

## COUNCIL ASSESSMENT REPORT

### HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

<b>PANEL REFERENCE &amp; DA NUMBER</b>	PPSHCC-334 – 16-2024-542-1
<b>PROPOSAL</b>	Multi-dwelling housing (30 new townhouses), alterations and additions to existing cabins, change of use of existing tourist accommodation to dwellings, community title subdivision, and construction of civil and landscaping works
<b>ADDRESS</b>	<p>LOT: 1 DP: 285191, LOT: 2 DP: 285191, LOT: 3 DP: 285191, LOT: 5 DP: 285191, LOT: 4 DP: 285191, LOT: 7 DP: 285191, LOT: 6 DP: 285191, LOT: 8 DP: 285191, LOT: 9 DP: 285191, LOT: 10 DP: 285191, LOT: 11 DP: 285191, LOT: 12 DP: 285191</p> <p>4 Fleet Street SALAMANDER BAY, 11 Inlet Close SALAMANDER BAY, 12 Inlet Close SALAMANDER BAY, 14 Inlet Close SALAMANDER BAY, 13 Inlet Close SALAMANDER BAY, 16 Inlet Close SALAMANDER BAY, 15 Inlet Close SALAMANDER BAY, 17 Inlet Close SALAMANDER BAY, 18 Inlet Close SALAMANDER BAY, 19 Inlet Close SALAMANDER BAY, 20 Inlet Close SALAMANDER BAY, 21 Ridgeview Drive SALAMANDER BAY</p>
<b>APPLICANT</b>	Perception Planning Pty Ltd
<b>OWNER</b>	Multiple – Community Title
<b>DA LODGEMENT DATE</b>	18/11/2024
<b>APPLICATION TYPE</b>	Integrated Development
<b>REGIONALLY SIGNIFICANT CRITERIA</b>	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: more than \$30 million
<b>EDC</b>	\$33,526,091 (excluding GST)
<b>CLAUSE 4.6 REQUESTS</b>	Yes – Clause 4.3 of the Port Stephens Local Environmental Plan 2013.
<b>KEY SEPP/LEP</b>	<ul style="list-style-type: none"> <li><i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i></li> <li><i>State Environmental Planning Policy (Planning Systems) 2021</i></li> </ul>

	<ul style="list-style-type: none"> <li>• <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i></li> <li>• <i>State Environmental Planning Policy (Sustainable Buildings) 2022;</i></li> <li>• <i>Port Stephens Local Environmental Plan 2013;</i></li> <li>• <i>Port Stephens Development Control Plan 2014.</i></li> </ul>
<b>TOTAL &amp; SUBMISSIONS ISSUES SUBMISSIONS</b>	<b>UNIQUE KEY IN</b> 68 total, 51 unique
<b>DOCUMENTS SUBMITTED FOR CONSIDERATION</b>	<p>Attachment A: Draft Conditions of consent</p> <p>Attachment B: DCP Compliance Table</p> <p>Attachment C: Clause 4.6 Variation Request</p> <p>Attachment D: Architectural Plans</p> <p>Attachment E: Landscape Plans</p> <p>Attachment F: Civil Engineering Plans</p> <p>Attachment G: Community Title Subdivision Plans</p> <p>Attachment H: Connecting to Country Statement</p> <p>Attachment I: Detailed Site Investigation</p> <p>Attachment J: Existing Neighbourhood Management Statement</p> <p>Attachment K: Proposed Waste Management Procedure</p> <p>Attachment L: Stormwater Management Report</p> <p>Attachment M: Applicant Clause 4.6 Variation Request</p> <p>Attachment N: Port Stephens Design Review Panel Minutes</p> <p>Attachment O: Construction Noise Management Plan</p> <p>Attachment P: Hazardous Substance Audit – Cabins</p> <p>Attachment Q: Traffic Impact Statement</p> <p>Attachment R: Visual Impact Assessment</p> <p>Attachment S: Arborist Report</p> <p>Attachment T: Flora and Fauna Assessment</p> <p>Attachment U: Bushfire Assessment Report</p> <p>Attachment V: BASIX Certificate</p> <p>Attachment W: Approved Bushfire and Vegetation Management Plan</p> <p>Attachment X: New South Wales Rural Fire Service General Terms of Approval</p>
<b>SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)</b>	N/A

<b>RECOMMENDATION</b>	Approval
<b>DRAFT CONDITIONS TO APPLICANT</b>	Yes
<b>SCHEDULED MEETING DATE</b>	8 December 2025
<b>PLAN VERSION</b>	13 November 2025, Revision L
<b>PREPARED BY</b>	Courtney Sargent – Principal Development Planner
<b>DATE OF REPORT</b>	25 November 2025

## EXECUTIVE SUMMARY

This Development Application (16-2024-542-1) seeks consent for a multi-dwelling housing development which includes the change of use of 36 existing cabins to dwellings, alterations and additions to 11 of the existing cabins, construction of 30 new townhouses, construction of 3 standalone garage buildings, a communal area, community title subdivision, visitor car parking and associated landscaping and civil works. At completion of the development, the site is proposed to contain a total of 66 dwellings inclusive of the existing dwellings.

The site is located in the Port Stephens Local Government Area (LGA) and is located across several lots with different street addresses and deposited plans. The site has an area of approximately 23,729m<sup>2</sup> and is located on Fleet Street within the suburb of Salamander Bay.

The proposal has been notified twice during the assessment in accordance with Council's Communications and Engagement Strategy. The first notification went from 3 December 2024 – 22 January 2025 and the second notification from 3 June 2025 – 17 June 2025. A total of 68 submissions were received from the separate notification periods. Of the submissions received, Council received three separate petitions, two were objecting to the proposal and collectively had 254 signatures and the third was in support of the proposal and had 22 signatures.

The key issues in respect of the assessment of this application related to construction access, management of the asset protection zone, height variations, waste management and compliance with private open space requirements. The key issues have been addressed through the provision of further information and amended plans.

The proposal is referred to the Hunter and Central Coast Regional Planning Panel (HCCRPP) for determination pursuant to Section 2.19(1) and Clause 2 of Schedule 6 of State Environmental Planning Policy (Planning Systems) 2021 which declares the proposal regionally significant development as the development has a capital investment value of more than \$30 million.

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. THE SITE AND LOCALITY

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### 1.1 The Site

The development is located across a number of lots with different street addresses and deposited plans. The site is an irregular shaped lot with an area of approximately 5.8ha and has vehicular access from Fleet Street in the south. The site has a sloped topography with the lot rising from the street frontage to the middle of the site before falling towards the north of the site. The site was previously operated as a tourist facility known as Colonial Ridge Resort and therefore contains internal roads and tourist units, some of which are currently utilised in the south eastern corner of the site as well as some in the northern portion of the site. The lot is already registered under a community title scheme. There are a number of vacant dilapidated tourist units in the south western corner and middle of the site as well as a dilapidated community building. The west of the site is heavily vegetated and is known as Stoney Ridge Reserve. A portion of the vegetated area was recently cleared for the purpose of an Asset Protection Zone approved and established under a separate Development Application, refer to **Figure 1**.



**Figure 1. Site Aerial**

The site has the following constraints:

- Bushfire Prone Land
- Littoral Rainforest Proximity Area
- Acid Sulfate Soils – Class 4 and 5
- Koala Habitat – Preferred, Preferred Koala Habitat Buffer over supplementary, Preferred Koala Habitat Buffer over link, Mainly Cleared, Supplementary,
- Coastal Management – Coastal Zone
- Combined Corridor Map – Landscape Habitat Link, Local Link,
- Endangered Ecological Communities – Swamp Mahogany
- NSW Wildlife Atlas - Fauna
- NSW Wildlife Atlas – Flora
- Biodiversity Values Map
- Flood Prone Land



## 1.2 The Locality

The site is located within the Port Stephens Local Government Area (LGA) within the suburb of Salamander Bay. The site is mostly surrounded by low to medium density residential development to the north, south and east. The west of the site is heavily vegetated land that fronts onto Cromartys Bay. Further to the east of the site is the Karuah River.

### Site Inspection

A site inspection was carried out on 20 November 2024. The subject site can be seen in the photographs below.



**Photograph 1.** Existing access driveway off Fleet Street as viewed from Ridgeway Drive within site



**Photograph 2.** Existing community building which has a separate approval for demolition



**Photograph 3.** Existing cabins and carport located in the east of the site which have separate approval for demolition.





**Photograph 4.** Looking east from crest of the site



**Photograph 5.** Existing Asset Protection Zone area looking north west





**Photograph 6.** Looking south towards Fleet Street with existing cabins to be repurposed in the forefront and the lifestyle village beyond



**Photograph 7.** Existing cabins along Anchor Cove to be repurposed as dwellings.





**Photograph 8.** Existing tennis court in north western corner of the site, the proposed location of the detention tank and communal area



**Photograph 9.** Existing north-west fire trail accessed from Ridgeview Drive



**Photograph 10.** Existing APZ looking south west

## **2. THE PROPOSAL AND BACKGROUND**

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### **2.1 The Proposal**

The proposal seeks consent for the following:

- Change of use of the 36 existing units/cabins on site to dwellings including partial demolition, alterations and additions to 11 cabins;
- Construction of three (3) garage buildings fronting Fleet Street to provide car parking to dwellings without in-built parking;
- Construction of 30 new townhouses;
- Provision of a communal area;
- 17 x new visitor car parking spaces;
- Community title subdivision; and
- Civil and landscaping works.

The site plan is shown in **Figure 2**. The development is proposed to be constructed over five stages. The stages are discussed further below. At completion of the development, the site is proposed to contain a total of 66 dwellings.





**Figure 2. Proposed Site Plan**

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

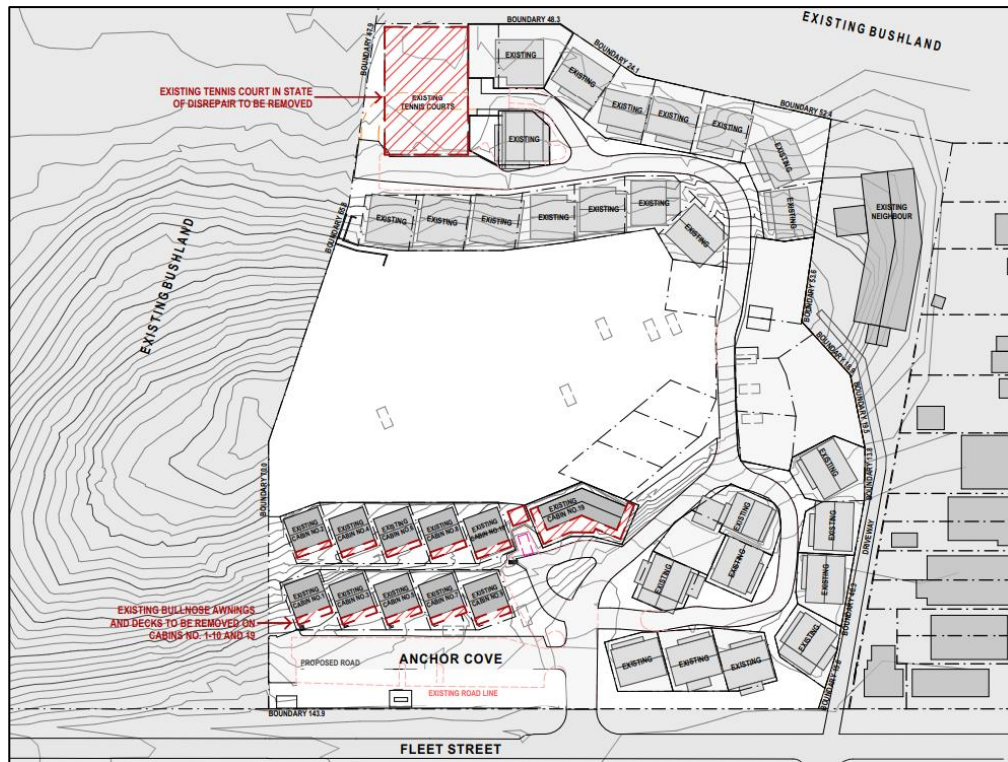
**Table 1: Key Development Data**

Control	Proposal
Site area	23,729m <sup>2</sup>
GFA	5,418m <sup>2</sup>
FSR (residential)	1:2.6 (new dwellings)
Clause 4.6 Requests	Yes – Clause 4.3 (9m height limit)
Max Height	9.69m
Landscaped area	8,125m <sup>2</sup> (34%)

## Demolition

The proposal seeks consent for the demolition of the existing awnings and decks on Cabins 1 – 10 and 19 as well as the existing tennis court in the north western corner of the site, refer to **Figure 3**.

The community building currently located in the middle of the site and the structures to the east of the community building are approved to be demolished under a separate development consent and therefore do not form part of this application.



**Figure 3.** Proposed demolition plan

### Existing Units – Change of Use Only

Twenty-five of the existing units are proposed to change use from tourist cabins to dwellings, these cabins are identified as ‘existing development’ on the plans and highlighted in blue in **Figure 4** below. No works are proposed to these twenty-five dwellings.



**Figure 4.** Tourist cabins subject to change of use only within shaded blue area above

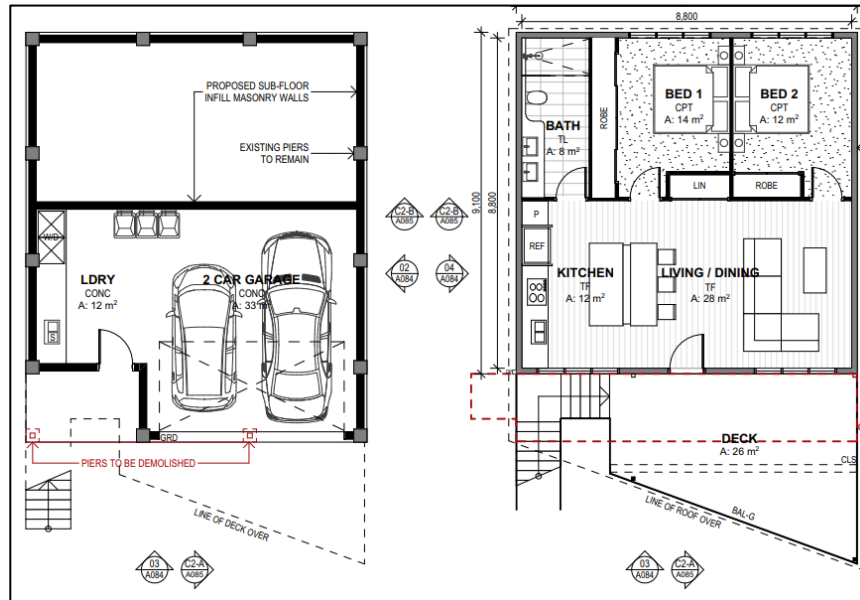




## Dwelling C2

Dwelling C2 is proposed to be a two storey, two bedroom dwelling. A two car garage, laundry and waste storage is located on the ground floor. The first floor contains two bedrooms, a bathroom, and an open plan living and dining area which is connected to a deck orientated south, refer to **Figure 7**.

There are three dwellings proposed to be C2 dwellings.

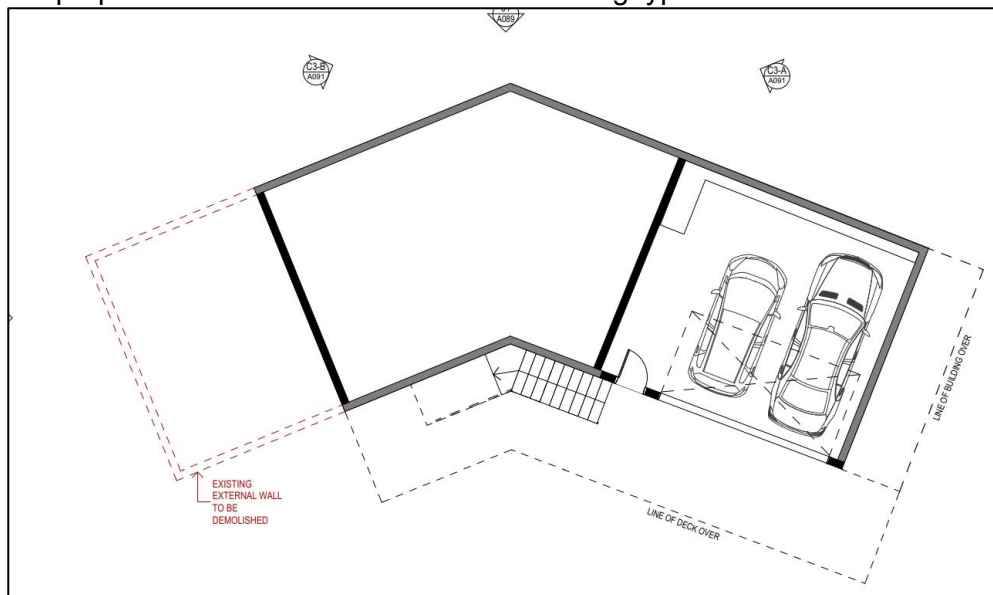


**Figure 7. Floor Plans for Dwelling Type C2**

## Dwelling C3

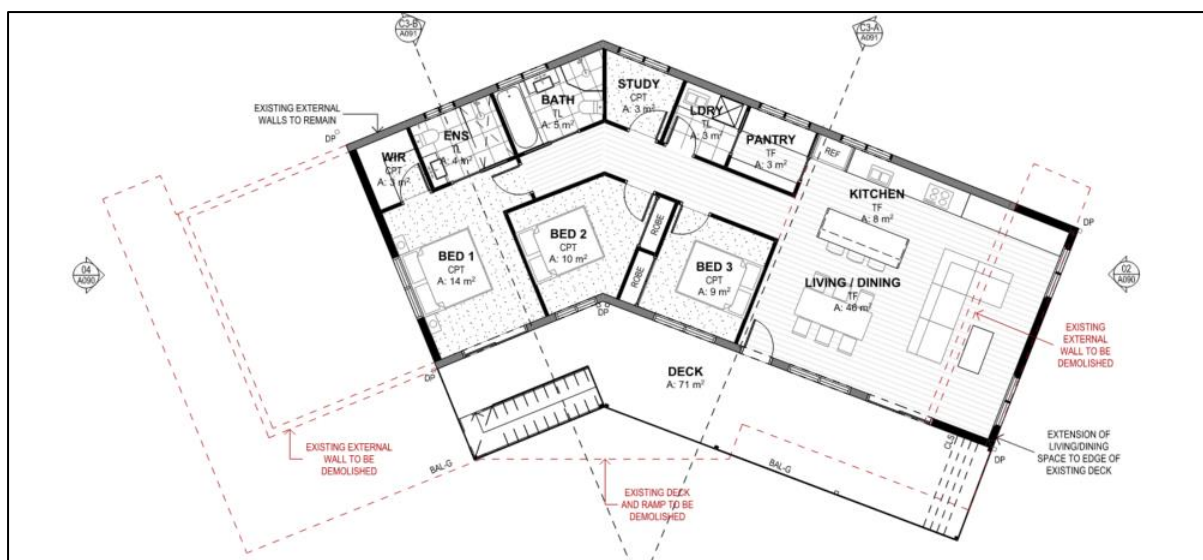
Dwelling C3 is a two storey dwelling with a garage and subfloor located on the ground floor. The first floor contains three bedrooms, a study, laundry, bathroom and an open planning living and dining area which connects to a south facing deck, refer to **Figure 8 and 9**.

One unit is proposed to be converted to the C3 dwelling type.



**Figure 8. Dwelling C3 Ground Floor Plan**



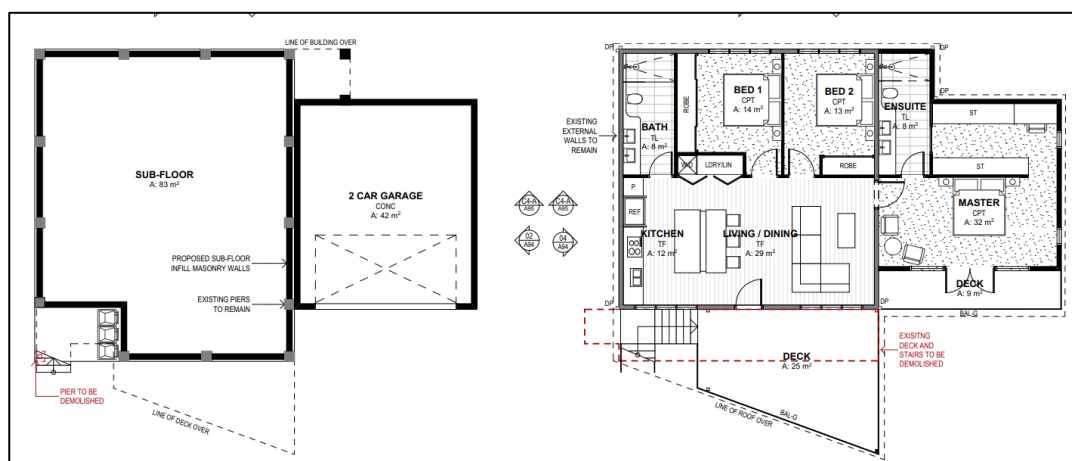


**Figure 9.** Dwelling C3 First Floor Plan

### Dwelling C4

Dwelling C4 is a two storey dwelling with a two car garage and sub floor on the ground floor. The first floor contains three bedrooms, a European style laundry, bathroom and open plan living and dining area that connects to a south facing deck, refer to **Figure 10**.

There is one C4 dwelling.



**Figure 10.** Floor Plans for Dwelling Type C4

Some dwelling types for the altered cabins, do not have car parking proposed. Three standalone garages each containing two separated double car garages are therefore proposed to be constructed identified as G3 on the plans as shown in **Figure 4**.

Two of the standalone garages will be allocated to Cabins 4, 6, 7 and 8. The third will be on its own separate community title lot as 'utility lots'.

Garage G1 is double car garage, with two of this type proposed. Each garage will be allocated to Cabins 2 and 9.

### New townhouses

The proposal involves the construction of 30 new attached townhouses in the middle portion of the site, refer to **Figure 11**. The townhouses comprise:

- 28 x three bedroom dwellings
- 2 x two bedroom dwellings.

There are six different floor layouts proposed across the 30 dwellings. Alternative floor plans are also proposed to be provided for four of the dwellings to allow for the option of having four bedrooms instead of three. The height and footprint of these dwellings are the same, with only the internal layout differing. The external façade differs slightly between the two options which is largely due to the placement of windows with the differing internal layouts.



**Figure 11. Proposed new townhouses**

The proposed new townhouses are summarised below.

#### Type 1A – 2 storeys – 3 bedrooms

- Ground Floor - Double car garage, waste storage, bathroom, European laundry, two bedrooms and a terrace.
- Second floor - Master bedroom with associated walk-in robe and ensuite, kitchen, open plan living and dining connecting to a balcony.

There are nine dwellings with the type 1A design.

#### Type 1B – 3 storeys – 3 bedrooms

- Basement level – Storage room, wine cellar, family room and laundry.
- Ground floor – Double garage, bathroom and two bedrooms and small balcony.
- First floor – Master bedroom with associated walk-in robe and ensuite, kitchen, powder room, open plan living and dining and balcony.

There is one dwelling with the type 1B design.

#### Type 1C – 2 storeys – 3 Bedroom

- Ground floor – Double car garage, bathroom, laundry, two bedrooms, terrace
- First floor – Master bedroom with associated walk-in robe and ensuite, kitchen, powder room, open plan living and dining and balcony

There are nine dwellings with the type 1C design.

#### Type 1D – 2 storeys – 3 bedrooms

- Ground floor – Double car garage, bathroom, laundry, two bedrooms and terrace
- First floor – Master bedroom with associated walk-in robe and ensuite, kitchen, powder room, open plan living and dining and balcony

There are three dwellings with the type 1D design.

#### Type 1E – 2 storeys – 3 bedrooms



- Ground floor – Double car garage, bathroom, laundry, two bedrooms and terrace
- First floor – Master bedroom with associated walk-in robe and ensuite, kitchen, powder room, open plan living and dining and balcony

There is one dwelling with the type 1E design.

#### Type 1F – 2 storeys – 3 bedrooms

- Ground floor – Double car garage, bathroom, laundry, two bedrooms and terrace
- First floor – Master bedroom with associated walk-in robe and ensuite, kitchen, powder room, open plan living and dining and balcony

There is one dwelling with the type 1F design.

#### Type 2A – 3 storeys – 3 bedrooms

- Ground floor – Double car garage, joint bathroom and laundry, two bedrooms, waste storage and a balcony
- First floor – Kitchen, open plan living and dining area, balcony and master bedroom with associated walk-in robe and ensuite
- Second Floor – Terrace, entertainment area and bathroom

There is one dwelling with the type 2A design.

#### Type 2B – 3 storeys – 4 bedrooms (alternate to type 2A)

- Ground floor – Double car garage, bathroom, waste storage, two bedrooms, balcony
- First floor – One bedroom with an ensuite, laundry, powder room, kitchen, open plan living and dining and a balcony
- Second floor – Master bedroom with associated walk-in robe and ensuite, bathroom, entertainment/lounge room and terrace

There is one dwelling with the type 2B design (as an alternative to 2A).

#### Type 2C – 3 storeys – 3 bedrooms

- Ground floor – Double car garage, waste storage, joint bathroom and laundry, two bedrooms and a balcony
- First floor – Master bedroom with associated walk-in robe and ensuite, kitchen, open plan living and dining area and balcony
- Second Floor – Terrace, entertainment area and bathroom

There are two dwellings with the type 2C design.

#### Type 2D – 3 storeys – 4 bedrooms (alternate to type 2C)

- Ground floor – Double car garage, bathroom, waste storage, two bedrooms, balcony
- First floor – One bedroom with an ensuite, laundry, kitchen, open plan living and dining and a balcony
- Second floor – Master bedroom with associated walk-in robe and ensuite, bathroom, entertainment/lounge room and terrace

There are two dwellings with the type 2D design (as an alternative to 2C).

#### Type 2E – 3 storeys – 3 bedrooms

- Ground floor – Double car garage, waste storage, joint bathroom and laundry, two bedrooms and a balcony
- First floor – Master bedroom with associated walk-in robe and ensuite, kitchen, open plan living and dining area and balcony
- Second Floor – Terrace, entertainment area and bathroom

There is one dwelling with the type 2E design.

#### 2F – 3 storeys – 4 bedrooms (alternate to type 2E)

- Ground floor – Double car garage, bathroom, waste storage, two bedrooms, balcony
- First floor – One bedroom with an ensuite, laundry, kitchen open plan living and dining and a balcony
- Second floor – Master bedroom with associated walk-in robe and ensuite, bathroom, entertainment/lounge room and terrace

There is one dwelling with the type 2F design (as an alternative to 2E).

#### Type 3 – 2 storeys – 2 bedrooms

- Ground floor – Single car garage, laundry, bedroom with ensuite, study and terrace.
- First floor – Bedroom with ensuite, powder room, kitchen, open plan living and dining area and balcony.

There is one dwelling with the type 3 design.

#### Type 4 – 2 storeys – 2 bedrooms

- Ground floor – Single car garage, laundry and bedroom with an ensuite and terrace.
- First floor – Bedroom with ensuite, powder room, kitchen, open plan living and dining and balcony.

There is one dwelling with the type 4 design.

### **Staging**

The development is proposed to be constructed over five stages, as follows:

#### Stage 1

- Conversion of the 36 existing units/cabins on site to dwellings.
- Partial demolition, alterations and additions to Cabins No. 1 – 10 and 19.
- Construction of garages G1 and G3; and
- Associated landscaping and civil works.

#### Stage 2

- Construction of townhouses TH1, TH2, TH3, TH4 and TH5 (five dwellings); and
- Associated landscaping and civil works.

It is noted that Ridgeview Drive is already existing.

#### Stage 3

- Construction of Angel Close (Stage 3A);
- Construction of townhouses TH6, TH7, TH8, TH9, TH10, TH11, TH12, TH13, TH14 and TH16 (10 dwellings) over two separate sub-stages (3A and 3B); and
- Associated landscaping and civil works.

#### Stage 4

- Construction of townhouses TH15, TH17, TH18, TH19, TH20, TH21, TH22 and TH23 (8 dwellings) over two separate sub-stages (4A and 4B); and
- Associated landscaping and civil works.

#### Stage 5

- Construction of townhouses – TH25, TH26, TH27, TH28, TH29 and TH30 (6 dwellings) over two separate sub-stages (5A and 5B);
- Construction of the community garden and visitor carparks (5C); and
- Associated landscaping and civil works.



## Construction Access

One construction access is proposed via the existing access road from Fleet Street connecting directly with Ridgeview Drive.

It is noted that in addition to the above construction access, a further two construction access points were also proposed. These sought to use the existing fire trails and Asset Protection Zone in the sites west. These construction access points have since been removed from the proposal.

## Operational Site Access

Following construction of the development, the site will continue to be accessed via a single driveway off Fleet Street which connects directly with Ridgeview Drive internally within the site.

## Communal Area

A communal area is proposed in the north western corner of the site. The communal area is proposed to include a community garden, seating areas, sheltered picnic tables and a BBQ.

## Visitor Parking

A total of 17 visitor car parking spaces are proposed to be provided throughout the site and will be located within the community lot (PT101).

## Community Title Subdivision

The lot is currently subject to a community title subdivision. Amendments to the existing lots and new community title lots are proposed. The first stage of the community title subdivision seeks to amend the existing lots to ensure that they are consistent with the proposed development and to create a number of development lots which will contain the land with the proposed dwellings.

The second stage seeks to further subdivide each new dwelling onto their community title lot, refer to **Figure 12**.

The communal area, internal roads, pathways and visitor car parking will be located on the community lot.



**Figure 12.** Proposed community title subdivision

### Landscaping

New landscaping is proposed throughout the site including within dwellings front setbacks, rear setbacks and along internal streets as well as the street frontage to Fleet Street. A landscaping plan has been prepared by Green Space Planning co and includes vegetation species that are both native and non-native. Some of the native species chosen are endemic to Port Stephens including:

- Coastal banksia
- Tuckeroo
- Blueberry Ash
- Cabbage tree palm

### Stormwater Management

A stormwater management plan was prepared by Northrop Consulting Engineers to address both stormwater quality and drainage.

The plan has been designed to capture all stormwater via a pit and pipe network through the site. For the northern catchment of the site, stormwater is proposed to be conveyed to an infiltration trench located in the north western corner of the site. The infiltration trench has been designed to ensure that runoff from all storms up to and including the 1% AEP event can be infiltrated with no overflow. In larger events, overflow will be direct to the existing creek located in the Council reserve to the north of the site.

A number of on-site detention (OSD) tanks are proposed throughout the site to collect stormwater from the southern catchment. The provisions of OSD tanks ensures that the post-development flow is consistent with the site's pre-development flow. Overflow will be directed to the existing stormwater network in Fleet Street.

Each new dwelling is proposed to have a minimum 2000 litre stormwater tank. It is proposed that stormwater collected in these tanks will be reused for toilet flushing and laundry.

Several water quality devices are also proposed to ensure adequate compliance with Council's water quality targets. These devices include rainwater harvesting tanks, sediment traps, proprietary filter cartridges and pit filter inserts.

### Waste Management

Each dwelling has been provided with space to store three waste bins. The development is proposed to be serviced by Council's waste collection service. It is proposed that the community association will engage a contractor to move all bins to the kerb on collection days and then place them back at their respective dwellings following collection.

This is consistent with how the site is currently serviced.

## 2.2 Background

The development application was lodged on **18 November 2024**. A chronology of the development application since lodgement is outlined below including the Panel's involvement with the application:

**Table 2: Chronology of the DA**

Date	Event
<b>18 November 2024</b>	DA lodged



<b>20 November 2024</b>	DA referred to internal teams and external agencies
<b>3 December 2024 - 22 January 2025</b>	Exhibition of the application
<b>14 January 2025</b>	Initial briefing with HCCRPP
<b>21 January 2025</b>	Request for Information from Council to applicant
<b>13 February 2025</b>	Application referred to the Port Stephens Urban Design Review Panel
<b>26 May 2025</b>	Response to RFI received.
<b>3 June 2025 – 17 June 2025</b>	Re-notification of the application
<b>12 June 2025</b>	Application re-referred to the Port Stephens Urban Design Review Panel
<b>8 July 2025</b>	Request for Information from Council to applicant
<b>21 August 2025</b>	Response to RFI received
<b>9 September 2025</b>	Request for Information from Council to applicant
<b>30 September 2025</b>	Assessment briefing with HCCRPP
<b>30 September 2025</b>	Amended request for further information from Council to the applicant
<b>27 October 2025</b>	Response to RFI received
<b>31 October 2025</b>	Request for Information from Council to applicant
<b>20 November 2025</b>	Response to RFI received
<b>28 November 2025</b>	Finalisation of assessment report

## 2.3 Site History

There have been a number of Development Applications approved over the lots.

The tourist facility was approved by Council through a number of combined Building and Development Applications with the first being approved in 1989 and subsequent approvals in the mid 1990's.

More recently, the lot has been subject to a number of development applications seeking to further develop the site or change the use of the existing cabins. The more recent development applications are summarised in **Table 3** below to give context of the site.

**Table 3: Historic applications over the site**

<b>Development Application</b>	<b>Summary</b>	<b>Status</b>
<b>DA 16-2015-448-1 Change of Use – Tourist Facility to Multi Dwelling Housing</b>	<p>At the time of this DA, the site contained 42 cabins.</p> <p>This DA sought to change the use of 10 of the existing cabins to dwellings (multi-dwelling housing) to allow for their permanent occupation as the first stage. The dwellings are those currently existing in the south eastern corner of the site.</p> <p>The remainder of the cabins (32) were intended to be retained as tourist cabins for a period of time before being demolished under stage two.</p>	<p>There is no Occupation Certificate on file for this application. The application therefore appears to have lapsed.</p>
<b>16-2018-121-1 Seniors Housing (15 Dwellings)</b>	<p>The application was approved for a seniors housing development and applied only to the eastern portion of the site (with the exception of the Asset Protection Zone). Specifically, the application involved:</p> <ul style="list-style-type: none"> <li>• A change to the use of the existing cabins in the south eastern corner of the site for seniors housing.</li> <li>• Construction of a two storey caretakers dwelling.</li> <li>• Construction of five dwellings for use as seniors housing.</li> <li>• Creation of a 50 metre Asset Protection Zone (APZ) and associated vegetation removal.</li> </ul>	<p>With the COVID provisions, this application lapsed on 10 October 2025.</p> <p>A Construction Certificate has not been issued. However, vegetation clearing works associated with establishing the 50m wide APZ has been completed and therefore the consent has been enacted. The clearing works were undertaken December 2023 and resulted in significant public interest which is apparent in the public submissions received regarding the proposal. A condition has been included requiring the surrender of this consent.</p>
<b>16-2022-691-1 Demolition</b>	<p>The application was approved for the demolition of:</p> <ul style="list-style-type: none"> <li>• 5 x cabins</li> <li>• The community building/function centre</li> </ul>	<p>The swimming pool has been demolished. The remaining structures approved for demolition have not yet been demolished. It is sought to</p>



	<ul style="list-style-type: none"> <li>Swimming pool and carport.</li> </ul>	continue to use this approval for the demolition of these structures, with this current proposal including only the demolition of decks associated with Cabins 1 -10 and 19.
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Three other applications for senior's housing development were lodged over the site in 2018. These were all withdrawn.

### 3. STATUTORY CONSIDERATIONS

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):

- Integrated Development (s4.46)

#### 3.1 Section 4.46 – What is 'integrated development'?

Section 4.46 EP&A Act provides that development is integrated development if in order to be carried out, the development requires development consent and one or more other approvals.

The proposed development required an integrated referral under section 100B of the Rural Fires Act 1997 due to the development including the subdivision of bush fire prone land that could lawfully be used for residential purposes. Accordingly, the application was referred to

the NSW Rural Fire Service (RFS) and subsequently supported with conditions under Division 4.8 of the Environmental Planning and Assessment Act 1979 (EP&A Act 1979).

A Bushfire Threat Assessment (BTA) was prepared for the proposal by Anderson Environment and Planning. The BTA assessed the proposal against the requirements of Planning for Bushfire Protection (PBP) 2019.

A Bush Fire Safety Authority (BFSA) has been issued by the NSW RFS dated 22 July 2025. The BFSA included conditions relating to the following:

- Asset Protection Zone (APZ).
- Construction Standards (BAL levels for existing and new dwellings).
- Access requirements; and
- Landscaping design.

It is noted that a 50m wide APZ was approved and established under a separate DA being DA 16-2018-121-1 which was for a senior's housing development. The APZ is located on a separate lot to the proposed multi-dwelling housing development being Lot 2 DP 791551. This lot has an existing easement for a 50m APZ. As previously noted, clearing works associated with establishing the 50m wide APZ has been completed and therefore the consent has been enacted. The clearing works were undertaken December 2023 and resulted in significant public interest which is apparent in the public submissions received regarding the proposal. The BFSA issued by the NSW RFS acknowledges the existing 50m APZ and associated easement noting that it is sufficient to service the proposed development and must be maintained as an APZ.

A Bushfire Vegetation Management Plan (BVMP) was prepared by Anderson Environment and Planning and approved by Council under DA 16-2018-121-1. The BVMP includes techniques to ensure the APZ is managed in accordance with Planning for Bushfire Protection (PBP) 2019 requirements but also includes measures to prioritise the protection of Powerful Owl and Koala, along with management of *Corybas dowlingii*, which is an endangered orchid species and is present within the site including in the APZ area. Regeneration of the BVMP land is intended to be undertaken over a period of six years.

In addition, DA 16-2018-121-1 has two ongoing use conditions relating to the APZ / the area subject to the BVMP, which state:

- *...no ground disturbance shall occur within the area covered by the approved Bushfire and Vegetation Management Plan or remainder of Lot 2 DP 791551”.*
- *No vegetation removal shall occur outside the approved Bushfire and Vegetation Management Plan area on 8 Fleet Street, Salamander Bay (Lot 2 DP 791551).*

An ongoing use condition has been recommended to ensure that the management of the APZ is undertaken in accordance with the approved BVMP and existing ongoing use conditions associated with DA 16-2018-121-1.

In addition, a condition has been recommended which requires the consolidation of Lot 2 DP 791551 into the community title lot. This ensures that the existing APZ easement is located within the community title lot.

### 3.2 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 (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2021; and*
- *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 4** and considered in more detail below.

**Table 4: Summary of Applicable Environmental Planning Instruments**

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	<p><b>Chapter 2: Vegetation in non-rural areas</b> The proposal does not seek consent for vegetation removal and therefore this chapter doesn't apply.</p> <p><b>Chapter 4: Koala Habitat Protection 2021</b> The proposed development does not seek to remove any vegetation. Council's Environmental Planner had raised concern over the use of the fire trails for construction access due to potential impacts to koala which would be inconsistent with this policy. The proposal has been amended to remove these construction access points with construction access now proposed only via the existing driveway off Fleet Street. Notwithstanding, a condition has been recommended restricting construction access only to be obtained via the existing access from Fleet Street.</p>	Y – subject to conditions.
State Environmental Planning Policy (Planning Systems) 2021	<p><b>Chapter 2: State and Regional Development</b></p> <ul style="list-style-type: none"> <li>• Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6.</li> </ul>	Y
State Environmental Planning Policy (Resilience & Hazards) 2021	<p><b>Chapter 2: Coastal Management</b></p> <ul style="list-style-type: none"> <li>• <b>Section 2.8(1)</b> - Development on land in proximity to coastal wetlands or littoral rainforest. This site is within proximity to a littoral rainforest.</li> <li>• <b>Section 2.10(1) &amp; (2)</b> - Development on land within the coastal environment area. The entire site is within a coastal environment area.</li> </ul>	Y – subject to conditions.



	<ul style="list-style-type: none"> <li>• <b>Section 2.11(1)</b> - Development on land within the coastal use area. The eastern portion of the site is within the coastal use area.</li> </ul> <p>The proposal is largely consistent with requirements of this Chapter.</p> <p><b>Chapter 4: Remediation of Land</b></p> <ul style="list-style-type: none"> <li>• <b>Section 4.6</b> – A Preliminary Site Contamination Investigation (PSI) was prepared for the proposal by DRB Consulting Engineers. The PSI identified several potential contamination sources associated with the site's historical and current land uses as a result, the PSI recommended that a Detailed Site Investigation (DSI) be prepared for the site. A DSI has been provided which concludes that the site can be made suitable for the proposed use.</li> </ul>	
State Environmental Planning Policy (Sustainable Buildings) 2022	<p><b>Chapter 2: Standards for residential development – BASIX</b></p> <ul style="list-style-type: none"> <li>• <b>Section 2.1(1)</b> – Section 2.1(1) requires that BASIX affected residential development be accompanied by a BASIX certificate.</li> </ul> <p>A valid BASIX certificate has been submitted for all new dwellings. The BASIX certificate demonstrates that the water, thermal performance and energy requirements for the proposal have been achieved. BASIX certificates have not been submitted for the existing cabins due to cost of works associated with each cabin alterations not exceeding \$50,000.</p> <ul style="list-style-type: none"> <li>• <b>Section 2.1(5)</b> – This section states that development consent must not be granted to BASIX affected residential development unless the embodied emissions attributable to the development have been quantified. The BASIX Certificate includes an Embodied Emissions Materials Assessment which complies with Section 2.1(5).</li> </ul>	Y
Proposed Instruments	N/A	N/A
LEP	<ul style="list-style-type: none"> <li>• Clause 2.3 – Permissibility and zone objectives – The proposal is permissible under the PSLEP 2013.</li> <li>• Clause 4.3 – Height of Buildings – The subject site has a maximum building height of 9m. A number of the new dwellings (16) exceed the 9m height limit</li> </ul>	Y

	<p>with the largest height breach being 9.69m in height, representing a 7.66% variation. A clause 4.6 variation has been submitted to Council.</p> <ul style="list-style-type: none"> <li>• Clause 4.4 – Floor Space Ratio – The subject site does not have a floor space ratio allocated.</li> <li>• Clause 4.6 – The proposal seeks to vary the height control. A clause 4.6 variation has been submitted to Council.</li> <li>• Clause 5.10 – Heritage conservation – The site is not a mapped heritage item, nor is it within the vicinity of any heritage listed items. An AHIMs search was provided for the site which found no recorded Aboriginal sites or place within a 200m buffer of the site.</li> <li>• Clause 5.21 – Flood planning – The western portion of the site is flood prone. This portion of the site is not intended to be utilised for the proposed development and is wholly located within the C2 zoned land. The proposal is therefore consistent with this Clause.</li> <li>• Clause 7.1 – Acid sulfate soils – The site is mapped as class 4 and 5 ASS. No works 2m below the natural ground surface are proposed and therefore consent under this clause is not required.</li> <li>• Clause 7.2 – Earthworks – The earthworks are considered to be ancillary to the proposed development and not considered likely to impact neighbouring properties.</li> <li>• Clause 7.6 – Essential services – The site has connection to reticulated water, electricity and sewer. Suitable vehicular access is provided from Fleet Street. Stormwater drainage is proposed which has been supported by Council's Development Engineer.</li> <li>• Clause 7.9 – Wetlands – A small portion in the south western corner of Lot 2 DP 791551 is mapped as containing wetlands. No works are proposed in this area nor is any stormwater draining or construction vehicles accessing this area. Therefore, the proposal is considered to be consistent with this clause.</li> </ul>	
DCP	<ul style="list-style-type: none"> <li>• B1 – Tree management – Tree removal is not required and therefore this chapter does not apply.</li> </ul>	Y

	<ul style="list-style-type: none"> <li>• B2 – Natural resources – Whilst no tree removal is proposed, Council's Environmental Planner had raised concern with regard to the construction access points identified which sought to utilise an existing fire trails and the APZ during construction. These construction access points have been removed from the proposal with construction access only being proposed via the existing driveway access to the site from Fleet Street. The proposal is therefore consistent with this Chapter.</li> <li>• 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.</li> <li>• B4 – Drainage and Water Quality – A stormwater management plan was prepared by Northrop Consulting Engineers which addressed both stormwater quality and drainage. The plans, associated report and modelling demonstrated that the design meets Councils requirements. Overall, Council's Development Engineer has supported the stormwater design.</li> <li>• B5 – Flooding – The west of the site is flood prone land. The proposal does not seek to use this flood prone portion of the land.</li> <li>• B7 – Heritage –There are no local or state heritage listed items on the site.</li> <li>• B8 – Road Network and Parking – A Traffic Impact Assessment (TIA) was prepared by SECA Solution. The TIA found that the proposed development will have a negligible impact on the operation of the local road network, with all generated traffic volumes able to be readily absorbed by the surrounding network.</li> </ul> <p>A total of 93 car parking spaces are required in accordance with the DCP. The development proposes to provide 88 car parking spaces representing a 5-car parking space shortfall. The shortfall is for visitor car parking spaces with a total 17 being provided (22 are required). The car parking shortfall has been justified through demonstration that the shortfall can be catered for through the use of stacked parking on townhouse driveways and some cabin driveways.</p>	
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	<ul style="list-style-type: none"> <li>• C5 – Multi-dwelling Housing – The proposed development is generally compliant with this chapter of the PSDCP.</li> <li>• C8 Ancillary Structures – The application proposes a number of retaining walls throughout the site and therefore this chapter applies. Many of the retaining walls proposed are less than 1m in height which is consistent with this DCP control. However, due to the sites slope, some exceed 1m with a maximum of 3.5m height proposed.</li> </ul>	
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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 R2 Low Density and C2 Environmental Conservation. Notwithstanding, the proposed development does not seek consent for the removal of vegetation.

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.

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 site is mapped under the CKPoM as containing preferred, supplementary and partially cleared koala habitat. The areas mapped as supplementary and preferred koala habitat are located in the west of the site. The land in the sites west contains existing bushland with fire trails and an APZ that was established under a separate DA. This bushland and APZ provides habitat for a number of threatened entities including the koala. The remainder of the site does not contain any koala habitat.

The proposal does not seek to remove any native vegetation including koala food trees. Noting this, the proposal is consistent with this policy.

It is noted that during construction, the proposal did seek to utilise two access points that traversed the APZ/ fire trails within the existing bushland. These construction access points have since been removed from the proposal with construction access proposed only via the existing cross over/driveway on Fleet Street.

*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 objectives of the *Coastal Management Act 2016*.

The site is mapped as being land in proximity to a littoral rainforest and therefore s2.8 of this policy applies. In accordance with s2.8 development consent must not be granted to development on land identified as “proximity area for littoral rainforest” on the *Coastal Wetlands and Littoral Rainforests Area Map* unless the consent authority is satisfied that the proposed development will not significantly impact on—

- (a) the biophysical, hydrological or ecological integrity of the adjacent coastal wetland or littoral rainforest, or
- (b) the quantity and quality of surface and ground water flows to and from the adjacent coastal wetland or littoral rainforest.

A stormwater management plan was prepared by Northrop Consulting Engineers to address both stormwater quality and drainage for the proposal. The system has been designed to capture all stormwater via a pit and pipe network through the site. For the northern catchment of the site which is within the proximity area, stormwater is proposed to be conveyed to an infiltration trench located in the north western corner of the site. The infiltration trench has been designed to infiltrate post developed flow to the pre-developed volume and flow rates for all storm events up to and including the 1% AEP storm event. Noting this, the proposal will not adversely impact on the quantity of surface water flows to the littoral rainforest.

In stormwater events larger than the 1% AEP event, overflow from the sites infiltration trench will be directed to the existing creek which is mapped as a littoral rainforest. To ensure that the proposal does not significantly impact on the quality of surface water flows as well as the biophysical, hydrological or ecological integrity of the littoral rainforest, several water quality devices are proposed to ensure adequate compliance with Council’s water quality targets. These devices include rainwater harvesting tanks, sediment traps, proprietary filter cartridges and pit filter inserts. Noting this, the proposal is considered to satisfy the requirement of s2.8 of this policy.

The site is mapped as being within a coastal environment area and therefore s2.10 of this policy applies. As per s2.10 development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,
- coastal environmental values and natural coastal processes,
- the water quality of the marine estate (within the meaning of the *Marine Estate Management Act 2014*), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,
- marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,
- existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,

- Aboriginal cultural heritage, practices and places,
- the use of the surf zone.

The proposal is generally consistent with s2.10 in that:

- The development will not cause an adverse impact on the integrity and resilience of the biophysical, hydrological and ecological environment associated with the coastal environment area, noting no vegetation removal is proposed and appropriate storm water quality improved devices are proposed.
- The development will not impact the coastal environmental values and natural coastal process due to the sites setback from the coast line.
- The development includes stormwater quality improvement devices which will ensure stormwater runoff will be treated to meet Council's stormwater stripping targets.
- The proposal will not have any adverse impact on marine vegetation or native vegetation, fauna and their habitats. Noting that the proposal does not seek to remove any vegetation. In addition, construction activities including access are no longer proposed on the existing fire trails and APZ.
- The proposal will not impact existing public open space or access to the coastline.
- The site is not a mapped heritage item, nor is it within the vicinity of any heritage listed items. An AHIMs search was provided for the site which found no recorded Aboriginal sites or places within a 200m buffer of the site.
- The proposal will not impact on the use of the surf zone.

The site is mapped as being within a coastal use area and therefore s2.11 of this policy applies. As per s2.11(1) development consent must not be granted to development on land that is within the coastal use area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following:

- Existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,
- Overshadowing, wind funneling and the loss of views from public places to foreshores,
- The visual amenity and scenic qualities of the coast, including coastal headlands,
- Aboriginal cultural heritage, practices and places,
- Cultural and built environment heritage.

The proposal is considered to be consistent with s2.11 in that:

- The proposed development does not impact the existing access to the waterfront land.
- The proposal does not adversely impact the views from public places to the foreshore.
- The proposed development will be visible from the foreshore when looking west from Salamander Bay, as depicted in the visual impact assessment, refer to **Figure 13** below. It is considered that the proposed development will not result in adverse visual impacts nor impact the scenic quality of the coast, with the proposal being located below the tree line beyond limiting the visual impact.
- An AHIMs search was provided for the site which found no recorded Aboriginal sites or place within a 200m buffer of the site.
- The proposed development is not considered likely to adversely impact upon the cultural and built environment heritage.





**Figure 13.** Montage of the proposed development from Salamander Baywater front

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 subject site is not impacted by the Port Stephens Coastal Management Program mapping.

#### 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.

A Preliminary Site Contamination Investigation (PSI) was prepared for the proposal by DRB Consulting Engineers. The PSI identified several potential contamination sources associated with the site's historical and current land uses and as a result, the PSI recommended that a Detailed Site Investigation (DSI) be prepared for the site. The DSI was prepared by DRB Consulting Engineers. The DSI involved intrusive soil sampling, stockpile assessment, and delineation of potential hotspots to confirm the presence, nature, and extent of contamination. Several areas of potential concern were identified. Most of the areas of potential concern were identified as being below the relevant health and ecological criteria except for the areas identified as BH17-0.1, B06-0.6, SP3 and SP5.

BH17-.01 and B06-0.6 area is in the north eastern corner of the site. It was identified that this area contained a contaminant associated with asphaltic fill from historical roadworks which presents minimal risk to human health or the environment. SP3 and SP5 were found to have minor exceedances in a contaminant linked to inclusions. These areas were recommended to be managed under a Contaminated Land Management Plan (CLMP) which is to include an Unexpected Find Procedure (UFP). The DSI makes a number of recommendations regarding what should be included in the CLMP including the requirement for a validation letter to be provided to Council. A condition has been recommended which requires the preparation of a CLMP and a validation report in accordance with the recommendations of the DSI.

The DSI concludes that the site can be made suitable for the proposed use subject to the implementation of the recommended CLMP. The proposal is therefore consistent with this chapter.

### *State Environmental Planning Policy (Sustainable Buildings) 2022*

#### Chapter 2: Standards for residential development – BASIX

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.

Section 2.1(1) requires that BASIX affected residential development be accompanied by a BASIX certificate. A valid BASIX certificate has been submitted for all new dwellings. The BASIX certificate demonstrates that the water, thermal performance and energy requirements for the proposal have been achieved. BASIX certificates have not been submitted for the existing cabins due to cost of works associated with each cabin alterations not exceeding \$50,000.

Section 2.1(5) requires that development consent must not be granted to BASIX affected residential development unless the embodied emissions attributable to the development have been quantified. The BASIX Certificate includes an Embodied Emissions Materials Assessment which complies with Section 2.1(5).

#### 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, provides opportunities for housing choice, and facilitates economic growth whilst not impacting environmental values.

## Zoning and Permissibility (Part 2)

The site has a split zoning being the R2 Low Density Residential and C2 Environmental Conservation Zones pursuant to Clause 2.3 of the Port Stephens Local Environmental Plan (PSLEP) 2013 (**Figure 14**).



**Figure 14.** Site Zoning Map

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of multi-dwelling housing which is a permissible use with consent in the Land Use Table in Clause 2.3. Noting that the proposed multi-dwelling housing is located wholly in the R2 zoned portion of the site.

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

- To provide for the housing needs of the community within a low-density residential environment.
- To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.
- To protect and enhance the existing residential amenity and character of the area.
- To ensure that development is carried out in a way that is compatible with the flood risk of the area.

The proposal is considered to be consistent with these zone objectives as the proposal provides for the housing needs of the community.

## 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 5** below.

The proposal does not comply with the development standard in Part 4 of the LEP and accordingly, a Clause 4.6 request has been provided with the application for the exceedance of the maximum building height.



**Table 5: Consideration of the LEP Controls**

Control	Requirement	Proposal	Comply
Subdivision (Cl 2.6)	Land to which this Plan applies may be subdivided, but only with development consent.	The proposed development involves community title subdivision which is permitted by this clause.	Yes
Minimum subdivision lot size (Cl 4.1)	This clause does not apply in relation to the subdivision of any land— (a) by the registration of a strata plan or strata plan of subdivision under the <i>Strata Schemes Development Act 2015</i> , or (b) by any kind of subdivision under the <i>Community Land Development Act 2021</i> .	The proposal involves the community title subdivision of the lot. However, this clause does not apply as per (cl 4.1(4)(b)).	N/A
Minimum subdivision lot size for community title schemes (Cl 4.1AA)	This clause applies to a subdivision (being a subdivision that requires development consent) under the <i>Community Land Development Act 2021</i> of land in any of the following zones— (a) Zone RU1 Primary Production, (b) Zone RU2 Rural Landscape, (c) Zone RU5 Village, (d) Zone R5 Large Lot Residential, (e) Zone C2 Environmental Conservation, (f) Zone C3 Environmental Management, (g) Zone C4 Environmental Living,	The proposed community title subdivision relates only to land zoned R2 Low Density Residential and therefore this clause does not apply as per (cl 4.1AA(2)).	N/A
Height of buildings	9m	The proposed development has a	No

(CI 4.3(2))		maximum height of 9.69m and is therefore non-compliant with the prescribed development standard. Accordingly, a Clause 4.6 request has been provided with the application.	
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 included under <b>Attachment C</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 AHIMs search was provided for the site which found no recorded Aboriginal sites or place within a 200m buffer of the site. The site has previously been heavily disturbed as a result of historic land uses and therefore it is considered unlikely that the proposal will impact Aboriginal objects or places. Notwithstanding, a condition has been recommended noting that all works must cease if a relic or Aboriginal object is unexpectedly discovered.</p>	Yes
Flooding Planning (CI 5.21)	Development consent must not be granted to development on land the consent authority	The lot to which the proposed multi-dwelling housing is located is not flood prone. The far	Yes

	<p>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 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 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</p>	<p>western portion of the lot containing the bushland is partially flood prone, however, no works are proposed within the portion of the site and therefore this clause does not apply.</p>	
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	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 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 4 and 5 Acid Sulfate Soils (ASS).</p> <p>Under Clause 7.1, on land mapped class 4 acid sulfate soils, consent is required for works more than 2 metres below the natural ground surface and for class 5 acid sulfate soils, consent is required for works within 500m of adjacent classes that is below 5 metres AHD and by which the watertable is likely to be lowered more than 1 metre AHD on adjacent classes.</p>	No works 2m below the natural ground surface are proposed and therefore consent under this clause is not required.	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>The proposal includes earthworks in the form of both cut and fill across the site. The requirements of this clause have been considered as follows:</p> <ul style="list-style-type: none"> <li>The proposal is not likely to result in any detrimental effect on drainage patterns and soil stability in the locality of the development.</li> </ul>	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>	<ul style="list-style-type: none"> <li>• The earthworks will facilitate future use of the site.</li> <li>• A condition has been recommended that requires that all imported and exported fill is to be VENM or a material identified as being subject to a resource recovery exemption by the NSW EPA.</li> <li>• Conditions have been recommended that require the applicant to protect and support the adjoining buildings from possible damage from the excavation and where necessary, underpin the adjoining buildings to prevent any such damage. The requirement for a dilapidation report of neighbouring properties has also been included as a recommended condition.</li> <li>• A condition has been recommended requiring that all fill must be VENM or ENM.</li> <li>• Given the disturbed nature of the site, the likelihood of disturbing relics is considered low. Notwithstanding, conditions</li> </ul>	
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		<p>regarding unexpected finds have been recommended.</p> <ul style="list-style-type: none"> <li>The proposal is not considered likely to impact on any waterway, drinking water catchment or environmentally sensitive area. Notwithstanding, conditions requiring that erosion and sediment control measures be put in place during construction have been recommended.</li> </ul>	
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.	The site has connection to reticulated electricity, water and sewer. The proposed stormwater management system has been assessed by Council's Development Engineer as being suitable. Vehicular access will continue to be off Fleet Street.	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	A small portion in the south western corner of Lot 2 DP 791551 is mapped as containing wetlands. No works are proposed in this area nor is any stormwater draining or construction vehicles accessing this area. Therefore, the proposal is considered to be consistent with this clause.	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>		
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The proposal is considered to be generally consistent with the LEP.

#### *Clause 4.6 Request*

#### *The Development Standard to be varied and extent of the variation*

The maximum height of buildings pertaining to the site is 9m. A number of the new dwellings (16) exceed the 9m height limit with the largest height breach being 9.69m in height, representing a 7.66% variation. The dwellings complying with/exceeding the height limit are shown in **Figure 15** below.

UNIT NUMBER	COMPLIANCE TO 9M LIMIT	UNIT NUMBER	COMPLIANCE TO 9M LIMIT	UNIT NUMBER	COMPLIANCE TO 9M LIMIT
TH1	MAX 0.69m OVER	TH11	COMPLIES	TH21	COMPLIES
TH2	COMPLIES	TH12	MAX 0.31m OVER	TH22	COMPLIES
TH3	MAX 0.21m OVER	TH13	COMPLIES	TH23	MAX 0.04m OVER
TH4	COMPLIES	TH14	MAX 0.04m OVER	TH24	COMPLIES
TH5	COMPLIES	TH15	MAX 0.43m OVER	TH25	COMPLIES
TH6	MAX 0.11m OVER	TH16	MAX 0.22m OVER	TH26	COMPLIES
TH7	COMPLIES	TH17	MAX 0.57m OVER	TH27	MAX 0.44m OVER
TH8	MAX 0.23m OVER	TH18	MAX 0.52m OVER	TH28	COMPLIES
TH9	COMPLIES	TH19	COMPLIES	TH29	MAX 0.09m OVER
TH10	MAX 0.43m OVER	TH20	MAX 0.02m OVER	TH30	MAX 0.44m OVER

**Figure 15.** Height compliance table.

#### *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.

The preconditions are:

1. Tests to be satisfied pursuant to Cl 4.6(3)(a) – this includes matters under Cl 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 C** 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 are 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 listing 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 2014* ('the DCP')

It is noted that the Port Stephens Development Control Plan 2025 was adopted on Tuesday 28 October 2025, commencing on 30 October 2025. In accordance with Chapter A4 of the PSDCP 2025, the plan does not apply to any DA lodged but not yet determined before the plan's commencement. Therefore, the PSDCP 2014 continues to apply.

*Chapter B1 – Tree Management*

The proposal does not seek to remove any trees and therefore this chapter does not apply.

*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.

This chapter applies as the development is considered to have the potential to impact native flora and fauna and is mapped as preferred and supplementary koala habitat.



The land which is proposed to contain the multi-dwelling housing development is heavily disturbed due to its historic use and as a result is mostly cleared of vegetation. No further vegetation removal is proposed.

The western lot (Lot 2 DP791551) subject to this application contains a 50m wide APZ directly adjacent to the land proposed to contain multi-dwelling housing. Beyond the APZ is heavily vegetated which connects to public bushland known as Stoney Ridge Reserve. The lot contains several existing fire trails. The site is mapped as containing an endangered ecological community, as well as preferred and supplementary koala habitat. Under previous assessments, the lot was identified as containing habitat for threatened species including koala and powerful owl with sitings of both species identified on the BioNet Atlas Records.

It is noted that the NSW RFS first issued a BFSA which advised that upgrades were required to the existing fire trails which required some tree removal. This is reflected in the Arborist Report and Ecological Impact Letter prepared for the proposal by Anderson Environment and Planning. Following further consultation with the NSW RFS, it was determined that upgrades were not required in order for the development to comply with Planning for Bushfire Protection (PBP) 2019. Consequently, the BFSA has been updated, removing reference to any fire trail upgrade requirements. Therefore, the proposed development does not seek to remove any vegetation.

It is noted that that a total of three construction access points were originally proposed. Two of the construction access points sought to use the existing fire trails and APZ in the sites west. Due to Council's concerns with regard to potential ecological impacts resulting from these construction access points, they have since been removed from the proposal. Access during construction will therefore be restricted to the existing access from Fleet Street connecting directly with Ridgeview Drive.

Notwithstanding the above, it is noted that the existing APZ is subject to an approved BVMP and ongoing use conditions under a separate DA (DA 16-2018-121-1). Given the clearing of the APZ was approved under DA 16-2018-121-1 on the basis that the BVMP would be implemented and ongoing use conditions complied with, the same ongoing use conditions have also been recommended to ensure compliance with the approved BVMP and consistency with the ongoing use conditions associated with DA 16-2018-121-1.

Subject to conditions, the proposal 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.

It is noted that some submissions raised concern with regard to demolition works and the potential for asbestos particles to become airborne. A Hazardous Substance Audit (HSA) was prepared for the proposal by Panacea Occupational Safety and Health. The HSA was

undertaken on the buildings where demolition works are proposed with no asbestos material found to be present.

### *Noise*

Both a Construction Noise Assessment and Management Plan (CNAMP) and an Acoustic Design Review (ADR) was prepared for the proposal by Muller Acoustic Consulting Pty Ltd.

The CNAMP sought to assess the potential construction noise impacts at off-site receivers and present mitigation and management measures that may be implemented to effectively manage such emissions. The assessment found that some construction activities are likely to exceed the noise management levels for both on and off-site residential receivers. Therefore, mitigation measures were recommended to be implemented during works to mitigate the potential noise impacts during construction.

When the CNAMP was prepared, that applicant had proposed three construction vehicle access points. The application has since been amended to only one construction access from Fleet Street. Whilst the construction access is not specifically referenced in the CNAMP, a condition has been recommended requiring that the applicant obtain a letter from a certified consultant to confirm that the mitigation measures recommended in the CNAMP remain suitable for the one construction access and if not, for them to be updated accordingly. Following updates (where required), the condition notes that the mitigation measures within the CNAMP are to be complied with during construction works.

The ADR assessed the intertenancy walls to inform the wall design and their adequacy against the appropriate performance with BCA standards. It was recommended that a 5-star wall with a DnT,w + CTR of 50 be provided for intertenancy walls. A condition has been recommended accordingly.

Noting the above, the proposal is considered to be consistent with this chapter.

### *Earthworks*

The proposal includes earthworks. A cut and fill plan was prepared for the proposal by Northrop Consulting Engineers as required by this section. A condition has been recommended that requires that all imported and exported fill to be VENM or a material identified as being subject to a resource recovery exemption by the NSW EPA. The proposal is therefore consistent with this section of the DCP.

### *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 and drain to the public drainage system. Therefore, this chapter applies.

A stormwater management plan was prepared by Northrop Consulting Engineers to address both stormwater quality and drainage.

The system has been designed to capture all stormwater via a pit and pipe network through the site. For the northern catchment of the site, stormwater is proposed to be conveyed to an

infiltration trench located in the north western corner of the site. The infiltration trench has been designed to ensure that runoff from all storms up to and including the 1% AEP event can be infiltrated with no overflow. In larger events, overflow will be directed to the existing creek located in the Council reserve to the north of the site.

A number of on-site detention (OSD) tanks are proposed throughout the site to collect stormwater from the southern catchment. The provisions of OSD tanks ensures that the post-development flow is consistent with the site's pre-development flow. Overflow will be directed to the existing stormwater network in Fleet Street.

Each new dwelling is proposed to have a minimum 2000 litre stormwater tank. It is proposed that stormwater collected in these tanks will be reused for toilet flushing and laundry.

Several water quality devices are also proposed to ensure adequate compliance with Council's water quality targets. These devices include rainwater harvesting tanks, sediment traps, proprietary filter cartridges and pit filter inserts.

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 land to which the multi-dwelling housing is proposed to be located is not flood prone land. A portion of the western side of the site is. However, no works are proposed within this area and therefore this chapter does not apply.

### Chapter B7 – Heritage

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

The site is not a mapped heritage item, nor is it within a conservation area or in proximity to a heritage listed item.

An AHIMs search was provided for the site which found no recorded Aboriginal sites or place within a 200m buffer of the site. The site has previously been heavily disturbed as a result of historic land uses on the site and therefore it is considered unlikely that the proposal will impact Aboriginal objects or places. Notwithstanding, a condition has been recommended noting that all works must cease if a relic or Aboriginal object is unexpectedly discovered.

### 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*

A Traffic Impact Assessment (TIA) was prepared by SECA Solution. The TIA determined that the proposal would generate 16-21 trips in the peak hour and up to 192 additional trips per day (96 inbound/96 outbound).

It was determined that the Fleet Street and Soldiers Point Road T-intersection shall continue to operate at its existing level of service, with capacity to cater from the increased demand as a result of the proposal.

### *On-site Parking Provisions*

Figure BU identifies car parking requirements for specific land uses. The parking requirements are shown in **Table 6** below.

**Table 6: Car parking control**

Use	Control
Multi-dwelling housing	1 car space for one and two bedroom dwellings 2 car spaces for three > bedroom dwellings 1 visitor space for every three dwellings

The required and proposed car parking for the new dwellings is detailed in Table 7 below.

**Table 7: Proposed and required car parking assessment (dwellings)**

Proposed Dwellings / Bedrooms	Parking Required	Parking proposed
Three bedroom dwellings - 30	60	60
Two bedroom dwellings – 11	11	11
<b>Total</b>	<b>71</b>	<b>71</b>

As shown in **Table 7** the car parking for the proposed new dwellings is compliant with the DCP car parking control.

With regard to visitor car parking, this has been calculated using the total of all proposed and existing dwellings which is 66. Based on this, a total of 22 visitor car parking spaces are required. The development proposes to provide 17 car parking spaces, representing a 5 car parking space shortfall. The car parking shortfall has been justified through demonstration that the shortfall can be catered for through the use of stacked parking on some townhouse and cabin driveways.

Notwithstanding the above, it is noted that whilst the PSDCP 2025 does not apply to the proposal, the visitor car parking rate has been amended to be 1 space for every five dwellings, rather than 1 space for every three as per the PSDCP 2014. Using the PSDCP 2025 rate, the development would be required to provide 13 visitor car parking spaces, meaning the proposal would be compliant with regard to visitor car parking.

### *On-site Parking Access*

The site will continue to be access via the existing cross over off Fleet Street. The TIA determined that this access provided good visibility for vehicles entering and exiting the site and as result expects minimal impacts upon road safety.

### *Visitor Parking and Loading Facilities*



A total of 17 visitor spaces are proposed and will be located within the community title lot. A condition has been recommended requiring that visitor car parking is sign posted.

The parking layout provides direct pedestrian paths to building entries.

#### *Access to public transport for 20 or more dwellings*

In accordance with this control, a DA for 20 or more dwellings is required to demonstrate that a bus stop is existing and fully accessible to current standards within a 400m walking catchment.

A bus stop is located approximately 150m from the site on Soldiers Point Road. The bus stop is serviced by three bus services being the 132, 133 and 134. These services provide transport to Nelson Bay, Anna Bay, Boat Harbour, Soldiers Point, Taylors Beach, Corlette, Shoal Bay and Fingal Bay. There is not currently a footpath along Fleet Street providing access to the bus stop. A condition has been recommended that requires a footpath to be provided along the sites street frontage and extending to the existing footpath on Soldiers Point Road.

Noting the above, the proposal is consistent with this control.

#### *Electric Vehicle Infrastructure*

In accordance with control B8.20, car parking for residential accommodation is to be designed to include provision of electrical circuitry with capacity to provide charging facilities for an electric vehicle to each car parking space. A condition has been recommended requiring at least 1 car park per dwelling to be made EV capable as per this control.

#### Chapter C5 – Multi Dwelling Housing or Seniors Housing

Chapter C5 applies to development that is defined as multi-dwelling housing or seniors housing and therefore applies to the proposed development. An assessment of the proposal against Chapter C5 has been provided at **Attachment B**.

### **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 apply to the proposed development. A condition has recommended requiring that a monetary contribution is to be paid to Council, pursuant to section 7.11 of the EP&A Act, prior to release of the Construction Certificate.

#### **(d) Section 4.15(1)(a)(iia) – 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.
- S64(2) requires that the consent authority to consider whether it is appropriate to require the existing building to be brought into total or partial conformity with the *Building Code of Australia*. Council's Building Surveyor identified that the existing cabins subject to the proposed alterations and changes of use need to be upgraded so as to bring the building into partial conformity with the Building Code of Australia. Conditions have been recommended accordingly.

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

### **3.3 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.

#### Social and Economic Impacts

There are a number of potential social impacts that may arise from the proposed development during construction including, short-term construction related impacts on the immediate locality, such as noise, safety, dust and vibration, and location of the temporary facilities. These impacts can be appropriately managed in accordance with the recommendations of the Construction Noise Impact Assessment and implementation of a Construction Management Plan as per the recommended conditions.

The construction of the development will have a monetary input into the local area and provide employment during the construction phase of the development.

The proposal will provide additional housing with differing typologies. This will contribute to both housing diversity and supply in the local area. The development is consistent with the Council's Local Housing Strategy providing infill housing.

The provision of additional housing in close proximity to existing retail and commercial centres nearby the site will contribute to enhancing the economic viability of these centres.

Noting the above, it is considered that the proposal will have a positive social and economic impact.

#### Built Environment

The proposed development will be visually prominent compared to that of the existing development on the site and sites within the immediate surrounds. This is largely due to the site currently containing small scale cabins from the historic tourist use and being on a slope. Whilst some non-compliances are proposed to setback and height controls, the proposal is not considered to result in adverse impacts to the built environment in that it does not result in

adverse amenity impacts to neighbouring properties and will reinforce the intended residential nature of the area, which the existing tourist use does not.

### Natural Environment

No tree removal is proposed and therefore, no impacts to the natural environment are expected in this regard. In addition, construction access has been restricted to the existing driveway from Fleet Street and therefore there is not expected to impact to the natural environment during construction. Furthermore, ongoing use conditions have been recommended to ensure that the APZ is managed in accordance with BVMP which includes techniques to ensure the APZ is managed in accordance with Planning for Bushfire Protection (PBP) 2019 requirements as well as measures to prioritise the protection of Powerful Owl and Koala, along with management of *Corybas dowlingii*, which is an endangered orchid species and is present within the site

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

#### **3.4 Section 4.15(1)(c) - Suitability of the site**

- The proposal is consistent with the Port Stephens Local Housing Strategy which seeks to encourage infill housing with Salamander Bay being identified as an area where there are opportunities for infill housing.
- The site is conveniently located within proximity to commercial precincts, public transport and infrastructure increasing the amenity of residents whilst also enhancing the viability of commercial centres.
- The development is considered to be compatible with the desired character, bulk and scale of development in the area.

#### **3.5 Section 4.15(1)(d) - Public Submissions**

These submissions are considered in Section 5 of this report.

#### **3.6 Section 4.15(1)(e) - Public interest**

The development provides additional residential dwellings in a convenient location. The proposed development contributes to both housing supply and diversity within the area, which is consistent with the Port Stephens Local Housing Strategy.

The proposed development is largely compliant with relevant controls and does not result in adverse amenity impacts to neighbouring properties or future residents.

Submissions received during notification of the application raised a consistent concern with regard to the use of the fire trails and APZ area for access during construction due to potential ecological impacts. It is noted that some submissions were supportive of the proposed alternative construction access noting that it is better for safety and amenity of existing residents within the lot. The use of the existing fire trails and APZ during construction has been removed from the proposal, with construction access now proposed to be from the existing driveway off Fleet Street only. It is considered that the amenity and safety of existing residents can be managed through the Construction Noise Assessment and Management Plan and a Construction Management Plan, which includes procedures to mitigate noise impacts and traffic impacts to existing residents.

Noting the above, it is considered that the proposal is 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 (Issue, resolution, conditions)	Resolved
<b>Concurrence Requirements (s4.13 of EP&amp;A Act)</b>			
N/A			
<b>Referral/Consultation Agencies</b>			
Ausgrid	S2.48 of State Environmental Planning Policy (Transport and Infrastructure) 2021	The application was referred to Ausgrid. Ausgrid did not object to the proposed development and provided advice with regard to the supply of electricity and working in proximity to network assets including underground mains and an existing kiosk substation.	Y
<b>Integrated Development (S 4.46 of the EP&amp;A Act)</b>			
NSW Rural Fire Services (RFS)	S100B - <i>Rural Fires Act 1997</i> bush fire safety of subdivision of land that could lawfully be used for residential or rural residential purposes or development of land for special fire protection purposes	The NSW RFS has issued a Bush Fire Safety Authority for the development.	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	Council's Development Engineer initially requested additional information. The information provided in response satisfied the outstanding items. Council's Development Engineer has supported the proposed development subject to conditions.	Y (conditions)



Building Surveyor	Council's Building Surveyor requested additional information to determine whether existing buildings meet the requirements of the Building Code of Australia. In response, the applicant provided a Building Code of Australia Review Report. Council's Building Surveyor reviewed the report and was not satisfied that the report adequately addressed the original RFI request. Therefore, conditions were recommended pursuant to Section 64 of the Regulations to bring existing buildings into partial conformity with the Building Code of Australia.	Y (conditions)
Waste	<p>The application was referred to Council's Waste team as the development is proposed to be serviced by Council's waste services which is consistent with how the site is currently serviced.</p> <p>No concern was raised with regard to the proposed servicing arrangement.</p>	Y
Spatial Services	Council's Spatial Services team recommended a condition be placed on the consent for the applicant to obtain addressing once the proposed road names are confirmed and gazetted.	Y (conditions)
Natural Systems	<p>The application was referred to Council's Natural Systems team. Three requests for information were issued, the first two related to the proposed use of the fire trail and APZ in the east of the site for construction access, identified as 'construction access 1' and 'alternate construction access' on the plans. The third related to use of the Asset Protection zone (APZ) for residential purposes including private open space for some dwellings and walking trails. Prior to receiving a response to this RFI, Council had an assessment briefing with the HCCRPP who advised that they would be supportive of the proposed footpaths and private open space areas within the APZ, subject to details being provided to Council which demonstrate that these uses will have no impacts on ecology. Notwithstanding, the applicant has removed POS and walking trails in the APZ on the plans.</p> <p>With regard to construction access, the applicant removed the two construction access points proposed in the fire trails and APZ area with only one construction access from the existing driveway off Fleet Street proposed.</p> <p>The application was not re-referred to Council's Natural Systems team as it is considered that their concerns have been addressed given that use of the APZ and fire trails has been removed.</p>	Y (conditions)
Development Contributions	The application was referred to Council's Development Contributions Officer. It was determined that s7.11 contributions apply for the proposed new dwellings. A condition was recommended accordingly.	Y (conditions)

Design Review Panel	<p>The proposed development was referred to Council's Design Review Panel (DRP) three times. Once prior to lodgement of the DA and twice during assessment of the application.</p> <p>The design was not supported by the DRP at pre-lodgement meeting with a number of concerns raised particularly in regard amenity, density and limited landscaping provided.</p> <p>Following lodgement of the DA, the application was referred to the DRP in February 2025. The plans lodged with the DA remained largely unchanged from those originally submitted for the pre-lodgement meeting. The DRP was unable to support the proposal at the time due to the proposal not sufficiently addressing a number of a concerns previous raised.</p> <p>The applicant amended the plans in response to the comments received from the DRP in February 2025 and Council's RFI. The amended plans were re-referred to the DRP in June 2025. The DRP was generally supportive of the amended design and noted that with some relatively simple further design development, the proposal can be expected to warrant the DRP's support. The DRP concluded that it was not necessary for the application to be re-referred to them for review.</p> <p>During this meeting that DRP noted that a meaningful response to Connecting to Country is an important component of the design for the site. As a result, the applicant provided a Connecting with Country Statement prepared by EJE Architecture. The statement notes that the design of the development had substantially commenced prior to the introduction of the Connection with Country Framework in November 2023 and further noted that the site is not a greenfield site having an already established network of roads and buildings, and as a result during development design process, the framework was not considered. Notwithstanding, the statement notes that all good design should inherently and subconsciously apply certain principles of Connecting with Country. The statements submits that the following design features assist with the development's connection to country:</p> <ul style="list-style-type: none"> <li>• <i>Topography – The project explores the natural rise of the site's hillside, with topography dictating the pattern of the development and streetscape (within the constraints of existing buildings). Cut and fill is minimised where possible. The outcome of utilising the topography to separate adjacent rows of buildings vertically allows increased access to light, views and cross ventilation to the collective buildings.</i></li> <li>• <i>Sightlines &amp; Views – The position of the existing site, sheltered within a surrounding expanse of bushland and with access to views outward across the bay allow</i></li> </ul>	Y
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	<p><i>connection for residents to the broader natural cultural landscape of the region.</i></p> <ul style="list-style-type: none"> <li><i>Ecology &amp; Biodiversity – Local Housing Strategy seeks density; however ecology also needs to be protected. The project seeks to infill an existing cleared and pre-developed site instead of impacting a landscape with natural ecological features. The proposal's landscape plan seeks to re-establish endemic species and provide habitat for pollinators &amp; other local flora and fauna through green corridors across the site.</i></li> <li><i>Water – The site enjoys proximity to Salamander Bay and Cromartys bay. Where midden deposits of shell fish in Port Stephens indicate Aboriginal people's use of the waterways for food collection over thousands of years, Oysters are still farmed close to the site today. Allowing people to live in proximity to the waterways of Port Stephens increases the opportunity for human connection to the greater systems of Country's biosphere.</i></li> <li><i>Circular Economy – The proposal seeks to re-use and "up-cycle" an existing built environment that would otherwise be demolished at the end of its life as tourist accommodation. Retention of this embodied carbon on the site is a strong environmental outcome, caring for Country in a direct practical sense.</i></li> </ul> <p>Council is satisfied that the design has addressed comments from the DRP.</p>	
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The outstanding issues raised by Council officers are considered in the Key Issues section of this report.

### 4.3 Community Consultation

The proposal has been notified twice during the assessment in accordance with the Council's Communications and Engagement Strategy. The first notification went from 3 December 2024 – 22 January 2025 and second from 3 June 2025 – 17 June 2025.

A total of 68 submissions were received from the separate notification periods. Of the 68, 51 were unique submissions, comprising 49 objections and 2 submissions in favour of the proposal. Of the submissions received, Council received three separate petitions, two were objecting to the proposal and collectively had 254 signatures and the third was in support of the proposal and had 22 signatures.

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

**Table 10: Community Submissions**

Issue	No of submissions	Council Comments
<b>Objection</b>		
<p>Impacts to flora and fauna as a result of use of fire trails during construction of the development including impacts from noise and vibration of construction vehicles. Concern that alternative have not been explored to minimise habitat destruction.</p> <p>The use of fire trails is not in the public interest and will block emergency vehicle access.</p> <p>Concerns were also raised with regard to the development proposing to place existing crushed rock along fire trails, suggesting that this would also impact flora and fauna within this area of the site.</p> <p>Objections to any further clearing in this portion of the site and suggestion that the remainder of the lot should be placed into conservation.</p>	<p>41</p> <p>Including 2 petitions having collectively 254 signatures</p>	<p>The originally lodged application sought consent for three construction access points. Two of these accesses included the use of existing fire trails and the APZ area. The applicant has since removed these construction accesses from the proposal with only one construction access from the existing driveway off Fleet Street now proposed. As such, a condition has been recommended which restricts construction to the existing driveway from Fleet Street.</p> <p>No consent is given for the placement of crushed rock along the fire trails.</p> <p>No further clearing is proposed under this application.</p>
Concerns with regard to fire trail extension which will cut through preferred koala habitat having adverse impacts on koala	2	No fire trail extension is proposed nor is vegetation removal.
Use of fire trails during construction will impact the general public use of existing reserve	1	Whilst use of fire trails during construction has since been removed from the application, it is noted that the fire trails are located on private land rather than a public reserve.
No Biodiversity Development	3	The development does not trigger entry into the Biodiversity Offset

Assessment Report (BDAR) provided as required under the Biodiversity Assessment Method (BAM)		Scheme (BOS) and therefore a BDAR was not required.
Traffic Impacts due to the increase number of vehicles, the narrowness of Fleet Street, access to Soldiers Point Road and impacts to congestion on Soldiers Point Road.	20  Including 1 petition with 247 signatures	<p>A Traffic Impact Assessment (TIA) was prepared by SECA Solution date 11 April 2025. The TIA determined that the proposal would generate 16-21 trips in the peak hour and up to 192 additional trips per day (96 inbound/96 outbound). It was determined that both Fleet Street and Soldiers Point Road have capacity to cater from the increased demand as a result of the proposal. In regard to the increased use of the intersection, it was acknowledged that the key impact of the development will be associated with the increased traffic utilising the intersection of Fleet Street and Soldiers Point Road.</p> <p>Notwithstanding, with consideration of recent crash data, a review of sight lines and traffic counts, the TIA determined that the intersection will continue to operate at its existing level of service and that that there would be a minimal impact upon road safety associated with the proposed development.</p>
Presence of asbestos during demolition and general contamination of the site	4	<p>A Hazardous Substance Audit (HSA) was prepared for the proposal by Panacea Occupational Safety and Health. The HSA was undertaken on the buildings proposed where demolition works are proposed with no asbestos material found to be present.</p> <p>A Detailed Site Investigation (DSI) was prepared for the site which found that the site can be made suitable for the proposed use from a contamination perspective.</p>
Concern for connection to water for bushfire protection and whether	1	The application was referred to the NSW RFS for comment. In accordance with the Bush Fire



existing dwellings/cabins can meet the relevant bushfire requirements.		<p>Safety Authority (BFSA) issued for the DA, the following is required to occur:</p> <ul style="list-style-type: none"> <li>• Cabins 1 and 2 are required to be constructed to BAL 19.</li> <li>• All remaining cabins proposed to be renovated under this application are required to be constructed to BAL 12.5 requirements</li> <li>• All existing cabins/dwellings are required to be upgraded to improve ember protection by enclosing all openings (excluding roof tile spaces) or covering openings with a non-corrosive metal screen mesh with a maximum aperture of 2mm.</li> </ul> <p>With regard to access to water, the site currently contains 2 fire hydrants with another 2 proposed under this application. Notwithstanding, the number of location of hydrants is to be confirmed as a Construction Certificate requirement in accordance with the National Construction Code.</p>
Inconsistency with the sites zoning.	2	<p>The site is zoned R2 Low Density Residential. Multi-dwelling housing is a permitted land use in the zone. The proposed development is considered to be consistent with the sites zoning in that the proposal provides for the housing needs of the community.</p>
Suggestion that the proposal is an overdevelopment with compromises given to landscaping, separation and privacy.	9	<p>The proposed development largely complies with the relevant DCP controls which seek to improve amenity including privacy, solar access, acoustic control and natural ventilation. There are some minor variations to setback controls for some proposed dwellings which have been supported on merit, as discussed in <b>Attachment B</b>. Where setbacks are reduced and have the potential to impact amenity of neighbouring properties, conditions have been recommended requiring the provision of privacy screens.</p>

Insufficient internal road widths	1	Road widths are considered suitable per Councils engineering standards and the DCP.
Impacts to amenity through overshadowing, overlooking/privacy and noise impacts to neighbouring properties	6	<p>Council's DCP requires that a minimum of 50% of private open space of adjoining dwellings is not affected by any shadow for a minimum of three hours between 9am – 3pm. The proposal complies with this control.</p> <p>As previously discussed, many of the proposed dwellings comply with the setback controls in the DCP. There are some minor variations to setback controls for some proposed dwellings which have been supported on merit, as discussed in <b>Attachment B</b>. Where setbacks are reduced and have the potential to impact amenity of neighbouring properties, conditions have been recommended requiring the provision of privacy screens.</p> <p>A Construction Noise Assessment and Management Plan (CNAMP) was prepared for the proposal by Muller Acoustic Consulting Pty Ltd. The assessment found that some construction activities are likely to exceed the noise management levels for both on and off-site residential receivers. Therefore, mitigation measures were recommended to be implemented during works to mitigate the potential noise impacts during construction. A condition has been recommended which requires that the mitigation measures within the CNAMP are to be complied with during construction works.</p>
Lack of open space for future residents	1	All new dwellings and renovated cabins meet the DCP requirements for private open space. A communal area is also proposed in the north western corner of the site which provides a community garden, seating areas, sheltered picnic tables and a BBQ. The open space proposed is therefore considered suitable noting that the

		provision of communal open space is not required for multi-dwelling housing under Council's DCP.
A footpath should be provided from the site to Soldiers Point Road	2	A condition has been recommended which requires the construction of a footpath along the sites entire frontage to Fleet Street, connecting to the existing Council footpath on Soldiers Point Road.
Waste management – visual and odour impacts to streetscape on collection days and concerns for future residents needing locate waste bins on Fleet Street kerb.	4	Waste bins are proposed to be brought to the kerb for weekly collection. This was supported by Council's Waste Team. Whilst there will be minor visual and odour impacts as a result of kerbside collection, this is considered to be acceptable given it is short term, once a week.
Pressure on public infrastructure including servicing availability	5	In accordance with clause 7.6 of the Port Stephens LEP, 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. The site has access to reticulated sewer, water and electricity, proposes a suitable stormwater drainage system and vehicular access and therefore the proposal is considered to meet the requirements of this clause.
Non-supportive of height non-compliance	4	Council has assessed the proposed height variation against Clause 4.6 of the PSLEP and has found that the objectives of the height of buildings development standard are achieved, notwithstanding non-compliance and there are sufficient environmental planning grounds to justify the contravention. The height variation is therefore supported, refer to <b>Attachment C</b> .
Visual impacts - Submissions raised concern with the VIA suggesting that it	5	Due to the sites location and topography, it is visually prominent and therefore it is to be expected that there will be some level of

<p>neglects significant nearby residential areas and fails to demonstrate that height exceedance does not result in adverse impacts to the streetscape and character of the area.</p>		<p>visual impact as a result of the development. The VIA took several viewpoints into consideration which included viewpoints from Fleet Street, the entrance to the site and the waterfront. The most sensitive viewpoint and therefore the most likely to result in adverse visual impacts is considered to be from the water looking back towards Salamander Bay. Chapter 2 of the Resilience and Hazards SEPP applies to the development and requires the consent authority to consider whether development will have an adverse impact on views from public spaces to foreshores and the visual amenity and scenic qualities of the coast. As discussed in the assessment against this SEPP, having regard to the VIA, it is considered that the proposed development will not result in adverse visual impacts nor impact the scenic quality of the coast, with the proposal being located below the tree line beyond limiting the visual impact.</p> <p>The proposed development will visually change the outlook from Fleet Street and residential uses to the sites south and east. Notwithstanding, it is considered that the visual impacts resulting from the are not significant, particularly given the site is already partially developed and no vegetation removal is proposed. Further, the proposal seeks to introduce additional landscaping both within setbacks and along the sites frontage to Fleet Street which should improve the sites presentation to the street.</p> <p>In addition to the above, as previously noted, the proposed development largely complies with the relevant DCP controls which seek to improve amenity. There are some minor variations to setback controls and the height limit for some proposed dwellings which</p>
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		<p>have been supported on merit. Where setbacks are reduced and have the potential to impact amenity of neighbouring properties, conditions have been recommended requiring the provision of privacy screens.</p> <p>Given the minor variations proposed including to the height limit, it is considered that a compliant development would not result in a materially different scaled development and therefore visual impacts would likely remain the same or similar.</p>
<p>Construction impacts including increased noise, vibration, dust and traffic. Concern has been raised with regard to impacts to nearby buildings during construction and requests for dilapidation reports.</p>	2	<p>These impacts can be appropriately managed in accordance with the recommendations of the Construction Noise Impact Assessment and implementation of a Construction Management Plan as per the recommended conditions.</p> <p>Conditions have been recommended that require the applicant to protect and support the adjoining buildings from possible damage from the excavation and where necessary, underpin the adjoining buildings to prevent any such damage. The requirement for a dilapidation report of neighbouring properties has also been included as a recommended condition.</p>
<p>Concern with regard to increased stormwater runoff and potential impacts to land that is already flood prone.</p> <p>The submissions noted that there was deficiencies in the stormwater design including stormwater quality and an inadequate consideration for downstream impacts.</p>	7	<p>A stormwater management plan was prepared by Northrop Consulting Engineers to address both stormwater quality and drainage. As discussed in the assessment against Chapter B4 of the DCP, the stormwater system has been designed to ensure that runoff from all storms up to and including the 1% AEP event can be captured to ensure that the post-development flow is consistent with the sites pre-development flow.</p> <p>Council's Development Engineer reviewed the stormwater</p>



Submissions suggested that a Flood Study should be prepared for the site.		<p>management plan and supported the stormwater design from a water quality and drainage perspective.</p> <p>The subject site is not mapped as being with a flood planning area and therefore a flood study is not considered necessary.</p>
Insufficient landscaping and use of species not local.	5	The landscaping proposed is consistent with Council's DCP with many of the species proposed to be planted being consistent with Council's Biodiversity Technical Specification.
Objection to use of APZ area for leisure/recreation.	3	The use of the APZ area for recreation has been removed from the plans.
Comments on previous ecology assessment and inadequacies associated with existing APZ.	2	This application is not required to consider the adequacy of reports submitted under separate DA's.
Design of garages in front setback not supported	2	The garages fronting Fleet Street have now been provided with a setback of 2.2m from the front boundary, increased from a 0m setback. Whilst this is not compliant with the DCP front setback control, it has been supported on the basis that landscaping is provided within the front setback and in the road reserve. In addition, articulation has been provided within the garage design. These measures collectively reduce the perceived bulk of the garages and minimise visual impacts.
Concern solar access is not suitable	1	<p>All new proposed dwellings are compliant with Council's DCP controls for solar access.</p> <p>The existing cabins proposed to be converted to dwellings, do not receive 2 hours of sunlight. This is due to the existing shadows from the topography of the land and is not as a result of new buildings on the site. Given the non-compliance is already existing, it is supported.</p>

		In addition, Council's DCP requires that a minimum of 50% of private open space of adjoining dwellings is not affected by any shadow for a minimum of three hours between 9am – 3pm. The proposal complies with this control.
Lack of housing diversity	1	The housing diversity is considered suitable with a range of 2, 3 and 4 bedroom houses proposed.
Gated communities are not in the public interest	1	Council does not have any controls restricting gated communities.
Lack of parking provided to residents and visitors noting that people park along Fleet Street causing traffic impacts.	4	Sufficient car parking has been provided for all new dwellings. There is a shortfall of 5 car parking spaces for visitors. However, the car parking shortfall has been justified through demonstration that the shortfall can be catered for through the use of stacked parking on townhouse driveways and some cabin driveways.
Impacts to littoral rain forest	5	As assessed previously against Chapter 2 of the Resilience and Hazards SEPP the proposal includes stormwater quantity and quality measures to ensure that the development will not adversely impact on the quality of surface water flows to the littoral rainforest.
Dust control - the submission noted that no dust control exists on site.	1	A condition requiring the preparation of a Construction Management Plan (CMP) has been recommended. This CMP will be required to include controls to limit impacts from dust during construction.
Failure to satisfy the requirements of s4.6 of the PSLEP.	1	Council's assessment determined that the proposal satisfies the requirements of s4.6 of the PSLEP, refer to <b>Attachment C</b> .
The development is not affordable housing despite it being referenced in the application.	2	Whilst reference has been made to some dwellings being potentially 'affordable' the application has not been submitted as an 'affordable housing' development under the State Environmental Planning Policy (Housing) 2021 rather the

		proposal is for multi-dwelling housing.
Notification – request for notification to be extended due to it being over the Christmas period.	2	The application was notified in accordance with the Port Stephens Communication and Engagement Strategy and the Environmental Planning and Assessment Act 1979 (exclusion period for Christmas / New Year).
Conflicts with existing tennis court, that is also showed as parking, a community garden and infiltration trench.	1	The existing tennis court is proposed to be demolished. This area will be utilised as a communal area providing a community garden, seating areas, sheltered picnic tables and a BBQ. The infiltration trench will be located below the communal area.
Request that an Environmental Impact Statement be undertaken.	1	The proposal is not considered Designated Development or State Significant Development and therefore an Environmental Impact Statement (EIS) is not required.
Impacts to Aboriginal Heritage	1	An AHIMs search was provided for the site which found no recorded Aboriginal sites or place within a 200m buffer of the site. The site has previously been heavily disturbed as a result of historic land uses and therefore it is considered unlikely that the proposal will impact Aboriginal objects or places. Notwithstanding, a condition has been recommended noting that all works must cease if a relic or Aboriginal object is unexpectedly discovered.
Question how emergency services such as fire trucks and ambulance will access the site.	1	A swept path analysis has been provided which demonstrates that a medium rigid vehicle (MRV) can enter the site.
Regionally significant pathway removes that Councillors ability to represent the community. This pathway should be reviewed to allow for Councillors to have further involvement.	2	The regionally significant pathway is nominated under State Environmental Planning Policy (Planning Systems) 2021 and therefore cannot be reviewed by Council.

Support		
Use of fire trail supported due to potential safety and amenity impacts caused during construction for existing residents	2 including 1 petition with 22 signatures	The use of the fire trail during construction has been removed from the application. It is considered that safety and amenity impacts during construction can be addressed and minimised with compliance with the CNAMP and the Construction Management Plan which has been conditioned.
Development will contribute to housing supply and provide an affordable housing option	1	Noted.
Height exceedance does not impacts views.	1	Noted.
Overlooking/privacy concerns should not be an issue	1	Noted.
Increase in traffic should be expected during holiday periods due to the area being a holiday destination.	1	Noted.

## 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 Construction Access

When lodged the application proposed three construction access points. One sought to use the existing access driveway off Fleet Street whilst the other two sought to utilise access points which connected to the existing APZ area and fire trails in the sites west. This area of the site is ecologically sensitive and therefore Council was not supportive of these construction access points due to insufficient information being provided to justify the proposed construction access and to determine the ecological impacts associated with these accesses. A number of requests for further information were issued by Council seeking for these accesses to be removed from the proposal. The proposal has since been amended with only one construction access proposed via the existing driveway off Fleet Street which is supported by Council. A condition has been recommended which restricts construction activities and construction vehicle access to the existing driveway off Fleet Street during works.

It is noted that a submission and a petition was received during notification of the application which supported the use of the fire trail and APZ during construction due to potential safety and amenity impacts caused during construction for existing residents. It is considered that the amenity and safety of existing residents can be managed through the Construction Noise Assessment and Management Plan and a Construction Management Plan, which include procedures to mitigate noise impacts and traffic impacts to existing residents.

## 5.2 Asset Protection Zone (APZ) management

The APZ was approved and established under DA 16-2018-121-1. The APZ will be managed in accordance with a Bushfire Vegetation Management Plan (BVMP), which was prepared by Anderson Environment and Planning and approved by Council under DA 16-2018-121-1. The BVMP includes techniques to ensure the APZ is managed in accordance with Planning for Bushfire Protection (PBP) 2019 requirements but also includes measures to prioritise the protection of Powerful Owl and Koala, along with management of *Corybas dowlingii*, which is an endangered orchid species and is present within the site. Regeneration of the BVMP land is intended to be undertaken in over a period of six years.

In addition, DA 16-2018-121-1 has two ongoing use conditions relating to the APZ / the area subject to the BVMP, which state:

- *...no ground disturbance shall occur within the area covered by the approved Bushfire and Vegetation Management Plan or remainder of Lot 2 DP 791551”.*
- *No vegetation removal shall occur outside the approved Bushfire and Vegetation Management Plan area on 8 Fleet Street, Salamander Bay (Lot 2 DP 791551).*

Several conditions have been recommended to ensure the ongoing to management of the APZ. Firstly, an ongoing use condition has been recommended to ensure that the management of the APZ is undertaken in accordance with the BVMP and existing ongoing use conditions associated with DA 16-2018-121-1 and a condition also requires that the community management statement include procedures to ensure the APZ is managed appropriately. In addition, a condition has been recommended which requires the consolidation of Lot 2 DP 791551 into the community title lot. This ensures that the existing APZ easement is located with the community title lot.

It is noted that the APZ area was proposed to be used for passive recreation with pedestrian pathways provided throughout the APZ. In addition, the private open space for some of the proposed dwellings were proposed to encroach APZ. This was inconsistent with the approved BVMP and existing ongoing use conditions and therefore Council issued a request for information requesting these components of the DA be removed from the proposal. The plans were updated accordingly.

## 5.3 Emergency Vehicle Access

The HCCRPP has previously raised concern with regard to vehicular access by Fire and Rescue NSW (FRNSW) vehicles and provision of fire hydrants within the site. To assist in assessing the suitability of the sites access and hydrant locations, the FRNSW fire safety guidelines, *access for fire brigade vehicles and firefighters* has been used.

The fire safety guideline outlines two distinct fire appliances being a general fire appliance and a specialist fire appliance. The guideline states that a general fire appliance will offer fire protection to any premises located within a fire district or rural fire district. Notwithstanding, it goes on to state that any building having an effective height greater than 9m (e.g. more than three storeys above ground) should be provided with fire brigade vehicle access commensurate to the parameters given for specialist fire appliance as appropriate to the risk.

Effective building height is the vertical distance between the floor of the lowest storey that provides direct egress to a road or open space and the floor of the topmost storey. None of the dwellings proposed have an *effective building height* of more than 9m. Therefore, it is considered that the development can be assessed on the basis that a general fire appliance will be used to service the site.



The fire safety guideline states that a 'medium rigid vehicle' (MRV) as identified in AS 2890.2:2018 should be used for swept path analysis for a general fire appliance. The applicant has provided swept paths for an MRV. The swept paths demonstrate that a MRV can access the site. In addition, a heavy rigid vehicle (HRV) can access the north (rear) of the site through existing fire trails located to the sites west if required.

The site has two existing hydrants, one located in the east of the site, adjacent to proposed dwelling TH4 and the other located in the north of the site, south of the proposed communal area. Two new hydrants are proposed which are both located in the west of the site.

It is noted that the National Construction Code (NCC) has requirements for both fire brigade vehicle access and fire hydrants. All new buildings and new building work in NSW must comply with the NCC. Details demonstrating compliance with the NCC is a Construction Certificate (CC) requirement rather than a DA requirement with any non-compliances dealt with during the CC process. Council is satisfied that the design demonstrates that compliance with the NCC is achievable and is unlikely to necessitate significant modifications to the proposal at a later date.

#### **5.4 Private Open Space**

When originally submitted some units proposed significant variations to Council's private open space requirements under the Port Stephens Development Control Plan (PSDCP).

The plans have since been amended with all dwellings being compliant with the PSDCP requirements for private open space.

#### **5.5 Building Height**

When originally lodged, 24 (75%) of the new dwellings proposed exceed the PSLEP height limit of 9 metres. The largest breach proposed was 1.57m, representing a 17.4% variation.

The plans have since been amended with the number of dwellings exceeding the height limit and extent of the variations reduced. As proposed, 16 of the dwellings exceed the 9m height limit with the largest height breach being 9.69m in height, representing a 7.66% variation.

The variations extents proposed are restricted to the roof components of the dwellings, which is largely due to buildings design corresponding with the site's topography. The Port Stephens Design Review Panel considered the height variation reasonable given the topography of the site. In addition, to assist in considering the proposed height exceedance, a Visual Impact Assessment has been prepared assessing impacts of the proposed development from several viewpoints.

A Clause 4.6 Variation request has been submitted for the proposed variation and has been supported by Council.

### **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 16-2024-542-1 for Multi-dwelling housing (30 new townhouses), alterations and additions to existing cabins, change of use of existing tourist accommodation to dwellings, community title subdivision, and construction of civil and landscaping works at 4 Fleet Street Salamander Bay 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: DCP Compliance Table
- Attachment C: Clause 4.6 Variation Request
- Attachment D: Architectural Plans
- Attachment E: Landscape Plans
- Attachment F: Civil Engineering Plans
- Attachment G: Community Title Subdivision Plans
- Attachment H: Connecting to Country Statement
- Attachment I: Detailed Site Investigation
- Attachment J: Existing Neighbourhood Management Statement
- Attachment K: Proposed Waste Management Procedure
- Attachment L: Stormwater Management Report
- Attachment M: Applicant Clause 4.6 Variation Request
- Attachment N: Port Stephens Design Review Panel Minutes
- Attachment O: Construction Noise Management Plan
- Attachment P: Hazardous Substance Audit – Cabins
- Attachment Q: Traffic Impact Statement
- Attachment R: Visual Impact Assessment
- Attachment S: Arborist Report
- Attachment T: Flora and Fauna Assessment
- Attachment U: Bushfire Assessment Report
- Attachment V: BASIX Certificate
- Attachment W: Approved Bushfire and Vegetation Management Plan
- Attachment X: NSW Rural Fire Service – Bush Fire Safety Authority