginal Cultural Heritage Assessment prepared by Biosis Pty Ltd, a Due Diligence assessment was undertaken by RPS (2015) for the proposed installation of a sewerage pipeline. The assessment found one AHIMS site within the development area (AHIMS #38-4-1160). The AHIMS recorded noted that the site comprised a low-density artefact scatter including two artefacts. The</p>	Yes
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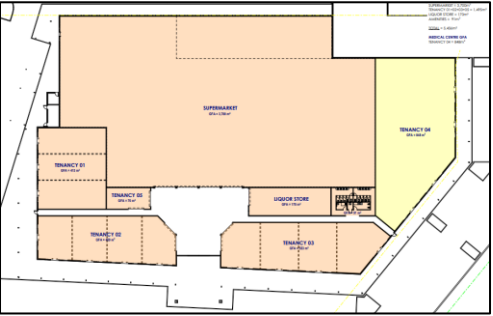
		field inspection revisited the recorded location of the AHIMs but identified no archaeological material at the recorded location nor along the proposed extent of the sewer works. It was noted that the site may have been destroyed as a result of road upgrades. As such, given no Aboriginal archaeological material was identified the report concluded the development may proceed without any AHIP application.	
Flooding Planning (CI 5.21)	Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development complies with the following matters identified in 5.21(2): (a) is compatible with the flood function and behaviour on the land, and (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes	<p>The site is located on flood prone land. The site contains a number of flood categories with the highest hazard category being high hazard flood storage. The proposal also includes cut and fill that has the potential to impact flood behaviour and therefore increase risk to life. This section therefore applies.</p> <p>A Flood and Stormwater Management Plan was prepared for the proposal by Northrop Consulting Engineers. The proposal is considered to be consistent with this clause in that:</p> <ul style="list-style-type: none"> - The proposed development has been designed to ensure it is compatible with the flood function and behaviour on the land with cut and fill proposed across the site to provide compensatory flood storage and to ensure that the finished floor level of the development meets the flood planning level (2.9m AHD). The access driveways and car park have been designed to be above the current day 1% AEP flood level which is consistent with Council requirements. - Modelling was undertaken as a part of the Flood and Stormwater Management Plan. The modelling assessed impacts resulting from the development for all events up to and including the probable maximum flood (PMF) event. It was found that the proposal results in a net decrease or similar inundation to existing catchment conditions during all flood events with the exception of the PMF event, both on-site and off-site. The increases in flood impacts during each flood event were considered to be minor in nature as they do not change the overall flood hazard category and 	Yes

	<p>for the surrounding area in the event of a flood, and (d) incorporates appropriate measures to manage risk to life in the event of a flood, and (e) will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses</p> <p>Section 5.21(3) requires that the consent authority must consider the following matters— (a) the impact of the development on projected changes to flood behaviour as a result of climate change, (b) the intended design and scale of buildings resulting from the development, (c) whether the development incorporates measures to minimise the risk to life and ensure the safe evacuation of people in the event of a flood, (d) the potential to modify, relocate or remove buildings</p>	<p>therefore do not increase risk to life. It was noted however, that during the PMF event, the road reserve off Nelson Bay Road would be further impacted by flooding. Council's Development Engineer supported the additional impact given the road reserve is already inundated in the current scenario and the hazard category remains unchanged. Overall, the additional flood impacts is mostly localised to road reserves and existing culverts and therefore does not result in additional impacts to existing residential properties or sensitive land uses.</p> <ul style="list-style-type: none"> - Access driveways have been designed to be above the current day 1% AEP flood level. Fullerton Cove Road and Nelson Bay Road remain flood free during all events up to and including the 1% AEP flood event providing a suitable evacuation route. - The development has been designed to have an appropriate finished level reducing risk to life. In addition, a condition has been recommended requiring that a Flood Emergency Evacuation Plan been prepared. - The proposal will not adversely affect the environment or cause avoidable erosion, siltation, destruction of riparian vegetation or a reduction in the stability of river banks or watercourses. <p>Council's Development Engineer supported the proposed development from a flood perspective. Noting the above, it is considered that the proposal is consistent with this clause.</p>	
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	resulting from development if the surrounding area is impacted by flooding or coastal erosion		
Acid sulfate soils (CI 7.1)	<p>The site is mapped as containing potential Class 2 and 4 Acid Sulfate Soils (ASS).</p> <p>Under Clause 7.1, on land mapped class 3 acid sulfate soils, consent is required for works more than 1 metres below the natural ground surface or works by which the watertable is likely to be lowered more than 1 metres below the natural ground surface.</p>	<p>As per cl.7.1(2), development consent is required where works below the natural ground surface in areas containing Class 2 ASS are proposed. The cut and fill plan prepared by Northrop consulting engineers shows that cut is proposed with in areas mapped as containing potential Class 2 ASS. ASS testing was undertaken by Qualtest. It was found that much of the northern portion of the site did not contain ASS. However, the southern portion of the site could not be tested due to the presence of Aboriginal Heritage items. It was noted that this area has a higher risk of ASS being present and therefore an Acid Sulfate Soils Management Plan (ASSMP) was prepared for the proposal by Qualtest. The ASSMP recommends that further ASS testing be undertaken once an AHIP has been obtained and sub-surface salvage and surface collection of the site for Aboriginal artefacts has occurred and updated as required.</p> <p>The proposal therefore meets the requirements of this Clause.</p>	Yes
Earthworks (CI 7.2)	<p>Under Clause 7.2(3) before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—</p> <p>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</p>	<p>Earthworks are required to facilitate the proposed development. Earthworks are required to construct a level building platform and given the sites flood prone nature, to raise portions of the land to the flood planning level for the site (2.9m AHD) whilst also creating compensatory cut to limit flood impacts. Earthworks will also be required for trenching and under boring associated with sewer connection works.</p> <p>The proposed earthworks require approximately 7,920m³ of cut and 6,039m³ fill. Resulting in net fill which will be exported off the site.</p> <p>The proposal is considered to be consistent with the requirements of this clause in that:</p> <ul style="list-style-type: none"> • A condition has been recommended that requires all imported and exported 	Yes

	<p>(b) the effect of the development on the likely future use or redevelopment of the land,</p> <p>(c) the quality of the fill or the soil to be excavated, or both,</p> <p>(d) the effect of the development on the existing and likely amenity of adjoining properties,</p> <p>(e) the source of any fill material and the destination of any excavated material,</p> <p>(f) the likelihood of disturbing relics,</p> <p>(g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</p> <p>(h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</p>	<p>fill is to be VENM or a material identified as being subject to a resource recovery exemption by the NSW EPA.</p> <ul style="list-style-type: none"> • The proposed earthworks facilitate development on the site. • The proposal does result in impacts to Aboriginal items which were assessed in the ACHA prepared for the proposal. General Terms of Approval have been received from HNSW. • Conditions requiring a Construction Management Plan to be prepared and sediment and erosion controls to be implemented during works have been recommended to reduce potential impacts of the development. • The earthworks have been designed to limit impacts from flooding and drainage. 	
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Essential Services (CI 7.6)	Cause 7.6 provides that development consent must not be granted to development unless the consent authority is satisfied that services that are essential for the development are available or that adequate arrangements have been made to make them available when required.	<p>The site has connection to reticulated electricity and water but not sewer. The proposed development involves sewer connection works. The applicant has obtained concurrence from TfNSW for works required in the road reserve and the application was also referred to Hunter Water Corporation (HWC). HWC advised that they had issued a Development Requirements letter to the applicant in June 2023. This letter advised that the watermain would need upgrading and that the sewer servicing would be done through a non-standard service agreement. Consent is not sought for the watermain upgrade, only the sewer. The sewer main is proposed to be constructed directly adjacent to the sewer main that was recently constructed to support the development at 21 Fullerton Cove Road. A condition has been recommended requiring that the applicant obtain a certificate of compliance under s50 of the Hunter Water Act prior to the issue of an Occupation Certificate.</p> <p>Noting the above, it is considered that the adequate arrangements have been made to make sewer available when required, satisfying the requirements of this clause.</p> <p>In regard to access, the development is proposed to be accessed via two new cross overs from Fullerton Cove Road.</p>	Yes
Wetlands (CI 7.9)	Clause 7.9 provides that development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that— (a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or	The site as a whole contains forested wetlands with a portion being located within the development area. Council's Environmental Planner raised concern with regard to impact on the forested wetlands on the site noting that targeted surveys hadn't been undertaken for endangered frog species. As a result, Council's Environmental Planner attended the site on a number of occasions to determine whether the threatened species Wallum Froglet or Mahony's Toadlet would occur on the site. Based on the site visits and PH data collected it was determined that these species are not likely to occur on the site. It was also noted that given the extent of forested wetlands to be retained, the proposed development is considered unlikely to remove a substantial area of potential breeding habitat for frogs. As	Yes

	<p>(b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or</p> <p>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</p>	<p>such, it is considered that the proposal is consistent with this Clause.</p>	
<p>Maximum gross floor area for commercial premises and neighbourhood supermarkets at Fullerton Cove (CI 7.24)</p>	<p>Development consent must not be granted for development for the purposes of commercial premises or neighbourhood supermarkets on land to which this clause applies unless the consent authority is satisfied the combined gross floor area of all commercial premises and neighbourhood supermarkets on the land will not exceed 5,500m².</p>	<p>The proposed GFA for commercial premises is under the maximum 5,500m² being 5,456m². Figure 14 below shows the GFA calculation with the orange areas included in the calculations.</p> <p>The medical centre has not been included within the calculation given it is not a commercial premises. The mall and circulation areas have also been excluded given they are also not commercial premises.</p> <p>Noting the above, the proposed development is consistent with this clause.</p>  <p>Figure 14. GFA of Commercial Premises Calculation</p>	<p>Yes</p>

As outlined in the table above, the proposal is considered to be generally consistent with the LEP.

Clause 4.6 Request

The maximum height of buildings pertaining to the site is 9m. The proposal has a maximum height of 9.75m which represent an 8.33% variation to the development standard, refer to Figure 15 below.

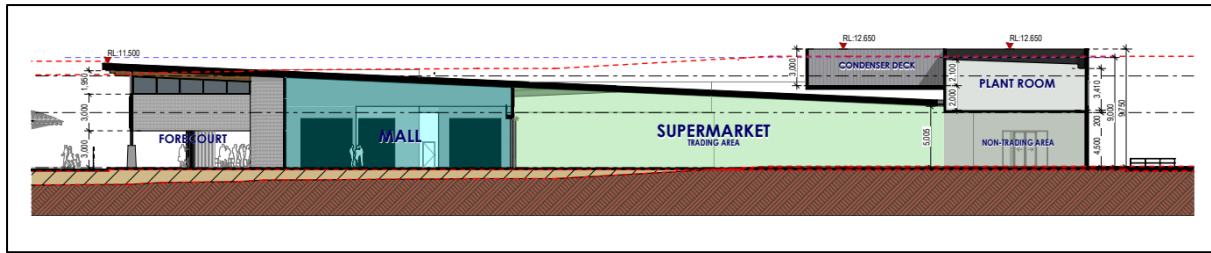


Figure 15. Section Plan showing proposed height exceedance

Preconditions to be satisfied

Clause 4.6(3) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Clause 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

It is noted that in September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which changes the operation of the clause across all LEP's. The amendment included savings provisions that allow for DA's made on or before 1 November 2023 to be determined as if the changes had not commenced. The DA was lodged after 1 November 2023 (being 4/12/2023) and therefore has been assessed against the amended Clause 4.6 provisions.

The preconditions are:

1. Tests to be satisfied pursuant to CI 4.6(3)(a) – this includes matters under CI 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard.

These matters are considered in Attachment B for the proposed development having regard to the applicant's Clause 4.6 request.

Overall, the proposed development is considered to be consistent with the objectives of Clause 4.6 given it will achieve a better outcome in these particular circumstances as the objectives of the development standard are achieved notwithstanding non-compliance.

(b) Section 4.15 (1)(a)(ii) - Provisions of any Proposed Instruments

There are several proposed instruments which have been the subject of public consultation under the EP&A Act, and are relevant to the proposal, including the following:

- *Draft Remediation of Land State Environmental Planning Policy*

The proposed instruments is considered below:

Draft Remediation of Land State Environmental Planning Policy

The proposed Remediation of Land SEPP is intended to repeal and replace Chapter 4 of SEPP Resilience and Hazards 2021. The draft SEPP, which was exhibited from 25 January to 13 April 2018, is currently under consideration.

The proposed SEPP seeks to provide a state-wide planning framework to guide the remediation of land, including outlining provisions that require consent authorities to consider the potential for land to be contaminated when determining development applications; clearly lists remediation works that require development consent; and introducing certification and operational requirements for remediation works that may be carried out without development consent.

Consideration has been given to the suitability of the site with respect to potential land contamination under SEPP Resilience and Hazards 2021 – Chapter 4 elsewhere within this report. The subject site has been identified as suitable for the proposed development.

There are no other draft environmental planning instruments that apply to the proposal.

(c) Section 4.15(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

- *Port Stephens Development Control Plan 2013* ('the DCP')

Chapter B1 – Tree Management

The objective of this chapter is to give effect to State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021 by listing those trees or other vegetation that require approval for removal or pruning. The proposed development seeks consent for the removal of vegetation that exceeds the BOS clearing threshold as part of a Part 4 application.

Therefore, native vegetation removal is assessed against the provisions of the Biodiversity Conservation Act 2016 and B2 of the DCP. No tree removal permit is required as the works form part of a development application. A BDAR was prepared for the proposal by Anderson Environment & Planning. The BDAR identified that a total of 2.242ha of native vegetation requires removal to facilitate the development. Council's Environmental Planner supported the removal of the vegetation on the site subject to conditions. This is discussed in further detail under Chapter B2 below.

The removal of vegetation is discussed further against Chapter B2 of the DCP below.

Chapter B2 – Flora and Fauna

This chapter applies to development that has the potential to impact native flora and fauna, contains a biosecurity risk, and contains land mapped as koala habitat. The development seeks to remove native vegetation which has the potential to impact native flora and fauna and therefore this chapter applies. In addition, the site contains a biosecurity risk (weeds).

This chapter notes that where biodiversity impacts exceed the Biodiversity Offset Scheme (BOS) threshold defined in the Biodiversity Conservation Act 2016 (BC Act), a Biodiversity Development Assessment Report (BDAR) will be required. The proposal seeks consent for the removal of native vegetation that exceeds the BOS clearing threshold. As such, a BDAR was prepared for the proposal by Anderson Environment & Planning.

Section B2.A Ecological Impact

The objectives on this section are to:

- To avoid and minimise impacts on native flora and fauna.

- To protect and enhance native flora and fauna, vegetation communities, and significant habitat on the site.

The BC Act establishes a biodiversity offset hierarchy for managing the adverse impacts of a development in order of priority of action, starting from avoidance, then mitigation and finally offsets. The site was rezoned in 2022. As a part of the Planning Proposal, a Biodiversity Development Assessment Report (BDAR) was prepared. The BDAR determined that the vegetation within the area now zoned E1 was mainly degraded and was unlikely to provide habitat for threatened species. The findings of the BDAR informed the zoning of the land, including the extents of the E1 and C2 zoned areas resulting in the majority of the areas of high biodiversity value being avoided and protected under a C2 zoning. The purpose of this was to avoid and minimise impacts on native flora and fauna which is consistent with both the BC Act provisions and the objectives of this chapter. However, the C2 zoning does not permit commercial development. It is acknowledged that the findings of the *Planners North v Ballina Shire Council* [2021] NSWLEC 120 case state that land that cannot be developed for the purpose of the proposed development (a commercial development in this case), cannot be considered as an avoidance measure under the BC Act hierarchy. Although this case is not a binding legal provision, the findings have relevancy when considering avoidance measures under the BC Act mitigation framework.

The site has a total area of approximately 6.86ha with 2.46ha zoned E1 and 4.4ha zoned C2. Overall, the proposed development seeks consent for the removal or modification of 2.242ha of native vegetation within the E1 zone and 0.007ha in the C2 zone for the purpose of the pylon sign. As noted above, the proposed clearing exceeds the native vegetation clearing threshold and therefore has triggered entry into the BOS.

The BDAR found that the native vegetation on the site overall contained four (4) plant community types (PCTs) being PCT 1646, PCT 1717, PCT 1728 and PCT 1737. These PCTs were found to be present in varying conditions. Six (6) vegetation zones were assessed within these PCTs.

A number of threatened fauna species were recorded or assumed present on the site including:

- Southern Myotis (*Myotis macropus*);
- Common Planigale (*Planigale maculata*)
- Eastern False Pipistrelle (*Falsistrellus tasmaniensis*)
- Eastern Coastal Free-tailed Bat (*Micronomus norfolkensis*)
- Little Bent-winged Bat (*Miniopterus australis*)
- Yellow-bellied sheath-tail Bat (*Saccolaimus flaviventris*)

Council Environmental Planner had concern regarding the potential presence of the threatened species Wallum Froglet and Mahony's Toadlet within the southern portion of the development footprint. Council's Environmental Planner conducted further site investigations to determine whether these species were present. It was determined that the habitat in the southern portion of the site was not suitable for these species due to the high pH recorded. In regard to the Green-thighed Frog and Green and Golden Bell Frog, it was determined that these species do not commonly occur within the area. Therefore, with consideration to the habitat on site, the lack of local records and the survey work previously undertaken as part of the Planning Proposal, these species are considered unlikely to occur on site.

Whilst much of the vegetation removal proposed is within the E1 zoned area, there is minor disturbance required in the C2 zoned land for the proposed business identification signage in the south eastern corner of the site fronting Nelson Bay Road. Business identification signage

is a permitted land use in the C2 zone in accordance with the LEP. The installation of the sign has a footprint area of 0.0001ha. The BDAR assessed the signage with an impact area of 0.007ha when including a 3m buffer area. The BDAR determined that the area where the sign is proposed to be located is PCT 1728 - *Swamp Oak - Prickly Paperbark - Tall Sedge swamp forest on coastal lowlands of the Central Coast and Lower North Coast* which forms part of the Endangered Ecological Community (EEC) - Swamp Oak Floodplain Forest and was considered to be in moderate condition. The BDAR determined that the impact from the installation of the signage on this community is negligible. In addition, it was noted that no hollow bearing trees will be impacted where the proposed business signage is proposed to be located. There is one tree that is proposed to be removed that is located on the border of the two zones in the east. The tree is a large Broad-leaved Paperbark (*Melaleuca quinquenervia*). It is noted there was originally a total 5 trees proposed to be removed (including one koala feed tree) in the C2 zoned land (one on the border) but design changes have reduced this impact, and was supported by an Arborist Report prepared by Anderson Environment and Planning. No other vegetation is proposed to be removed within the C2 zone.

Of the 2.242ha of native vegetation to be removed (2.235ha in the E1 zone and 0.007ha in the C2 zone), 1.42ha was found to be highly degraded and as a result, its removal does not require credit offsets. With this highly degraded area excluded from consideration, the proposed development would impact only 0.815ha of native vegetation within the E1 portion of the site. It is noted that during assessment of the application, the design was amended to reduce the development footprint to further avoid native vegetation along the northern boundary of the E1 zoned area reducing the clearing in the E1 zone from 2.27ha to 2.235ha, refer to **Figures 16 and 17** below. The area now retained contains a mix of native and exotic species including a mature Magenta Lilly Pilly (*Syzygium paniculatum*), which is a listed threatened species under the BC Act and EPBC Act. In addition to protecting a threatened species, this area will also contribute to establishing a buffer to the watercourse to the north, which feeds into the RAMSAR listed Fullerton Cove Wetland. The area of native vegetation to be removed in the E1 zoned (0.815ha) was classed as being of poor to moderate condition, was found to contain only one koala feed tree (which is required to be replaced at a 1:8 ratio) and no habitat trees (including hollow bearing trees).

To further mitigate residual impacts from the on-going operation of the proposed development on the C2 zoned land, conditions have been recommended requiring that permanent lighting be designed to minimise light spill into surrounding vegetation and that fencing be installed between the development and surrounding C2 zoned land to deter access and degradation of this area of the site.

In addition to works on the development site, the proposal also involves the sewer connection works. The sewer main is proposed to be constructed directly adjacent to the sewer main that was recently constructed to support the development at 21 Fullerton Cove Road. It is noted that the sewer main extension is required to traverse through vegetation including a Swamp Sclerophyll Forest which is a Threatened Ecological Community (TEC), refer to **Figure 18**. To avoid impact to vegetation, under boring is proposed in certain locations as shown in the sewer connection plans. Noting this, no vegetation removal is proposed to facilitate the sewer main construction. A condition has been recommended noting no consent is granted for vegetation removal associated with the sewer connection works.

Noting the above, it is considered that the areas of high biodiversity value have been appropriately avoided and impacts minimised, satisfying the hierarchy requirements of the BC Act and the objectives of this chapter. Notwithstanding, the proposed vegetation removal has also generated the requirement for offsetting. The BDAR calculated the offsets required which have been included as recommended requiring the applicant to retire biodiversity credits prior to the issue of a Construction Certificate to offset the residual impact on biodiversity values.

To manage the conservation lands as a minimisation and conservation measure, the applicant also seeks to prepare a Biodiversity Management Plan (BMP) for the C2 land. This requirement forms part of a recommended condition. The BMP will be required to be endorsed by Council's Environmental Planner prior to a Construction Certificate being issued. The preparation of the BMP will ensure that areas already containing high ecological value will continue to be managed and protected and those that are of lower ecological value be restored. It is noted that the replacement koala feed trees will be required to be planted within the C2 zoned area.

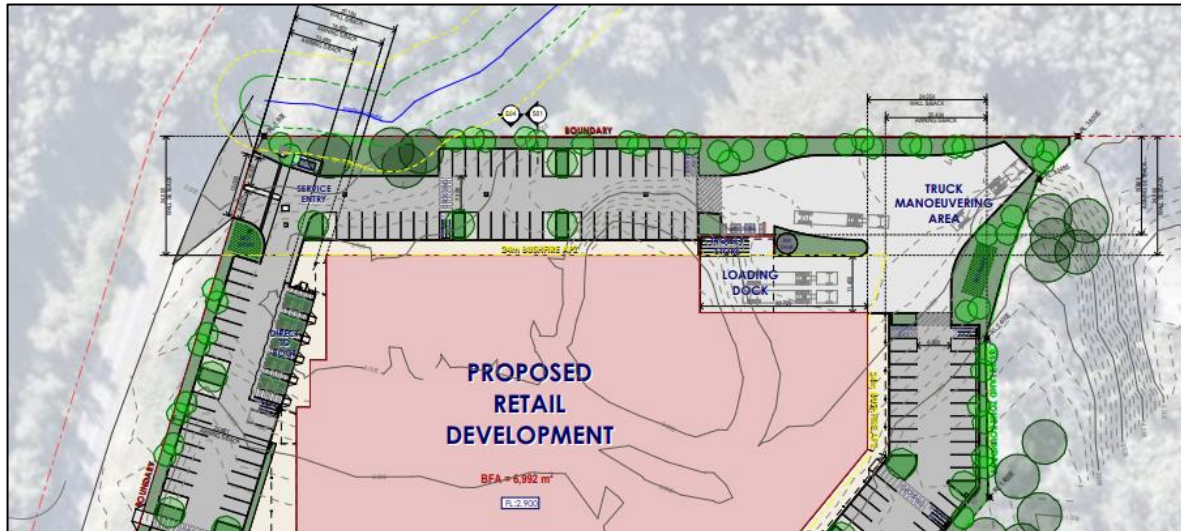


Figure 16. Originally proposed site plan

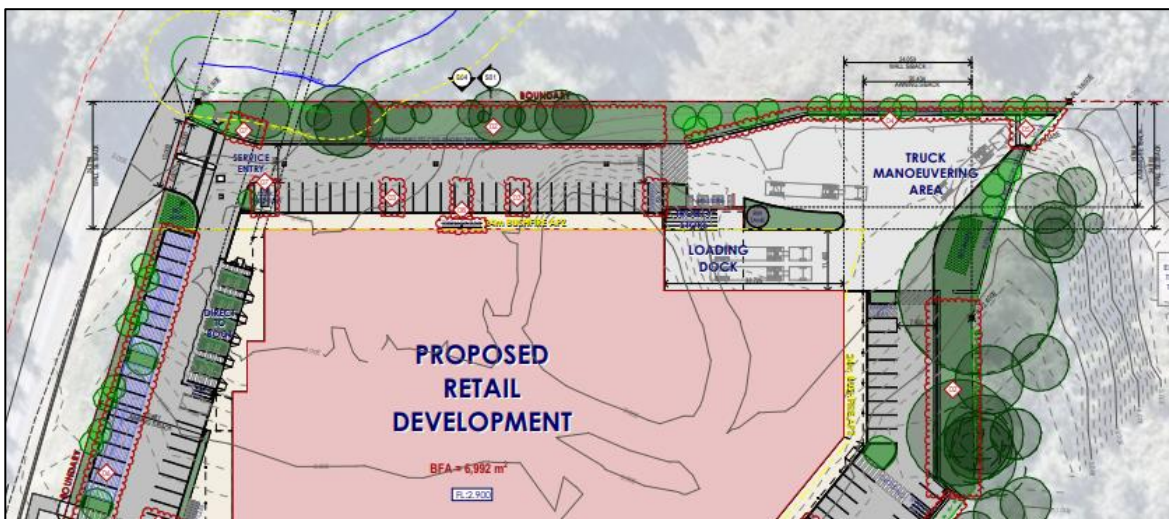


Figure 17. Amended site plan further avoid vegetation along the north boundary and the internal zone boundary in the east

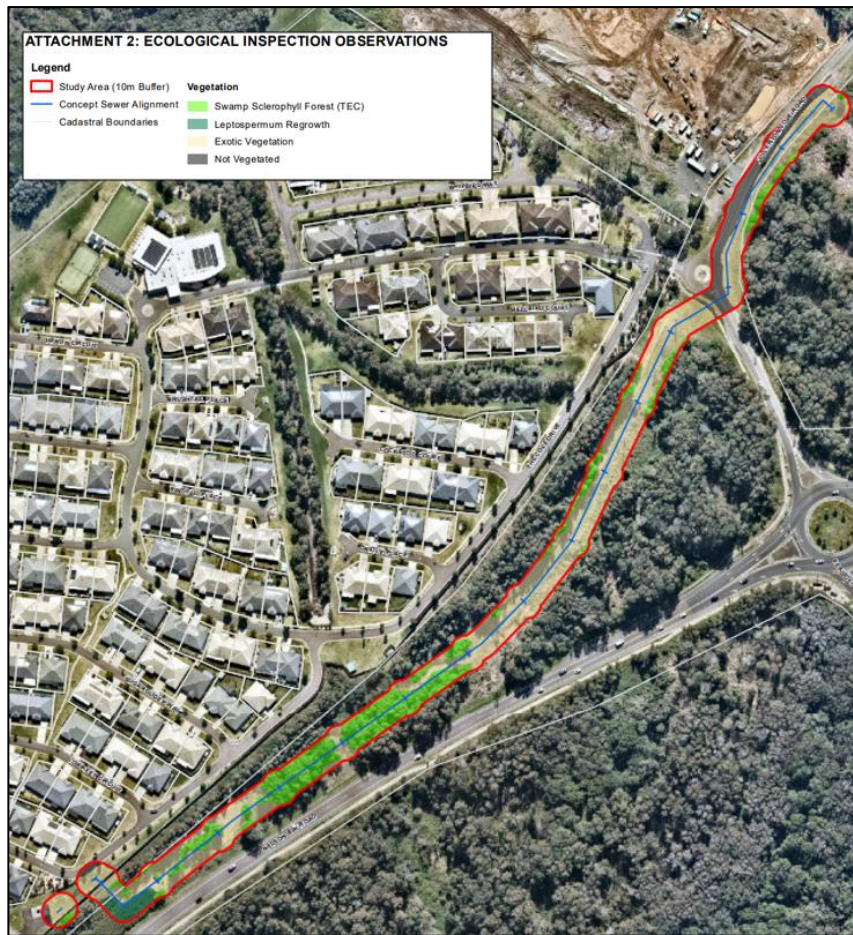


Figure 18. Location of TEC within proximity to sewer main works

Section B2.B – B2.C Koala Habitat and Compensatory Requirements

The objective of this section is to:

- To encourage the proper identification, management and conservation of Koala habitat in accordance with Council's Comprehensive Koala Plan of Management (CKPoM).

The site is mapped partly as mainly cleared and partly as supplementary koala habitat. The BDAR assessed the proposal against the CKPoM's performance criteria. The BDAR identified three koala feed trees (3 x Swamp Mahoganies) within/in proximity to the development footprint. One of these koala feed trees requires removal to facilitate the proposed development. It was determined that the removal of this tree would not result in adverse impacts as it is disjunct from other vegetation and is largely surrounded by cleared land. Notwithstanding, Council's Biodiversity Technical Specification requires that koala feed trees are replaced at 1:8 ratio. A condition has been recommended accordingly.

Overall, the BDAR concluded that given sites small size, low levels of koala records in the immediate vicinity, the presence of the retained native vegetation on site, and connectivity in the locality, the proposed development is not likely to impact on existing koala population within the region making it consistent with this CKPoM and therefore this policy. Council's Environmental Planner supported the assessment against the CKPoM. As such, the proposal is consistent with this section of the DCP.

Section B2.D – Biosecurity Risks (weeds)

The objective of this section is to:

- To reduce the negative impact of biosecurity risks (weeds) on the economy, community and environment by eliminating or restricting their geographical spread

The site has been identified as containing weeds in both Council's mapping and within the BDAR. To satisfy the objectives of this section, conditions have been recommended which require certain measures to be implemented prior to the commencement of works and during works. It is noted that the BMP will also include measures to eliminate and dispose of high threat exotic weeds and highly competitive weeds within the C2 zoned land.

Overall, the proposed development is consistent with this Chapter.

Chapter B3 – Environmental Management

Chapter B3 contains provisions relating to earthworks and noise impacts which have been assessed below.

Air Quality

The development is not a use that would adversely impact surrounding areas in terms of air quality and therefore an Air Quality Impact Assessment was not prepared for the development. Notwithstanding, a condition has been recommended requiring that a Construction Site Management Plan be prepared that includes measures to manage dust during construction of the proposed development.

Noise

Control B3.B identifies that an acoustic report is required for development that has the potential to produce offensive noise. Considering the construction works required, the proposed operational and delivery hours and the sites proximity to sensitive receivers, an Acoustic Assessment was prepared by Rapt Consulting. The Acoustic Assessment considered impacts of the proposed development during both construction and operation.

It was identified that there may be exceedance of noise criteria during construction for one residential receiver. This exceedance was predicted to be by 3dB(A). According to the Acoustic Assessment, this is widely considered as 'just noticeable'. Notwithstanding, given the exceedance, the report recommended that a Noise Management Plan be implemented as part of the proposal to minimise noise emanating upon the community. A condition has been recommended requiring the preparation of a Construction Management Plan that includes noise measures.

Acoustic modelling was also undertaken to predict the effects of site operational noise. The modelling considered impacts from mechanical plant, industrial noise, road noise, and site deliveries and removal. The results of the assessment indicate compliance at all residential and commercial / industrial receptors during operation. Additionally, as this was a maximum noise level assessment, sleep disturbance noise goals are expected to be met in all situations. It was noted that the modelling was undertaken based on worse case scenarios and therefore noise levels are expected to be significantly less. Overall, the assessment found that the development was acceptable from a noise impact perspective. These findings were supported by Council's Environmental Health Officer.

The proposal is therefore considered to be consistent with this chapter.

Earthworks

There is proposed to be 7,920m³ of cut and 6,039m³ fill and therefore, a bulk earthworks plan has been provided with the DA as required by this chapter, refer to **Figure 19**.

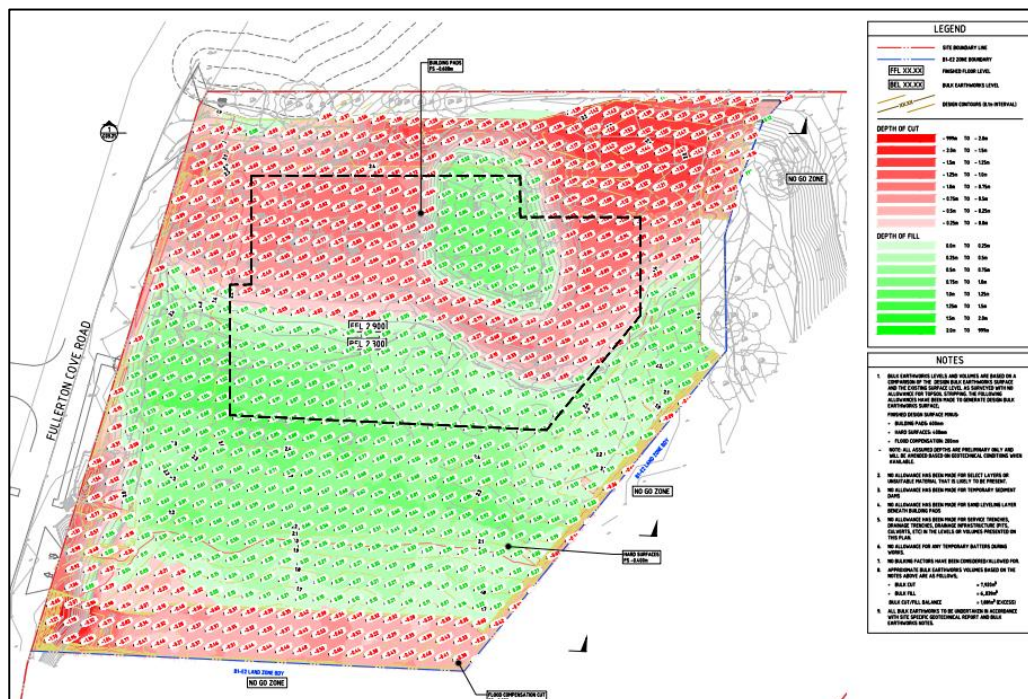


Figure 19. Proposed bulk earthworks plan

Chapter B4 – Drainage and Water Quality

This section applies to development that:

- *Increases impervious surfaces; or*
- *Drains to the public drainage system; or*
- *Involves a controlled activity within 40m of waterfront land.*

The development seeks to increase impervious surfaces, drain to the public drainage system and is within 40m of waterfront land. Therefore, this chapter applies.

A storm management plan was prepared by Northrop Consulting Engineers. The stormwater systems has been designed as follows:

- All stormwater runoff from the northern section of the car park will be captured via a pit and pipe network and conveyed to treatment devices before being discharged off the site into the watercourse to the north of the site via a concrete headwall with scour protection at the outlet to the pipes.
- All stormwater runoff from the eastern and southern areas of the car park is proposed to be captured by pit inserts and treated accordingly prior to being discharged to flat based swales acting as a level spreader within the compensatory flood storage area and then draining to the southern discharge point.
- All stormwater runoff from the roof will be split and directed to above and below ground stormwater tanks for reuse. Harvested water is proposed to be reticulated internally for toilet flushing and externally for landscape irrigation. Overflow from

these tanks will be conveyed to the stormwater system for treatment prior to discharge to one of the discharge points previously noted.

Council's Development Engineer supported the stormwater design from a water quality and drainage perspective.

Chapter B5 – Flooding

This section applies to all development on flood prone land. The subject land is mapped as being within the Flood Planning Area. The site contains high hazard flood storage, low hazard flood storage, low hazard flood fringe areas. The development is located across all flood hazard categories on the site.

Figure BI of the DCP identifies suitable land uses by flood hazard category. Shops, commercial premises and medicals centres are not a use specifically identified. As such, the proposal falls under the 'all other development' category which is considered suitable in the flood hazard categories to which the development is located.

Figure BJ of the DCP identifies the required Finished Floor Level (FFL) for certain development types. For commercial premises, habitable rooms are required to be at the flood planning level (FPL) and non-habitable rooms at the onsite waste water level. Car parking and access driveways are required to be at the current day 1% AEP flood level. The subject site has an FPL of 2.9m AHD, an on-site waste water level of 1.8m AHD and a current 1% AEP level of 1.7m AHD.

The FFL for the commercial premises is proposed to be 2.9m AHD and therefore compliant with the FPL. The proposed driveway is also proposed to be constructed to 2.12m AHD which is above the 1% AEP level requirement. Majority of the carpark is also proposed to be above this level. A small portion of the car park in the south is below the 1% AEP level requirement. Notwithstanding, this was supported by Council's Development Engineer given the small area impacted and that it will all for as much flood storage to be retained on site as possible.

The building is considered to be consistent with the flood compatible design requirements with all structures being located at the FPL and therefore not impacted by the 1% AEP flood event.

As per control B5.8, a Flood Impact Assessment is required where fill that exceeds 2000m³ is proposed in a flood storage area. The proposal includes 6,039m³ of fill in a flood storage area and therefore a Flood Impact Assessment (FIA) was prepared for the proposal by Northrop Consulting Engineers. To reduce potential impacts from the proposed filling, 7,920m³ cut is proposed to provide compensatory flood storage on the site. As noted under the assessment again Clause 5.21 of the LEP, the FIA found that the proposal would result in minor increases in flood impacts during each flood event up to and including the PMF event. Although, the findings note that the impacts are minor in nature mostly localised to road reserves and existing culverts and therefore do not result in additional impacts to existing residential properties or sensitive land uses. The FIA therefore concluded that the proposal would not increase flood risk to life.

Conditions have been recommended requiring that all electrical features designed for construction are located above the FPL.

A driveway and access has been designed to be above the 1% AEP level of the site which is consistent with the level of Fullerton Cove Road.

The proposal was supported by Council's Development Engineer from a flooding perspective.

Chapter B7 – Heritage

The objectives of this section is to conserve environmental heritage, heritage items and conservation areas, archaeological sites and Aboriginal sites and objects of heritage significance.

There are no local or state heritage listed items on the site. Aboriginal heritage impacts have been addressed elsewhere in this report.

Chapter B8 – Road Network and Parking

This chapter applies to development with the potential to impact on the existing road network or create demand for on-site parking.

Traffic Impacts

The proposed development is categorised as traffic generating development in accordance with the Transport and Infrastructure SEPP. A Traffic Impact Assessment (TIA) was prepared for the development by Seca Solution. TfNSW requested that as per the Guide to Traffic Generating Development, traffic generation from peak hour periods on Thursdays PM, Fridays PM and Saturdays should be assessed to understand the potential impacts from the proposed development. It was found that the proposal would generate the following vehicle trips:

- Thursday PM – 360 (180 inbound / 180 outbound)
- Friday PM - 330 (165 inbound/165 outbound)
- Saturday – 408 (204 inbound/204 outbound)

The applicant utilised SIDRA modelling to assess potential impacts to the surrounding road network under existing and future traffic demands through to the 10 year traffic forecast. The modelling included traffic flows associated with the proposed development, the lifestyle village currently under construction, The Cove over 55s village plus a 2% pa background growth.

It was found that the proposed increase in traffic is within the capacity of the existing road network without necessitating significant upgrades and would not adversely impact the functioning of the existing roundabouts to the south east and south west of the site.

Notwithstanding, the proposed development does require some road upgrades along the frontage to Fullerton Cove Road. The upgrades include the provision of a right-hand turning lane from Fullerton Cove Road into the development site as well as a pedestrian refuge connection to a footpath from the site to the existing footpath adjacent to the site.

TfNSW and Council's Development Engineer supported the proposal from a traffic perspective.

On-site Parking Provisions

Figure BU identifies car parking requirements for specific land uses. The parking requirements are shown in **Table 7** below.

Table 7: Consideration of the LEP Controls

Use	Control
Shop	1 car space per 20m ² floor area 1 accessible car space per 30 car spaces.

Medical Centre	1 car space per 25m ² floor area 1 car space per 10 car spaces
----------------	--

The parking requirements for shops has been used to assess the supermarket and the 5 tenancies. The non-trading area of the supermarket and the amenities have been excluded from these calculations. Based on this, the floor area for the commercial uses on site is 4,150m². This generates that requirement for 208 car parks including 9 accessible spaces.

The medical centre (tenancy 4) has a total area of 848m² and therefore requires 34 car parking spaces including 3 accessible spaces.

Based on the above, the development is required to have 242 car parking spaces including 12 accessible space. The proposal includes a total of 280 car parking spaces including 12 accessible space. The proposal is therefore compliant with Figure BU.

On-site Parking Access

Two new crossovers from Fullerton Cove Road are proposed. One crossover is proposed in the south of the site for standard vehicles only, whilst another is proposed in the northern portion of the site and has been designed to be utilised by both standard and service vehicles. The TIA prepared by Seca Solution confirms that both access points achieve the required sight lines.

Swept paths have been provided which demonstrate that vehicles (including service vehicles) can enter and exit the site in a forward direction.

Visitor Parking and Loading Facilities

Given the nature of the development, visitor parking is not required to be marked/signposted.

The service area is appropriately located on the site being at the rear of the site, away from pedestrian access and nearby residential uses.

Electric Vehicle Infrastructure

In accordance with control B8.21, car parking or non-residential development where 10 or more parking spaces are provided is to include provision for the installation of at least 1 shared electric vehicle charging point per 10 car parking spaces. Based on this requirement, the development is required to provide 28 car parks with electric vehicle charging points. A total of 28 car parks have been identified on the site for EV charging.

Chapter C2 – Commercial

This section applies to development defined as commercial premises.

Height

Control C2.1 requires that height is consistent with the maximum building height stipulated in the PSLEP. As previously assessed, the proposed height exceeds the PSLEP control however, is considered acceptable in this instance. Refer to Attachment B for the Clause 4.6 Variation assessment.

Controls C2.2-2.5 relate to floor to ceiling heights. The proposed floor to ceiling height is 4.5m which exceeds the 3.5m requirement.

Site frontage and setbacks

As per control C2.6, where a building is higher than 10.5m, the minimum site frontage is required to be 20m. The proposed height does not exceed 10.5m. Notwithstanding, the site frontage exceeds 20m.

Control C2.7 requires that development is built to the front boundary line for the ground and first floor. The proposed development is not compliant with this control. When taking into consideration the developments design and the surrounding character of the area, the proposed setbacks are considered to result in a better planning outcome in that it is more consistent with the surrounding streetscape context and allows for the provision of meaningful landscaping. Therefore, the front setback variation is supported in this instance. Controls C2.8 – C2.9 provide controls of development that exceed two storeys and therefore doesn't apply to the proposal.

Control C2.11 requires that development be built to the side boundary to maximise continuous active street frontage, except where side access is provided. The proposed development is significantly setback from its side boundaries and therefore doesn't comply with this control. The site is the only commercially zoned land within the immediate vicinity meaning there is no existing active street frontage. Provision of an active street frontage is not considered suitable in this location for this reason. In addition, the provision of side setbacks allows for the retainment of existing vegetation and provision of landscaping both of which assist ensuring the development built form is consistent with the streetscape character. The controls under this section are akin to high street commercial development, as opposed to standalone a supermarket with integrated commercial tenancies. Therefore, they are not strictly applicable in the context of the development.

Control C2.12 requires that a commercial development that is adjacent to a lot that is zoned or used for residential purposes or a public reserve is to provide a minimum rear setback of 5m. The sites rear boundary is with Nelson Bay Road and therefore this control does not strictly apply. Notwithstanding, given the presence of the C2 zoned land, a significant setback from this boundary is proposed (approximately 112m). The proposed development is also setback approximately 25.2m from the internal boundary with the C2 zoned land. The rear setbacks are considered appropriate for the sites context and zoning.

Despite the numerical variations, the design and context of the site still achieve the intended DCP objectives of a well designed commercial premises.

Further, Section 4.15(3A) of the EP&A Act stipulates that if a development control plan contains provisions that relate to the development that is the subject of a development application, the consent authority may reasonably vary those standards in accordance with the below—

(b) if those provisions set standards with respect to an aspect of the development and the development application does not comply with those standards—is to be flexible in applying those provisions and allow reasonable alternative solutions that achieve the objects of those standards for dealing with that aspect of the development, and

(c) may consider those provisions only in connection with the assessment of that development application.

Building form and massing

Control C2.15 states that the building mass does not result in unreasonable loss of amenity to adjacent properties or the public domain. Given the proposed setbacks, the building mass does not result in unreasonable loss of amenity.

Control C2.16 states that building proportion is complimentary to the form, proportions and massing of existing building patterns. The site is surrounded by a mixture of land uses including residential and rural uses. Much of the built form surrounding the site is single storey. The proposed development is largely single storey with the exception of the plant room condenser deck and the voids provided in the forecourt areas. Given this and the setbacks proposed, the proposal is considered to be complementary of the existing built form.

Facades

Control C2.17 states that building facades are to use materials, colours and architectural elements to reduce bulk and scale. The development has used a mixture of materials and finishes which includes different coloured painted external cladding and perforated patterned metal sheeting, refer to **Figure 20**. It is considered that the proposed finishes reduce the bulk and scale.



Figure 20. Proposed materials and finishes

Controls C2.18 – C2.19 relate to active street frontages. As noted previously the site is not within a location where business premises or retail premises predominately face the street and have direct pedestrian access from the street. Therefore, these controls are not considered to be applicable.

Control C2.20 requires that development incorporates crime prevention through environmental design (CPTED) principles by providing passive surveillance to public spaces through building design and orientation. A CPTED report was prepared for the proposal by Monteath and Powys. The findings of the report have been considered below.

- *Access Control*

Access control treatments restrict, channel and encourage people and vehicles into, out of and around the development. The proposal has been designed with access control measures as follows:

- Formal access to the site has been limited to two vehicular access points and one pedestrian access point from the public domain. These accesses have been designed to be clearly legible through use of landscaping and physical barriers.
- Entry to the building itself is legible whilst still being integrated into the building design.
- Pedestrian crossings and pathways have been provided throughout car park providing connect to and from the commercial building.

The CPTED report recommends the following to improve access control:

- During the construction stage, clear directional and wayfinding signage is to be integrated into the proposed development at an appropriate rate and location to enable functional guidance of visitors and to deter unauthorised access to restricted areas.
- Above mentioned signage to be supported by clear road markings, where applicable.
- Bollards are to be installed around the key pedestrian and retail interfaces, specifically, the main forecourt entrance should be provided with bollards to prevent vehicle access.
- During the operation of the use, limit access to service areas, such as loading docks, to authorised personnel only. Where appropriate, barriers or controlled entry points are to be used in these areas to prevent unauthorised entry. The designated direct-to-boot door along the northwest side of the building should be kept locked when not in use.

A condition has been recommended requiring compliance with the recommendations of the CPTED report. It is noted that the wayfinding should form part of the construction plans. This has been clarified in the recommended condition.

- *Territorial Re-enforcement*

Territorial re-enforcement uses actual and symbolic boundary markers, spatial legibility and environmental cues to 'connect' people with space, to encourage communal responsibility for public areas and facilities, and to communicate to people where they should/not be and what activities are appropriate. The proposal has been designed with territorial re-enforcement measures as follows:

- Physical barriers including landscaping and fencing is proposed along the boundaries of the E1 zoned areas reinforcing the development area.
- Clear pedestrian entry points.
- Provision of wayfinding signage and pavement parks as per the recommendations under access control.
- Provision of public art with the intended final design to be prepared by a local artist which will further encourage connection to the space.
- Outdoor seating is proposed which will encourage social interaction and therefore further connection to place.

- *Surveillance*

People feel safe in public areas when they can see and interact with others, particularly people connected with that space, such as shopkeepers or adjoining residents. There are two types of surveillance to consider; natural surveillance and technical/mechanical surveillance.

Natural surveillance is achieved when normal space users can see and be seen by others. The proposal includes natural surveillance measures as follows:

- Tenancies that are oriented towards the carpark have been design with direct access from the forecourt area ensuring pedestrian movement and social interaction within the area.
- Seating is provided within the forecourt area which will encourage use by customers and provide passive surveillance.
- Landscaping selection maintains sightlines across the car park to the commercial building.
- The direct to boot area has been located in a portion of the site that would otherwise be of low use and therefore encouraging use of this portion of the site.

There is potential risk associated with car park next to loading dock in the north of the site. This area will be frequented by staff using the dock and service vehicles which would provide some passive surveillance. Notwithstanding, this area will need to be complemented with technical surveillance.

Technical/mechanical surveillance is achieved through mechanical/electronic measures such as CCTV, help points and mirrored building panels. The plans do not include detail for any technical surveillance. However, the CPTED report recommends CCTV and suitable lighting be provided throughout the site. It was also recommended in the report that trees and shrubs be maintained to ensure sightlines are maintained. As noted previously, a condition has been recommended requiring that the recommendations of the CPTED report be incorporated into the development.

- *Space Management*

Space/Activity Management strategies are an important way to develop and maintain natural community control.

Whilst space management will largely be undertaken by the future site managers. Conditions have been recommended to further ensure space management including the requirement for ongoing maintenance of landscaping, driveways and signage and removal of graffiti within 24 hours.

Control C2.21 requires that commercial development provides paving to the public footpath for the entire length of the development street frontage. There is currently no footpath along the site frontage. However, the proposal includes a footpath from the site and a pedestrian refuge which will connect to an existing shared pathway. This pathway provides pedestrian connection to the approved and existing residential villages to the sites west and south west as well as the Seaside residential estate to the sites south east. There is a pedestrian path and crossing internal to the site which will connect to the path proposed in the road reserve, refer to **Figure 21**.



Figure 21. Proposed pedestrian footpath

Awnings

Control C2.2 requires that awning are proposed over pedestrian pathways. Awnings are provided over pedestrian entries to the building which is considered suitable.

Building Entries

Control C2.23 requires that access points are recognisable from the primary street. From the street, two vehicular access points and one pedestrian access point are proposed. These accesses have been designed to be clearly legible. Entries to the building are also clearly identifiable.

Building facilities and services

Control C2.25 requires that building facilities and services are located at the rear of the building. The proposal complies with this requirement.

The DCP requires that commercial development with a CIV over \$2 million shall provide toilets that are accessible to the public. Amenities are provided.

Public Art

Control C2.27 requires that commercial development with a capital investment value over \$2 million and that provides frontage to the public domain shall incorporate public art. A concept public art plan has been provided which incorporates pavement designs and murals to outdoor seating design by a local artist, refer to **Figure 22**. A condition has been recommended requiring that prior to the issue of a Construction Certificate, the applicant must obtain approval from Council's Vibrant Places team for the final design.

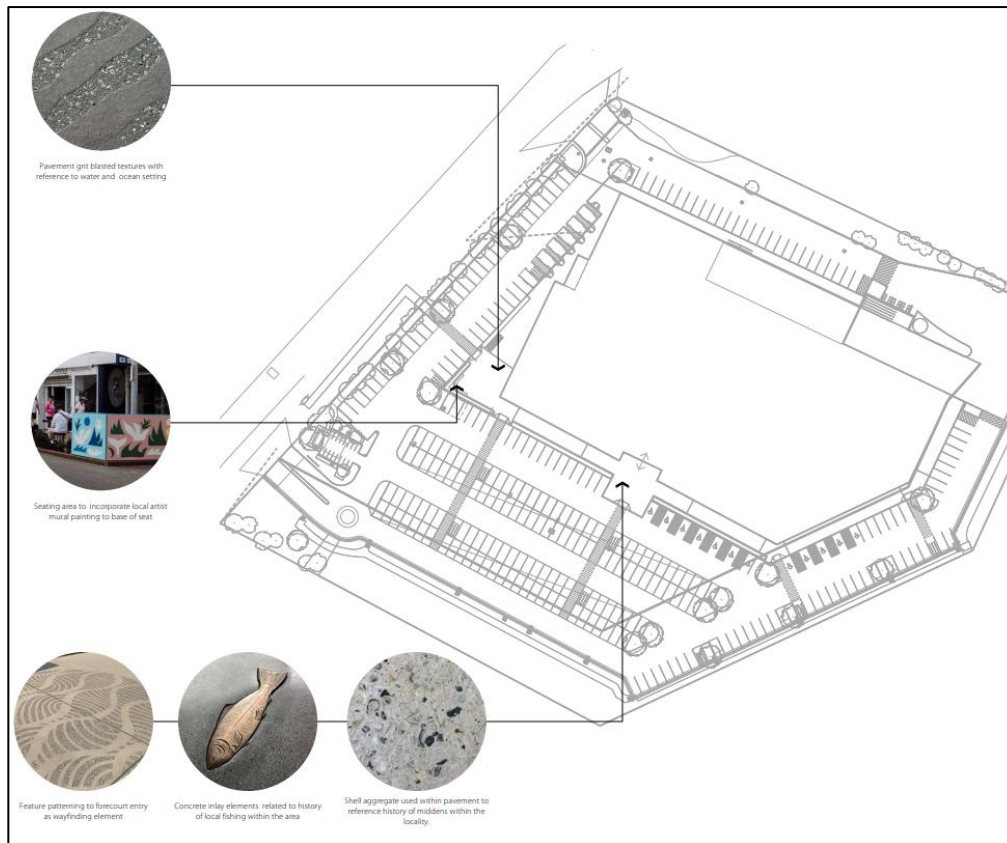


Figure 22. Concept public art plan

Shipping Container Stacks

No shipping containers are proposed and therefore this section does not apply.

Landscaping

Control C2.31 requires that landscaping is provided as follows:

- 10% of the site area consisting of deep soil planting
- 30% shading over car park areas

Control C2.32 notes that to be counted as part of the total landscaping coverage the landscaped area must be at least 1.5m wide and 3m long. A total of 17.2% of the development area is deep soil landscaping and is therefore compliant. To provide additional shading, shade covers are proposed throughout the site. A total of 25% of the car park is shaded which is non-compliant with the DCP.

Specialised retail premises

N/A the proposed development is not defined as a specialised retail premises.

Signage

The signage proposed is not a type of signs listed as not supported.

Development Contributions

The following contributions plans are relevant pursuant to Section 7.18 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- *Port Stephens Local Infrastructure Contributions Plan 2020 (PS LIC Plan)*

Under the PS LIC Plan S7.11 contributions do not apply to the proposed development.

There are no exemptions for the proposed use and therefore S7.12 contributions apply.

A condition has recommended requiring that a monetary contribution is to be paid to Council, pursuant to section 7.12 of the EP&A Act and the Port Stephens Council Fixed Development Contributions Plan, prior to release of the Construction Certificate.

(d) Section 4.15(1)(a)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

There have been no planning agreements entered into and there are no draft planning agreements being proposed for the site.

(e) Section 4.15(1)(a)(iv) - Provisions of Regulations

Section 61 of the 2021 EP&A Regulation contains matters that must be taken into consideration by a consent authority in determining a development application, with the following matters being relevant to the proposal:

- S61(1) requires that if a development application includes the demolition of a building, the consent authority must consider the Australian Standard AS 2601—2001: *The Demolition of Structures*. Appropriate conditions have been recommended to address demolition requirements.

These provisions of the 2021 EP&A Regulation have been considered and are addressed in the recommended draft conditions (where necessary).

3.5 Section 4.15(1)(b) - Likely Impacts of Development

The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality must be considered. In this regard, potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls outlined above and the Key Issues section below.

Built Environment

The site is surrounded by a mixture of land uses including residential and rural land uses. The proposal is therefore the only commercial development within the sites immediate surrounds. Notwithstanding, the proposal has been designed in a way that will reduce potential impacts to the existing built form, with the building itself being significantly setback from all boundaries particularly the Fullerton Cove Road frontage, which will be the most visible aspect from the public domain due to the retained vegetation along other boundaries. Landscaping is proposed along the front boundary which includes tree plantings *Tristaniopsis laurina*, *Glochidion ferdinandi* and *Cupaniopsis anacardioides* all of which are native species. This provision of this landscaping will soften the hardstand space and complement the built form which is evident in the montages of the development in **Figure 23** and **24** below.

Whilst the building exceeds the maximum height limit, it is considered to be reflective of the land use structure and intended character of this land.



Figure 23. Existing and proposed montage looking north east along Fullerton Cove Road



Figure 24. Existing and proposed montage looking south along Fullerton Cove Road

Natural Environment

The proposed development seeks to remove native of vegetation as discussed in this report. Whilst the proposal seeks to remove 2.242 hectares of native vegetation, 1.42ha was found to be highly degraded and as a result, its removal does not require credit offsets. With this highly degraded area excluded from consideration, the proposed development impacts 0.815ha of native vegetation. The 0.815ha of vegetation was found to be in poor to moderate condition. The removal of this vegetation is not considered likely to result in adverse environmental impacts. It is considered that the areas of high environmental value within the site have been appropriately avoided and impacts minimised, satisfying the hierarchy requirements of the Biodiversity Conservation Act.

Whilst the retainment of vegetation within the C2 zoned area of the site cannot be considered when satisfying the hierarchy requirements of the Biodiversity Conservation Act, the proposal also includes the preparation of a Biodiversity Management Plan (BMP) for this portion of the site which will have beneficial impacts to the natural environment. The BMP will ensure that the areas within this portion of the site that are already of high value will continue to be managed and protected and those that are of lower ecological value be restored.

Noting the above, whilst the proposal will have impact on the existing natural environment, these impacts are considered to have been appropriately minimised.

Social and Economic Impact

The proposal will have a positive social and economic impact as it will create more jobs within the area during both construction and throughout the developments operation. The applicant has indicated that the proposal will create a total of 170 full time equivalent jobs during operation of the development.

This provides job reassurance and security contributing to positive social outcomes. The proposal is in proximity to the urban areas of Fullerton Cove, Fern Bay, Stockton and Newcastle, allowing for short commute times.

As evidenced in the Fern Bay and North Stockton Strategy, the area is currently underserved by commercial development. The strategy found the residents are likely to travel to Newcastle, Medowie or Mayfield centres for shopping needs which are located approximately 20 minutes by car outside peak hours from the area. Noting this, the proposal is considered to result in positive social and economic impacts as it will result service existing future resident's needs, reduce the travel required to get to a larger centre which will reduce transport costs and also provide a centre for the community to socially interact.

In addition, the development has been designed having consideration of CPTED principles in the aim to reduce the potential for crime and create a sense of community at the proposed development.

Accordingly, it is considered that the proposal will not result in any significant adverse impacts in the locality as outlined above.

3.6 Section 4.15(1)(c) - Suitability of the site

The site is considered to be suitable for the proposed development for the following reasons:

- The site has recently been rezoned for commercial purposes which was intended to enable a local centre, with a supermarket, for local day-to-day retail convenience and services within an area that is currently underserved.
- The site is consistent with the findings of the Fern Bay and North Stockton Strategy which identified the need for a new local super market including a large format supermarket to service the needs of a community that is currently underserved.
- The site is conveniently located in close proximity to existing residential development which is accessible by a suitable road network that does not require significant upgrades and existing pedestrian footpaths.
- Impacts from the proposed development have appropriately assessed and mitigated as required.
- The development has been designed with consideration for impacts from natural hazards (bushfire and flooding).

Based on the above, the site is suitable to accommodate the proposal.

3.7 Section 4.15(1)(d) - Public Submissions

The proposal was notified and advertised in accordance with the Port Stephens Council's Commutation and Engagement Strategy from 12 December 2023 until 1 February 2024. A total of 3 unique submissions, comprising 2 objections and 1 submission in favour of the proposal, were received during this time.

Following receipt of additional information from the first RFI, the proposal was re-notified and advertised in from 2 May 2024 until 16 May 2024. During this time 1 submission of objection was received. The submissions are responded to in Section 4 of this report.

3.8 Section 4.15(1)(e) - Public interest

The development is considered to be in the public interest as it would not have any significant adverse impacts on the built or natural environment, and has positive social and economic impacts. The proposal is consistent with the relevant of environmental planning instruments applying to the land.

In addition to the above, the proposal is consistent with the Fern Bay and North Stockton Strategy which identified the need for a new local super market including a large format supermarket to service the needs of a community that is currently underserved.

On this basis, the proposal is considered to be in the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for comment/concurrence/referral as required by the EP&A Act and outlined below in **Table 8**.

There are no outstanding issues arising from these concurrence and referral requirements subject to the imposition of the recommended conditions of consent being imposed.

Table 8: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
Transport for New South Wales	S2.122 – SEPP (Transport and Infrastructure) 2021 – Traffic Generating Development	The application was referred to Transport for NSW as traffic generating development. During assessment of the application TfNSW issued a number of requests for information. The matters raised by TfNSW were resolved, and the development was ultimately supported.	Y
Referral/Consultation Agencies			
Department of Defence	S7.4 – PSLEP 2013 – Airspace Operations	A referral was received from the Department of Defence who raised no concern with the proposal but noted the site will experience some level of aircraft noise given its proximity to the RAAF Base Williamtown and that it is within a bird strike area and therefore waste should be stored appropriately. An advice note has been recommended which notes the requirements for sites within a Bird Strike zone.	Y
Hunter Water Corporation	S51 – Hunter Water Act 1991 – Consent authority to notify Corporation of certain applications etc	A referral was received from Hunter Water Corporate (HWC). No concern was raised with the proposal. HWC noted that a Development Requirements Letter regarding the sewer extension had been issued to the applicant. This letter has since been provided to Council. HWC recommended a condition be included on the consent requiring that a certificate of compliance be obtained prior to the issue of a Construction Certificate. This condition has been recommended accordingly.	Y

Ausgrid	s2.48 – SEPP (Transport and Infrastructure) 2021 – Determination of development applications – other development	A referral was received from Ausgrid providing advice in regard to the supply of electricity. Compliance with the Ausgrid referral comments has been included in a recommended condition.	Y
NSW Police	N/A	The application was referred to the NSW Police for comment. No comments was received.	N/A
Integrated Development (S 4.46 of the EP&A Act)			
Heritage NSW	S90 – National Parks and Wildlife Act 1974 – Aboriginal heritage impact permits	A referral was received from Heritage NSW who issued general terms of approval.	Y
Department of Planning and Environment – Water	S91 – Water Management Act 2000 – Activity approvals	A referral was received from the Department of Planning and Environment – Water who issued general terms of approval.	Y

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 9**.

Table 9: Consideration of Council Referrals

Officer	Comments	Resolved
Development Engineering	The application was referred to Council's Development Engineering team to review the proposal from a traffic, access, stormwater and flooding perspective. A number of requests for information were issued throughout the assessment of the application where responses were provided from the applicant. The application was ultimately supported by Council's Development Engineer subject to conditions which have been included in the recommended conditions of consent.	Y
Development Contributions	The application was referred to Council's Development Contributions Officer. It was determined that the proposal is subject so s7.12 contributions. A condition has been recommended.	Y
Environmental Health	The application was referred to Council's Environmental Health officer who reviewed noise impacts, sewer, the potential for food premises and contamination on the site.	Y

	A request for information was issued requesting a noise impact assessment and a preliminary site investigation. No concerns were raised in the original proposal regarding sewer only that s68 approval will be required for any private pump to sewer proposed. The applicant provided an Acoustic Impact Assessment and further information regarding contamination. Upon receipt of this information, the DA was supported by Council's Environmental Health Officer subject to conditions.	
Natural Systems	The application was referred to Council's Environmental Planner for review of the potential ecology impacts resulting from the proposed development. Throughout assessment of the report, Council's Environmental Planner raised a number of concerns and issued requests for information. These concerns have since been resolved, as discussed throughout the assessment report. Noting this, Council's Environmental Planner recommended conditions which have been included within the recommended conditions.	Y
Building Surveyor	The application was referred to Council's Building Surveyor. The assessment found that the proposal is capable of achieving compliance with the BCA and is unlikely to necessitate significant modifications to the proposal at a later date. Therefore, no objections were raised regarding the proposal subject to compliance with recommended conditions. These conditions have been included in the recommended conditions.	Y
Heritage	The application was referred to Council's Heritage Advisor. It was recommended that the proposal comply with the recommendations identified in the Addendum ACHAR prepared by Biosis. The General Terms of Approval issued by Heritage NSW reference that the development must be in accordance with this report.	Y

The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

4.3 Community Consultation

The proposal was notified and advertised in accordance with the Port Stephens Council's Participation Plan from 12 December 2023 until 1 February 2024. A total of 3 unique submissions, comprising 2 objections and 1 submission in favour of the proposal, were received during this time.

Following receipt of additional information from the first RFI, the proposal was re-notified and advertised in from 2 May 2024 until 16 May 2024. During this time, 1 unique submissions of objection was received.

One submission was also received outside of both notification/advertising periods.

The issues raised in these submissions are considered in **Table 10** below.

Table 10: Community Submissions

Issue	No of submissions	Council Comments
<p>Cycling Facilities</p> <p>One submissions noted the need for cycling facilities and disagreed with the findings of the Traffic Impact Assessment which found that there was low demand for them.</p>	1	<p>Notwithstanding the findings of the TIA, a shared path has recently been constructed along Fullerton Cove Road. The proposal includes the construction of a pedestrian connection from the development to this shared pathway via a pedestrian refuge. Bicycle stands are also proposed on the site.</p>
<p>No demand for the proposal</p> <p>One submission raised concern required demand for the proposal noting that the site is within close proximity to other shopping centres and retail uses in the area. The submission also noted that the proposal is an overdevelopment and will result in adverse traffic and ecological impacts.</p>	1	<p>The land was rezoned and informed by a Commercial Lands Study which identified the need for development of this type in the area. The proposal is largely compliant with relevant controls including those relating to setbacks and landscaping and therefore not considered to be an overdevelopment. In regard to ecological impact, the proposed development does seek to remove native vegetation on site. However, it not considered to result in adverse impacts to environment as discussed throughout this report.</p>
<p>In principle support</p> <p>One submission was in principle support of the proposed development subject to the imposition conditions relating renewable energy and sustainability, as well as re-assurances about drainage and confirmation of plans for ongoing maintenance of landscaping and of the adjacent environmental conservation zone.</p>	1	<p>The application was been assessed against the State Environmental Planning Policy (sustainable buildings) 2022. Chapter 3 of the policy applies to non-residential development that has an estimated development cost of \$5 million or more and therefore applies to the proposed development. This chapter requires the consent authority to consider a number of matters in regard to sustainability which have been assessed in this report. The proposal will also be subject to the requirements of Section J of the National Construction Code (NCC) which provides provisions for energy efficiency. In addition, 28 EV charging spaces are proposed and the requirement to provide solar PV panels to the roof has been included within the recommended conditions.</p>

		<p>Drainage was assessed by Council's Development Engineer and found to be consistent with relevant Council requirements and ultimately supported by them subject to conditions.</p> <p>In regard to maintenance of landscaping, a condition has been recommended requiring that landscaping is maintained during operation of the development. A condition has also been recommended which requires that from the date of practical completion, a 12- month maintenance establishment period applies to landscaped areas.</p> <p>In regard to the C2 zoned land, the applicant seeks to prepare a Biodiversity Management Plan (BMP) to manage this land. This requirement also forms part of a recommended condition. The BMP will be required to be endorsed by Council's Natural Systems teams prior to a construction certificate being issued. The preparation of the BMP will ensure that areas that areas already containing high ecological value will continue to be managed and protected and those that are of lower ecological value be restored.</p>
<p>Traffic Impacts</p> <p>One submission notes that it was in support of the proposal but raised concern regarding traffic impacts. Particularly, the impacts to the small round-a-bout between Nelson Bay Road and Fullerton Cove Road.</p> <p>The submission requested that consideration be given to providing a pedestrian crossing from the site to the other residential developments on the other side of Fullerton Cove Road.</p> <p>The submission requested that the speed limit be</p>	1	<p>Traffic impacts were considered during assessment of the application which included the provision of a Traffic Impact Assessment (TIA) and SIDRA modelling. The TIA and modelling determined that both roundabouts within the vicinity of the development would continue to function in a satisfactory manner during operation of the development without the need for upgrades. This conclusion was supported by both Transport for NSW and Council's Development Engineer.</p> <p>A pedestrian footpath and refuge is proposed to the other side of Fullerton Cove Road.</p>

reduced along Fullerton Cove Road.		Transport for NSW sets speed limits in NSW which is undertaken outside the DA process.
<p>Ecological Impact</p> <p>One submission raised concern with regard to the impacts on ecology particular to endangered frog species.</p> <p>The submission questioned whether a site visit was undertaken during rezoning.</p> <p>The submission recommended another site for this development.</p>	1	<p>Impacts to the natural environmental including impacts to endangered frog species were considered in the assessment of this application. It was determined that the proposal will not have an adverse environmental impact with much of the vegetation requiring removal being of low environmental value. Notwithstanding, the vegetation within the area of C2 zoned land will be retained and managed through a Biodiversity Management Plan.</p> <p>A number of site visits were undertaken by Council staff during assessment of the application.</p> <p>Given the DA is lodged over this site, the merits for the subject application are being considered.</p>

5. KEY ISSUES

The following key issues are relevant to the assessment of this application having considered the relevant planning controls and the proposal in detail:

5.1 Ecology

Ecology has remained a key issue throughout the assessment of the application with the HCCRPP noting in the preliminary briefing for the proposal, that further understanding on how ecology has been dealt with in terms of the avoid and minimise requirements under the Biodiversity Conservation Act need to be provided. This was discussed further in the assessment briefing for the application where the HCCRPP reiterated the importance of the findings of the *Planners North v Ballina Shire Council* [2021] NSWLEC 120 case. Noting this, the application has been assessed on the basis that the retainment of the C2 zoned land cannot be considered as a mitigation measure to address the avoid and minimise requirements of the BC Act (with the exception of the business identification sign).

To demonstrate further avoidance, the proposed development was amended to reduce the development footprint to further avoid native vegetation along the northern boundary of the E1 zoned area reducing the clearing in the E1 zone from 2.27ha to 2.235ha. The reduction in clearing resulted in the retainment of a threatened tree species along with the creation of a larger buffer between the site and the nearby watercourse to the north. The applicant also provided Council with a number of design concepts that were prepared prior to and following

lodgement of the DA to demonstrate that avoidance of vegetation has been considered throughout the planning phase of the development, refer to **Figure 25** below.

The proposed development seeks to remove the following:

- 2.235 hectares of native vegetation (including PCT 1646, PCT 1737 and PCT 1717) within the E1 zoned area, including:
 - 1.42ha of highly degraded vegetation that does not trigger the requirement for credit offsets
 - 0.815ha of native vegetation classified as being of poor to moderate condition
 - 1 x koala feed tree
 - No habitat trees (including no hollow bearing trees).
- 0.007 hectares of native vegetation (PCT 1728) within the C2 zoned area, including:
 - 0.007ha of native vegetation classified as being in moderate condition.
 - Signage footprint of 0001ha and 0.007ha when including a 3m buffer area.
 - No hollow bearing trees.

To mitigate the impacts of the proposed development, the proposal seeks to:

- Replace the 1 x koala feed tree with 8 x koala feed trees within the C2 zoned land.
- Provide exclusionary fencing along the boundary between the two zones to deter access to the C2 zoned area of the site.
- Permanent lighting to be designed to minimise light spill into surrounding vegetation.

It is noted that there is no intent to subdivide the C2 portion of the site off from the E1 area. In addition, the BMP is intended implemented by a qualified ecologist on behalf of the owner/ applicant.

Noting the above, it is considered that the areas of high biodiversity value have been appropriately avoided and impacts minimised, satisfying the hierarchy requirements of the Biodiversity Conservation Act. Notwithstanding, the proposed vegetation removal has also generated the requirement for offsetting. A condition has been recommended requiring the applicant to retire biodiversity credits in accordance with the BDAR prior to the issue of a Construction Certificate or removal of vegetation to offset the residual impact on biodiversity values.

In addition, the applicant also seeks to prepare a Biodiversity Management Plan (BMP) for the C2 land. The preparation and implementation of the BMP will ensure that C2 zoned area is managed in a way that will improve the existing ecological value of the area.



Figure 25. Concept designs for development

5.2 Pedestrian Connectivity

A footpath from the site and a pedestrian refuge are proposed to be constructed as a part of the proposal. The pedestrian refuge will connect to an existing shared pathway located to the sites east. The existing pathway provides pedestrian connection to the approved and existing residential villages to the sites west and south west as well as nearby bus stops, the Seaside residential estate to the sites south east and a number of other existing shared and pedestrian paths, refer to **Figure 25**.

Council investigated the opportunity for the development to provide its own shared pathway in the road reserve directly adjacent to the site but determined it would not be suitable due to the presence of an Aboriginal artefact in road reserve which would require removal for the pathway. Council's Development Engineers therefore recommended what is now being proposed.

Noting the above, it is considered that the site will have appropriate pedestrian connectivity, encouraging active transport options.

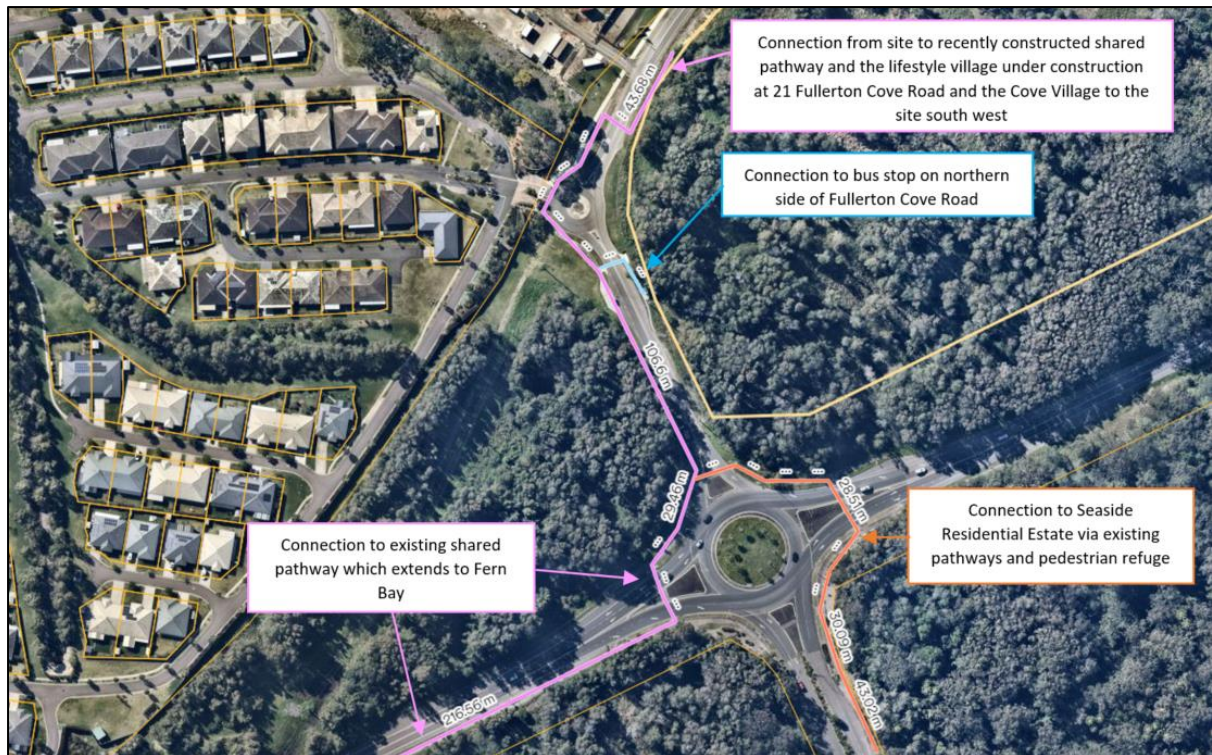


Figure 25. Surrounding pedestrian connections

5.3 Pylon Signage

The development proposes two pylon signs for the purposes of business identification, one fronting Fullerton Cove Road in the west of the site and the other fronting Nelson Bay Road in the south of the site. The pylon signage located in the south of the site is located within the C2 Environmental Conservation area of site, refer to **Figure 26** for a montage of the sign. Business identification signage is permitted within the C2 zone in accordance with the PSLEP 2013. The signage does require the removal of native vegetation (PCT 1728). The BDAR included a 3m buffer around the sign to ensure that any potential impact was considered. It was determined that the removal of this vegetation for the sign would have a negligible on the PCT. A condition has been recommended the illumination of signs is to only occur during business operational hours to limit the potential impacts on light spill.

In addition to the sign being a permitted use, it is considered to be consistent with the objective of the zone in that:

- The sign will not have an adverse effect on the environmental values of the area as concluded in the BDAR.
- The sign will not impact the ongoing management and restoration of the C2 zoned area required by the BMP.



Figure 25. Montage of proposed pylon sign in south eastern corner of the site

5.4 Traffic

A Traffic Impact Assessment (TIA) was prepared for the development by Seca Solution for the proposed development as it is considered to be traffic generating development. As a part of the TIA, traffic modelling was undertaken to assess impacts from the proposed development including during peak hour periods under existing and future traffic demands through to the 10 year traffic forecast. The modelling included traffic flows associated with the proposed development, the lifestyle village currently under construction, The Cove over 55s village plus a 2% pa background growth.

It was found that the proposed increase in traffic is within the capacity of the existing road network without necessitating significant upgrades and would not adversely impact the functioning of the existing roundabouts to the south east and south west of the site.

Notwithstanding, the proposed development does require some road upgrades along the frontage to Fullerton Cove Road. The upgrades include the provision of a right-hand turning lane from Fullerton Cove Road into the development site as well as a pedestrian refuge connection to a footpath from the site to the existing footpath adjacent to the site.

TfNSW and Council's Development Engineer supported the proposal from a traffic perspective.

5.5 Contamination

Contamination was raised as key briefing matter by Council in the assessment briefing with the HCCRPP. As a part of the rezoning of the site, a Preliminary Contamination Assessment was prepared by Qualtest. The report recommended that additional assessment, comprising soil sampling in the areas of environmental concern identified, be carried out after removal of buildings and stored equipment and materials. Council issued a RFI noting that in order to satisfy this section of the SEPP, the consent authority needs to be satisfied that the land is suitable or can be made suitable for the proposed use which the current report did not confirm.

In response, an addendum letter dated 4 June 2024 was prepared by Qualtest and provided to Council. The letter concluded that the site can be made suitable for the proposed

development subject to a number of recommendations being met prior the issue of a Construction Certificate including:

- Preparation of a Detailed Site Investigation (DSI);
- Preparation of a Remediation Action Plan (RAP) (if required); and
- Preparation of a Validation Report should remediation be required which clearly stated that the site is suitable for the proposed development.

Council's Environmental Health Officer supported the findings of the contamination studies subject to the imposition of conditions requiring that a Detailed Site Investigation be undertaken following the demolition of buildings and provided to Council for review and endorsement. Noting the above, it is considered that the proposal meets the requirements of the Resilience and Hazards SEPP subject to conditions which have been recommended accordingly. The proposal is not for a highly sensitive land use, such as residential or a childcare premises, on this basis the findings and recommendations of the Contamination Assessment are suitable for the consent authority to be satisfied that the land can be made suitable to support the proposed commercial use.

6. CONCLUSION

This development application has been considered in accordance with the requirements of the EP&A Act and the Regulations as outlined in this report. Following a thorough assessment of the relevant planning controls, issues raised in submissions and the key issues identified in this report, it is considered that the application can be supported.

It is considered that the key issues as outlined in Section 5 have been resolved satisfactorily through amendments to the proposal and/or in the recommended draft conditions at **Attachment A**.

7. RECOMMENDATION

That the Development Application [DA No 16-2023-685-1] for the Construction of a Shop (supermarket), 5 x Commercial Premises, a Medical Centre, Signage, Sewer Extension and Demolition of existing dwelling at 42 Fullerton Cove Road, Fullerton Cove be APPROVED pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Draft Conditions of consent
- Attachment B: Clause 4.6 Request
- Attachment C: Architectural Plans
- Attachment D: Civil Engineering Report and Plans
- Attachment E: Landscape Plans
- Attachment F: Traffic Impact Assessment
- Attachment G: Noise Impact Assessment
- Attachment H: Contamination
- Attachment I: Biodiversity Development Assessment Report and associated RFI responses
- Attachment J: Crime Prevent through Environmental Design Report
- Attachment K: Sewer Connection Plans
- Attachment L: Addendum to Aboriginal Cultural Heritage Assessment Report

- Attachment M: Aboriginal Due Diligence Assessment – Sewer Connection
- Attachment N: Statement of Environmental Effects
- Attachment O: Bushfire Report
- Attachment P: Applicant 4.6 Variation Request
- Attachment Q: Acid Sulfate Soils Management Plan
- Attachment R: Arborist Report
- Attachment S: Sewer Alignment Ecology Response