

COUNCIL ASSESSMENT REPORT

HUNTER AND CENTRAL COAST REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSHCC-336 – 16-2024-587-1
PROPOSAL	Construction of a Residential Flat Building (48 Units), two business premises and one retail premises, associated car parking, landscaping and strata title subdivision
ADDRESS	38 Stockton Street, Nelson Bay LOT: 781 DP: 802108 8A Tomaree Street, Nelson Bay LOT: 782 DP: 802108
APPLICANT	Perception Planning
OWNER	Kinala Pty Ltd
DA LODGEMENT DATE	14/11/2024
APPLICATION TYPE	Local Development Application
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19(1) and Clause 2 of Schedule 6 of <i>State Environmental Planning Policy (Planning Systems) 2021</i> declares the proposal regionally significant development as: the development has an estimated development cost of more than \$30 million.
CIV	\$33,526,091 (excluding GST)
CLAUSE 4.6 REQUESTS	Yes – Clause 7.22 Active Street Frontages
KEY SEPP/LEP	• <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> • <i>State Environmental Planning Policy (Housing) 2021</i> • <i>State Environmental Planning Policy (Planning Systems) 2021</i> • <i>State Environmental Planning Policy (Resilience and Hazards) 2021</i> • <i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i> • <i>Port Stephens Local Environmental Plan 2013</i> • <i>Port Stephens Development Control Plan 2014.</i>
TOTAL & UNIQUE SUBMISSIONS ISSUES KEY IN SUBMISSIONS	69 (68 in support, 1 objection)

DOCUMENTS SUBMITTED FOR CONSIDERATION	• Attachment A: Recommended Conditions of Consent • Attachment B: SEPP Housing Assessment Table • Attachment C: Clause 4.6 Variation Request Assessment • Attachment D: Architectural Plans • Attachment E: Arborist Report • Attachment F: Applicant Clause 4.6 Variation Request • Attachment G: Contamination Site Suitability Assessment Report • Attachment H: Letter from Environment Protection Authority • Attachment I: Arborists report • Attachment J: Connecting to Country Statement • Attachment K: Construction Noise Management Plan • Attachment L: Design verification statement • Attachment M: Draft Plan of Strata Subdivision • Attachment N: Flood Assessment • Attachment O: Geotechnical Report • Attachment P: Landscape Plan • Attachment Q: Noise Impact Assessment • Attachment R: Stormwater Management Plan • Attachment S: Survey Plan • Attachment T: Traffic Impact Assessment • Attachment U: Unexpected Finds Protocol • Attachment V: Urban design review panel Minutes • Attachment W: Visual Impact Assessment Report • Attachment X: Waste management plan
RECOMMENDATION	Approval
DRAFT CONDITIONS TO APPLICANT	Yes
SCHEDULED MEETING DATE	3 June 2025
PLAN VERSION	26 March 2025 Version N
PREPARED BY	Courtney Sargent – Senior Development Planner
DATE OF REPORT	16 May 2025

EXECUTIVE SUMMARY

This development application (no. 16-2024-587-1) seeks consent for the construction of a Residential Flat Building (48 Units), two business premises and one retail premises, associated car parking, landscaping and strata title subdivision.

The site is known as 38 Stockton Street and 8A Tomaree Street, Nelson Bay (Lots 781 & 782 DP 802108). The site is located within the Port Stephens Local Government Area (LGA), has an area of 2,262.7m² and is located within the Nelson Bay town centre.

The proposal was notified and advertised during assessment of the application in accordance with the Port Stephens Community Participation Plan. The notification period was from 3 December 2024 to 22 January 2025. A total of 69 submissions including 1 submissions of objection and 68 submissions in support were received during this time.

The key issues in respect of the assessment of this application related to contamination, flooding, waste management and street activation. 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

1.1 The Site

The site is known as 38 Stockton Street and 8A Tomaree Street, Nelson Bay (Lots 781 & 782 DP 802108). The site is currently vacant of any built structures, being used informally as a car park and contains several mature trees, as seen in **Figure 1** below. The site features a sloped topography, falling approximately 5.5m from the south-west corner to the north-east corner. The site has a street frontage of 50.45m along Tomaree Street and 44.055m along Stockton Street, with a total area of approximately 2,262m².



Figure 1. Site Aerial

1.2 The Locality

The site is located within southern portion of the Nelson Bay commercial centre, approximately 400m south of the marina and waterfront. The site is surrounded by a mixture of development typologies with a multi-dwelling housing developments existing to the north and west, a residential flat building to the south and commercial premises to the east. The wider locality reflect this mixed development typology in all directions.

Site Inspection

A site inspection was carried out on 10 January 2025. The subject site can be seen in the photographs below.



Photograph 1. Site from the north eastern corner on Stockton Street



Photograph 2. The site from the corner of Stockton Street and Tomaree Street



Photograph 3. The site from Tomaree Street looking toward to the eastern boundary



Photograph 4. The sites current frontage to Tomaree Street



Photograph 5. The sites current frontage to Stockton Street



Photograph 6. The existing residential development located to the north of the site on Stockton Street



Photograph 7. Existing residential development to the south of the site on Tomaree Street



Photograph 8. Existing residential development to the site west on Tomaree Street



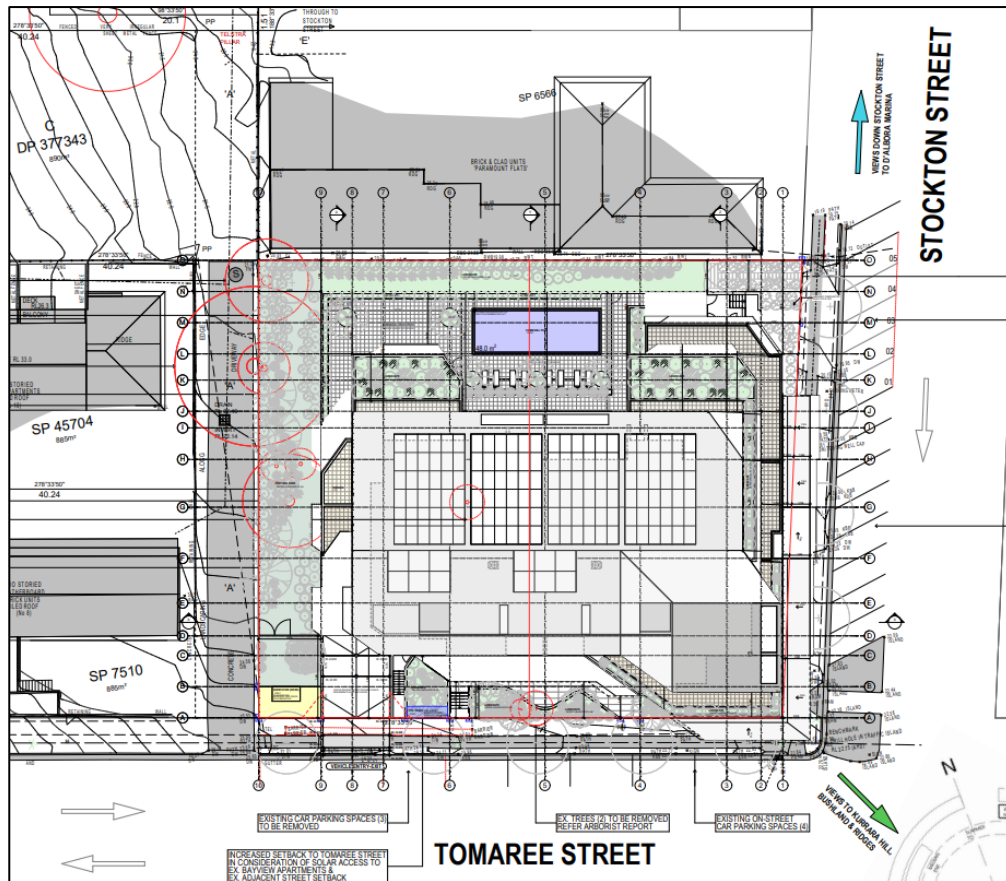
Photograph 9. Existing commercial development to the sites east on Stockton Street

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for the construction of a residential flat building and two ground floor business premises and one retail premises refer to **Figure 2**. The development comprises:

- Forty-eight (48) residential apartments.
- Two ground floor business premises, one fronts directly to Stockton Street, whilst the other is located on the corner of the lot and is orientated towards Tomaree Street.
- One ground floor retail premise, located between the two lobbies fronting Tomaree Street.
- Two communal spaces, one located on the ground floor providing an internal room and external balcony and the other is located on Level 1 containing a swimming pool, landscaping, seating and a barbeque.
- Basement, lower ground and ground level car parking with 83 car parking spaces provided.
- Strata subdivision of the residential units.
- Associated landscaping, vegetation removal and infrastructure works.



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

Table 1: Key Development Data

Control	Proposal
Site area	2,626.7m ²
GFA	6,231.8m ²
FSR	2.75:1
Clause 4.6 Requests	Yes - Clause 7.22 Active Street Frontages
No of apartments	48
Max Height	27.96m
Landscaped area	634.2m ²
Car Parking spaces	83

Apartments

The proposed development include 48 residential apartments comprising:

- 4 x 1 bedroom apartments;
- 36 x 2 bedroom apartments;
- 5 x 3 bedroom apartments; and
- 3 x 4 bedroom apartments.

All apartments are located on the upper floors with a mix of 3 – 9 apartments on each level.

All apartments have been designed with an open plan kitchen, dining and living area connecting directly to a terrace/balcony. Each apartment has a laundry and bathroom. Some apartments are also provided with an ensuite for the master bedroom, walk in robes and a study room or nook.

Communal Space

Two areas of formal communal space are proposed. One is located on the ground floor fronting Stockton Street and is approximately 62.7m², refer to **Figure 3**. This area of communal space provides an indoor room with a kitchenette with the intent for it to be used as a 'work from home' space. The indoor area connects directly to an outdoor terrace.

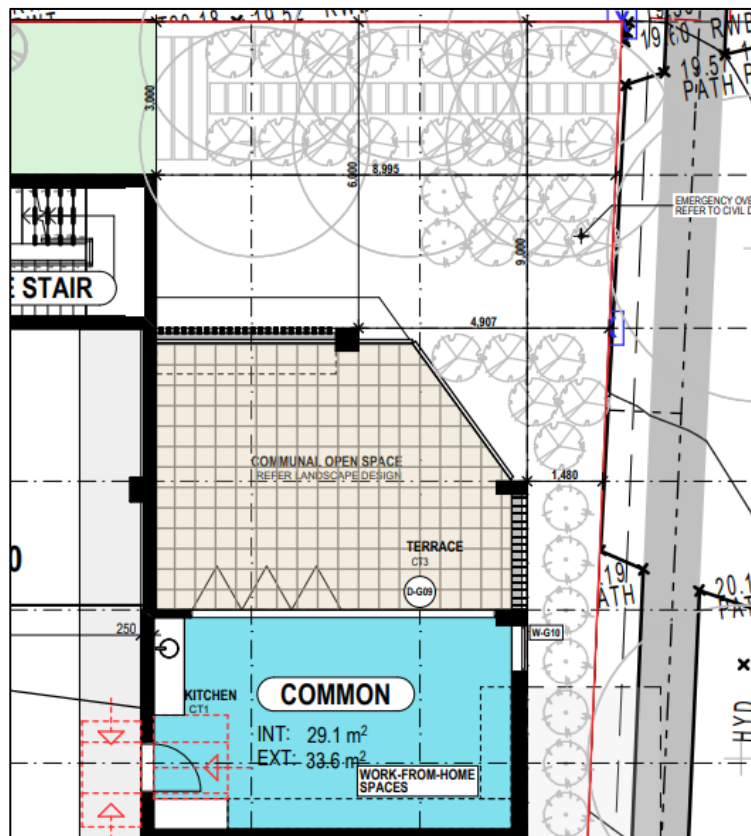


Figure 3. Ground floor communal space

The second area of communal space is proposed to be located on level one and is approximately 422.9m², refer to **Figure 4**. The area contains a swimming pool, outdoor seating, landscaped areas, an internal common kitchen and accessible bathrooms.

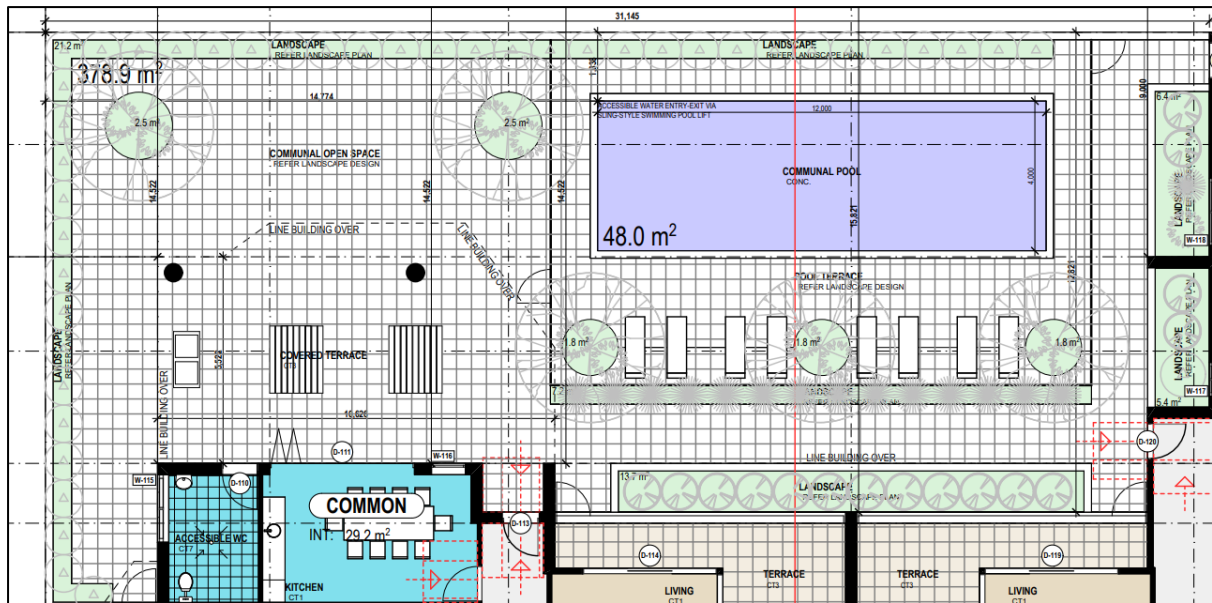


Figure 4. Communal open space

Business and Retail Premises

Two business premises are proposed on the ground floor, one fronts directly to Stockton Street, whilst the other is located on the corner of the lot and is orientated towards Tomaree Street, refer to Figure 5.

One ground floor retail premises is proposed and is located between the two lobbies, refer to Figure 5.

The operational details of these premises are unknown at this stage. The applicant has advised that the likely operating hours will be between 6am – 9pm.

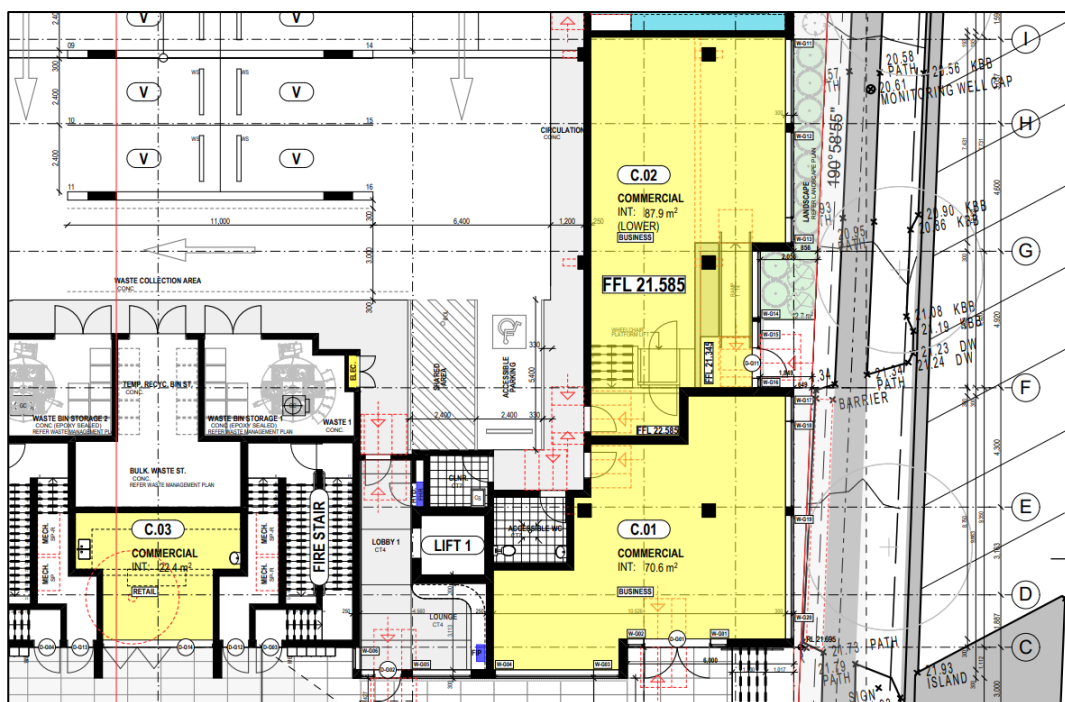


Figure 5. Business and retail premises floor plan

Materials and Finishes

The development is proposed to be constructed of pre-cast concrete panel, stone cladding and compressed fibre cement of differing finishes, as shown in **Figure 6** below.

The proposed vertical screens are proposed to be constructed of aluminium.

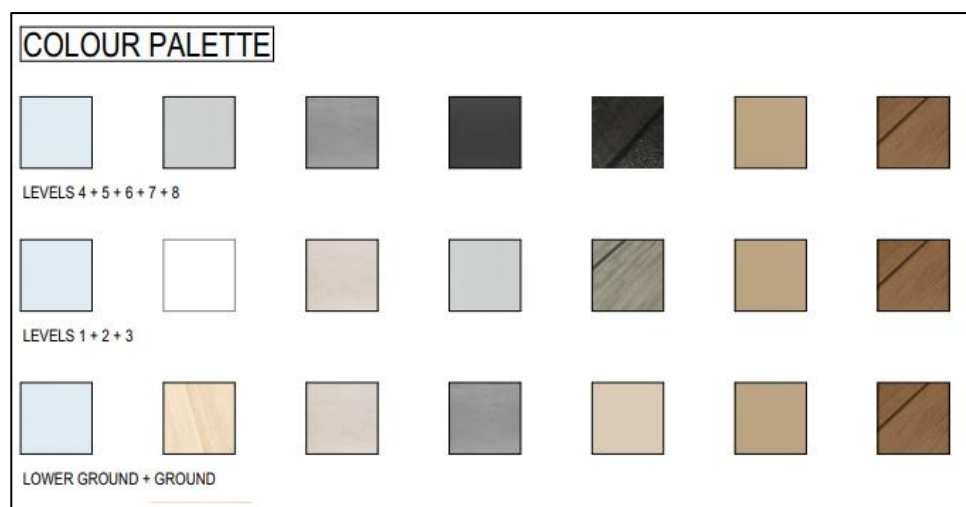


Figure 6. Colour palette

Car parking and access

Vehicular access is proposed off Tomaree Street. The proposed development provides 83 car spaces which includes a number of stacked spaces, 17 visitor spaces and 6 spaces for the commercial premises.

The units require a total of 72 parking spaces and 16 visitor parking spaces, while the commercial premises require 5 parking spaces (based on a business premises use).

Landscaping

A landscaping design has been provided for the proposed development, prepared by Meraki Green Landscape Architecture.

Landscaping is provided on the ground level which provides deep soil landscaping within the northern and western setback areas as well as landscaping within the forecourt area and along the frontage to Stockton Street, refer to **Figure 7**.

Landscaping is also provided on the structure in the communal open space area, fourth floor and seventh floor.

The landscaping design includes a range of trees, shrubs, ground covers, grasses and climbers including native vegetation of various sizes including:

- Tuckeroo
- Blueberry Ash
- Grevillea 'forest Rambler'

A total of 634.2m² of landscaping is proposed including 221.6m² of deep soil landscaping.

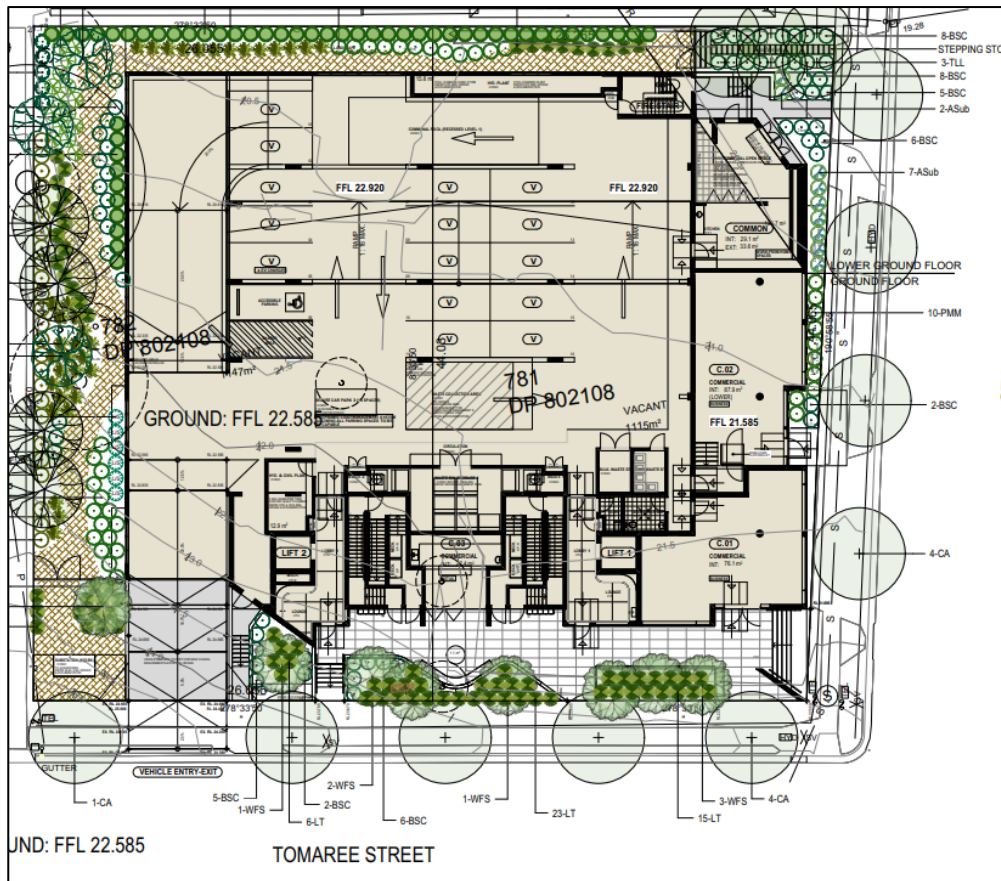


Figure 7. Ground floor landscape plan

Vegetation Removal

The proposal seeks consent for the removal of 10 existing trees on the site. The Arborist Report prepared for the proposal by Abacus Tree Services identifies the vegetation on the site as primarily consisting of exotic trees species within some small native trees and shrubs.

A tree protection plan was prepared to allow for the retention of 1 tree being a Camphor Laurel.

Waste Management

Waste storage areas are provided on the ground floor of the development with separate storage rooms provided for the residential units and the commercial premises. A Waste Management Plan (WMP) has been prepared for the proposal by WGA which considers operational waste. The residential component of the development is to be serviced by a bulk waste room, a residential bin room with chutes and another residential bin room to service the ground level apartment, refer to **Figure 8**. The commercial component is to be serviced by a single waste room as shown in **Figure 8**.

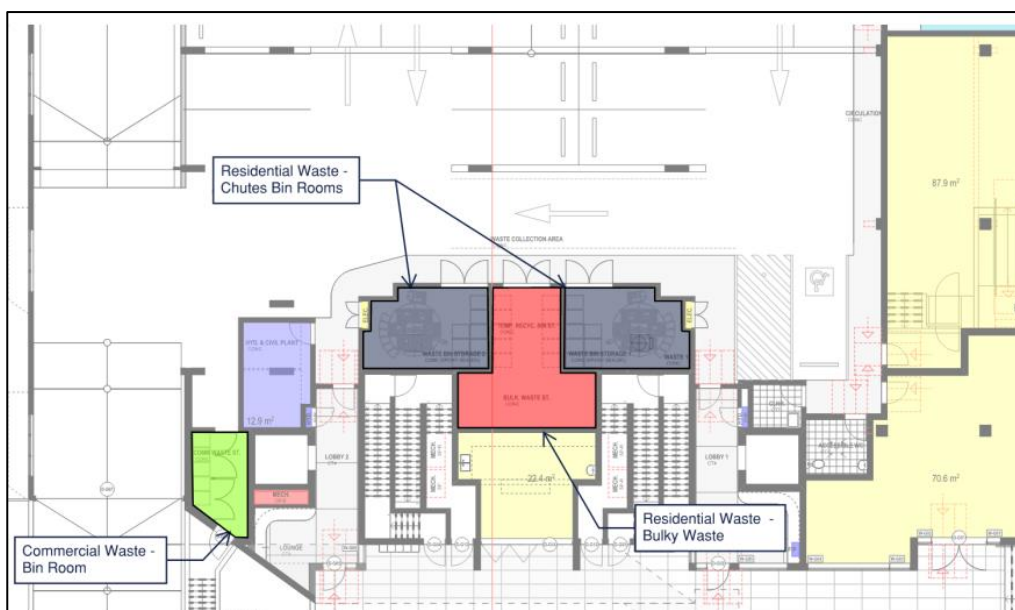


Figure 8. Waste storage rooms located on the ground floor

The average weekly waste generation, bin composition and collection frequency identified in the WMP for the overall development is shown in **Figure 9** below.

SYSTEM	WASTE STREAM	WEEKLY WASTE GENERATION	BIN SIZE	NUMBER OF BINS	NUMBER OF COLLECTIONS	INFERRED WEEKLY BIN CAPACITY
East Chute	Garbage	3,655 L	240 L	8	2 a week	3,840 L
West Chute	Garbage	2,625 L	240 L	6	2 a week	2,880 L
Residential	Recycling	4,880	240 L	14	2 a week	6,720 L
Commercial	Garbage	380 L	240 L	2	1 a week	480 L
	Commingled Recycling	507 L	240 L	2	2 a week	960 L

Figure 9. Bin composition and collection frequency

Based on the above, the WMP identified that one collection per week will be required for both recycling and general waste. The WMP confirmed that the waste rooms provided on the ground floor are suitable to store the required waste bins.

It is proposed that waste will be collected on-site within the car park. Swept paths have been provided which demonstrate that a waste vehicle can enter and exit the site in a forward direction. It is noted that waste collection is proposed to be undertaken by a private waste contractor.

2.2 Background

The development application was lodged on **14 November 2024**. A chronology of the development application since lodgement is outlined in **Table 2**.

Table 2: Chronology of the DA

Date	Event
3 December 2024 – 22 January 2025	Exhibition of the application
19 November 2024	DA referred to external agencies
12 December 2024	DA presented to the Port Stephens Urban Design Panel
23 December 2024	Request for Information from Council to applicant
14 January 2025	Preliminary Panel briefing
18 February 2025	Amended plans lodged as a response to Council's request for further information. The main change was the removal of 2 x units including 1 x ground floor unit and replacement of this unit with a communal area. Council accepted the amendments on 18 February 2025 under CI 38 of the 2021 EP&A Regulation.
11 March 2025	Request for Information from Council to applicant
27 March 2025	Response to the request for additional information received
16 May 2025	Finalisation of assessment report

2.3 Site History

There are several historical applications lodged over the site, with the most recent applications being:

- BA/DA 7-1991-5341-1: Installation of Underground Petroleum Tank;
- DA 16-2014-23-1: Removal of Underground Tanks – Demolish Existing Structure; and
- DA 16-2015-616-1: Demolition of Service Station and Site Remediation Works

As shown above, one of the subject lots (38 Stockton Street) was previously utilised as a petrol station containing underground petroleum storage tanks causing the site to become contaminated and requiring remediation works to be undertaken. Under both DA's 16-2014-23-1 and DA 16-2015-616-1, demolition and remediation works were approved and completed. A letter from the Environmental Protection Authority (EPA) dated 14 March 2016 was provided to Council. The intent of the letter was to inform Council that the service station had been decommissioned and the site remediated and validated for potential future residential use. Contamination is discussed further against Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021.

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 not considered to be (which are considered further in this report):

- Integrated Development (s4.46)
- Designated Development (s4.10)
- Requiring concurrence/referral (s4.13)
- Crown DA (s4.33) - written agreement from the Crown to the proposed conditions of consent must be provided

The proposed development is Nominated Integrated development at is requires a Water Supply Work approval under the Water Management Act 2000 (WM Act) relating to construction dewatering for the proposed basement level. Therefore, the application was referred to WaterNSW accordingly. WaterNSW issued a Request for Information requesting further geotechnical information. This information was provided and WaterNSW have since issued General Terms of Approval which have been referenced in a recommended condition.

3.1 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 (Housing) 2021*

- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Sustainable Buildings) 2022*
- *Port Stephens Local Environmental Plan 2013*

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

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 2: Vegetation in non-rural areas The proposal seeks consent for the removal of 10 existing trees on the site. Chapter 4: Koala Habitat Protection 2021 The site is mapped as being clear of koala habitat. The species being removed are not koala feed trees.	Y
State Environmental Planning Policy (Housing) 2021	Chapter 4: Design of Residential Apartment Development This chapter applies to the proposed development as it meets the definition of a residential flat building, being a new building that is at least 3 stories and contains at least 4 dwellings. As per s145 of this chapter, the application has been referred to the Port Stephens Design Review Panel. An assessment against Schedule 9 of this policy and the Apartment Design Guide has been undertaken and the proposal has been found to be generally compliant with the requirements. Refer to Attachment B.	Y
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development • Section 2.19(1) declares the proposal regionally significant development pursuant to Clause 2 of Schedule 6.	Y
State Environmental Planning Policy (Resilience & Hazards) 2021	Chapter 2: Coastal Management • Section 2.10(1) & (2) - Development on land within the coastal environment area • Section 2.12 - Development in coastal zone generally — development not to increase risk of coastal hazards. Chapter 4: Remediation of Land • Section 4.6 – A contamination Site Suitability Assessment Report was prepared for the proposal by Tetra Tech Coffery. The report found that the site was suitable for the proposed use.	Y

State Environmental Planning Policy (Sustainable Buildings) 2022	Chapter 2: Standards for residential development – BASIX • Section 2.1 – 2.2 – A valid BASIX certificate has been submitted with the development application.	Y
LEP	• Clause 2.3 – Permissibility and zone objectives – The proposal is permissible under the PSLEP 2013. • Clause 2.6 – Subdivision – consent requirements - The proposed development involves strata title subdivision which is permitted by this clause. • Clause 4.1 – Minimum subdivision lot size – The proposal includes the strata subdivision of the development. This clause does not apply to the subdivision of land by registration of a strata plan of subdivision. • Clause 4.3 – Height of Buildings – The subject site has a maximum building height of 28m. The proposal has a maximum building height of 27.96m from natural ground level. • Clause 4.4 – Floor Space Ratio – The subject site has a maximum floor space ration of 3:1. The proposal has a floor space ratio of 2.75:1. • Clause 4.6 – Exceptions to development standards – A request to vary the active street frontages clause has been received. • 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. • Clause 5.21 – Flood planning – The site is partially flood prone. Flood modelling was undertaken for the proposal which demonstrated that the site is flood free in all events up to and including the Probable Maximum Flood. This conclusion was supported by Council's Development Engineer. • Clause 5.22 –Special Flood Considerations – This clause does not apply based on the above. • Clause 7.1 – Acid sulfate soils – The site is mapped as class 5 ASS. The proposal is not considered likely to encounter ASS during works as per the Geotechnical Investigation prepared by Tetra Tech Coffey.	Y

	• Clause 7.2 – Earthworks – The earthworks are considered to be ancillary to the proposed development and not considered likely to impact neighbouring properties. • Clause 7.6 – Essential services – The site has connection to reticulated water, electricity and sewer. Suitable vehicular access is proposed from Tomaree Street. Stormwater drainage is proposed with the design being supported by Council's Development Engineer. • Clause 7.22 – Active Street Frontages – The clause applies to the sites frontage to Stockton Street. The development proposes two business premises and a communal area on the ground floor. The presence of the communal area instead of a business premise is non-compliant with this Clause. A clause 4.6 variation request has been submitted to Council. • Clause 7.23 – Minimum building street frontages for development in Zones R3 and E1 – The site has at least one street frontage of 15m or more and is therefore compliant with this clause.	
DCP	Port Stephens Development Control Plan 2014 Section B – General Controls • B1 – Tree management – Tree removal is required and therefore this chapter applies. • B2 – Natural resources – The proposal is not likely to impact upon native flora or fauna, is not a mapped wetland, does not contain biosecurity risks nor is it mapped koala habitat. Therefore, this chapter does not apply. • 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. • B4 – Drainage and Water Quality – A storm management plan was prepared by ADW Johnson. The stormwater design was supported by Council's Development Engineer. • B5 – Flooding - The site is mapped as being flood prone land. However, flood modelling was undertaken for the proposal which demonstrated that the site is flood free the site is flood free up to and including the Probable Maximum Flood. This conclusion was supported by Council's Development Engineer	Y

	• B7 – Heritage –There are no local or state heritage listed items on the site. • B8 – Road Network and Parking – A Traffic Impact Assessment (TIA) was prepared by WGA. The TIA found that the proposed development will have a negligible impact on the operation of Tomaree Street and Stockton Street, with all site generated traffic volumes able to be readily absorbed by the surrounding network. A total of 83 car parking spaces are proposed. The units require a total of 56 parking spaces and 16 visitor parking spaces, while the business and retail premises require 5 parking spaces (based on a business premises use). The car parking provided is compliant with the DCP.	
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Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 2: Vegetation in non-rural areas

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

The proposal seeks consent for the removal of 10 existing trees on the site. The Arborist Report prepared for the proposal by Abacus Tree Services identifies the vegetation on the site consisting primarily of exotic trees species within some small native trees and shrubs.

A tree protection plan was prepared to allow for the retention of 1 tree being a Camphor Laurel. Camphor Laurel is listed as a Priority Weed species in the Hunter Region of NSW. As such, Council's Natural Systems team noted that it was preferable for this tree to be removed and replaced with a suitable native tree which has been recommended as a condition of consent.

Overall, Council's Natural Systems team supported the proposed tree removal on the site.

Chapter 3: Koala Habitat Protection 2021

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

The site is mapped as being clear of koala habitat. The species being removed are not koala feed trees. The proposal is therefore not inconsistent with this chapter.

State Environmental Planning Policy (Planning Systems) 2021

Chapter 2: State and Regional Development

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

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2: Coastal Management

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

The site is mapped as being within a coastal 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 funnelling 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 Nelson Bay foreshore.
- The proposed development will be visible from the foreshore when looking back towards the Nelson Bay town centre, as depicted in the visual impact assessment, refer to **Figure 10** 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 generally consistent with surrounding building heights and the future desired character of Nelson Bay. It is noted that the height limits in Nelson Bay were increased in accordance with the Nelson Bay Town Centre Strategic Plan which highlighted the importance of the future built form to be consistent with the topography Nelson Bay's natural amphitheatre. Therefore, the density and height positioning for future development throughout the Nelson Bay centre were adopted to promote and reinforce the natural topography and ensure that important views and vistas were retained. The development's compliance with the LEP height limit and FSR controls further demonstrates that the proposal is sympathetic to the coastal area.
- 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 10. Montage of the proposed development from the water fronting Nelson Bay

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.

As per section 2.13 notes that development consent must not be granted to development on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land. The Port Stephens LGA does not currently have a certified coastal management program (CMP) and therefore this section does not apply. Notwithstanding, the draft Port Stephens CMP has been prepared and is currently in the process of gaining certification. However, the subject site is not impacted by the draft CMP 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.

38 Stockton Street was previously utilised as a petrol station containing underground petroleum storage tanks ceasing use in 2014. The use of the site for this purpose caused the site to become contaminated, requiring remediation works to occur to ensure the site was made suitable for residential use. Demolition and remediation works were approved and completed under two separate DA's previously approved by Council in 2014 and 2015. These DA's approved contamination assessments and Remediation Action Plans (RAPs). Following remediation works occurring, a Site Audit Report was prepared by a NSW EPA accredited Site Auditor which summarised the previous contamination reports and the RAP. The Site Audit Report concluded that the site was considered "suitable, with respect to land contamination, for possible future residential land use and for uses permissible with consent under the current site zoning". In addition to this, a letter from the Environmental Protection Authority (EPA) dated 14 March 2016 was provided to Council. The intent of the letter was to

again inform Council that the service station had been decommissioned and the site remediated and validated for potential future residential use.

Notwithstanding the above, a contamination Site Suitability Assessment Report was prepared for the proposal by Tetra Tech Coffey, particularly due to the other lot (8A Tomaree Street) not being subject to the previous remediation works and the Site Audit Report. In order to assess the suitability of 8A Tomaree Street for the proposed use, soil sampling was undertaken, which confirmed contaminant concentration levels across the site were within the health investigation and screening criteria. Noting this the report concluded that the site was suitable for the proposed residential use but recommended that an Unexpected Finds Protocol (UFP) be implemented during works. A condition has been recommended accordingly.

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 with the development application which demonstrates that the water, thermal performance and energy requirements for the proposal have been achieved. The proposal is considered to satisfy the relevant provisions of SEPP BASIX.

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).

State Environmental Planning Policy (Housing) 2021

Chapter 4: Design of Residential Apartment Development

Chapter 4 of this policy aims to improve the quality of residential apartment development and provides an assessment framework ('the Apartment Design Guide') to facilitate the assessment of 'good design'.

This chapter applies to the proposed development as it is defined as a residential flat building, is a new building that is at least 3 stories and contains at least 4 dwellings.

Section 145 requires that before determining an application for a residential flat building, the consent authority must refer the application to the design review panel for the local government area. The proposed development was referred to the Port Stephens Design Review Panel (DRP) on two occasions, one at pre-lodgement stage the other following lodgement. The minutes from both meetings are provided at **Attachment V**. This is discussed further below.

Section 147(1)(a) requires that the consent authority considers the design principles for residential apartment developments set out in Schedule 9 of the policy. An assessment against the design principles has been undertaken, refer to **Attachment B**.

Section 147(1)(b) requires the consent authority to consider the Apartment Design Guide (ADG). An assessment of the application against the ADG has been undertaken, refer to **Attachment B**.

Section 147(1)(c) requires the consent authority to consider any advice received from the design review panel. As noted above, the proposed development was considered by the Port Stephens DRP on two occasions, one at pre-lodgement stage the other following lodgement.

The proposed development was first referred to the DRP on 5 August 2024, prior to lodgement of a DA. The application was not supported by the DRP during this meeting with a number of concerns raised particularly in regard to height, street activation, built form, sustainability, landscape, amenity, safety, and aesthetics. The following amendments and additional documentation were made following the pre-lodgement meeting:

- The proposed height was reduced to be compliant with the maximum height limit of 28m under the PSLEP 2013.
- A connecting to country statement was provided.
- Access to the car park was restricted only to Tomaree Street (rather than from both street frontages as original proposed).
- One ground floor apartment was removed. However, on lodgement, one ground floor apartment still remained.
- The tower was setback from the podium on the Stockton Street frontage.
- Separation distances between the north and western boundaries were amended to be mostly compliant with the ADG.

Following lodgement of the DA, the application was referred to DRP on 12 December 2024. The DRP recognised that improvements had been made to the design since the pre-lodgement review however, remained of the opinion that the proposal required further redevelopment, particularly the bulk and scale of the building, the design of the ground floor and its interface with the street, communal spaces, landscape design and unit design. The applicant has since provided amended plans following advice from the DRP, making the following amendments:

- Amendments to the Connecting to Country statement as recommended by the DRP.
- Removal of the ground floor unit and replacement with a communal open space, as recommended by the DRP.
- To address the DRPs advice that activation could be improved on the Tomaree Street frontage, a retail premises and communal seating fronting Tomaree Street has been included on the ground floor.
- A minor increase in the floor-to-floor heights to 3.145m to ensure an appropriate level of structural and service design is available. The DRP recommended the floor-to-floor heights be increased to 3.2m. The applicant has advised the proposed floor to floor is suitable. It is noted, that despite the increase in floor-to-floor height, the proposed height remains compliant with the PSLEP height limit.
- Increased size of the communal open space located on the podium level to be compliant with the ADG. The layout of the communal open space was also amended to reduce to the pool size and provide an area large enough for residents to entertain larger groups of people, as recommended by the DRP.
- Separation of visitor and residential car parking from a security perspective. All residential and commercial car parking spaces are located on the two basement levels which are separated by an internal garage door.

It is noted that some items recommended by the DRP were not included in the amended design package. Whilst the DRP acknowledged that the developments upper floors had been further setback than the pre-lodgement design, improving the ability to distinguish between

the podium and the tower, the DRP still raised concerns that the design presented as being 'top heavy' due to the proportions of the podium and darker colour palette of the upper floors. The proposed development meets the required separation, height and FSR controls and incorporates different materials and finishes therefore, Council is satisfied that the proposed development is of an appropriate bulk and scale.

Council is satisfied that the proposal suitably addresses the comments made by the DRP and therefore did not refer the application back for further review. Notwithstanding, the advice from the DRP has been considered in the assessment of this application, as required by s147(1)(c) of this policy.

Overall, the proposal is consistent with the requirements of this policy.

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 is located within the E1 Local Centre pursuant to Clause 2.2 of the LEP, refer to **Figure 11** below.

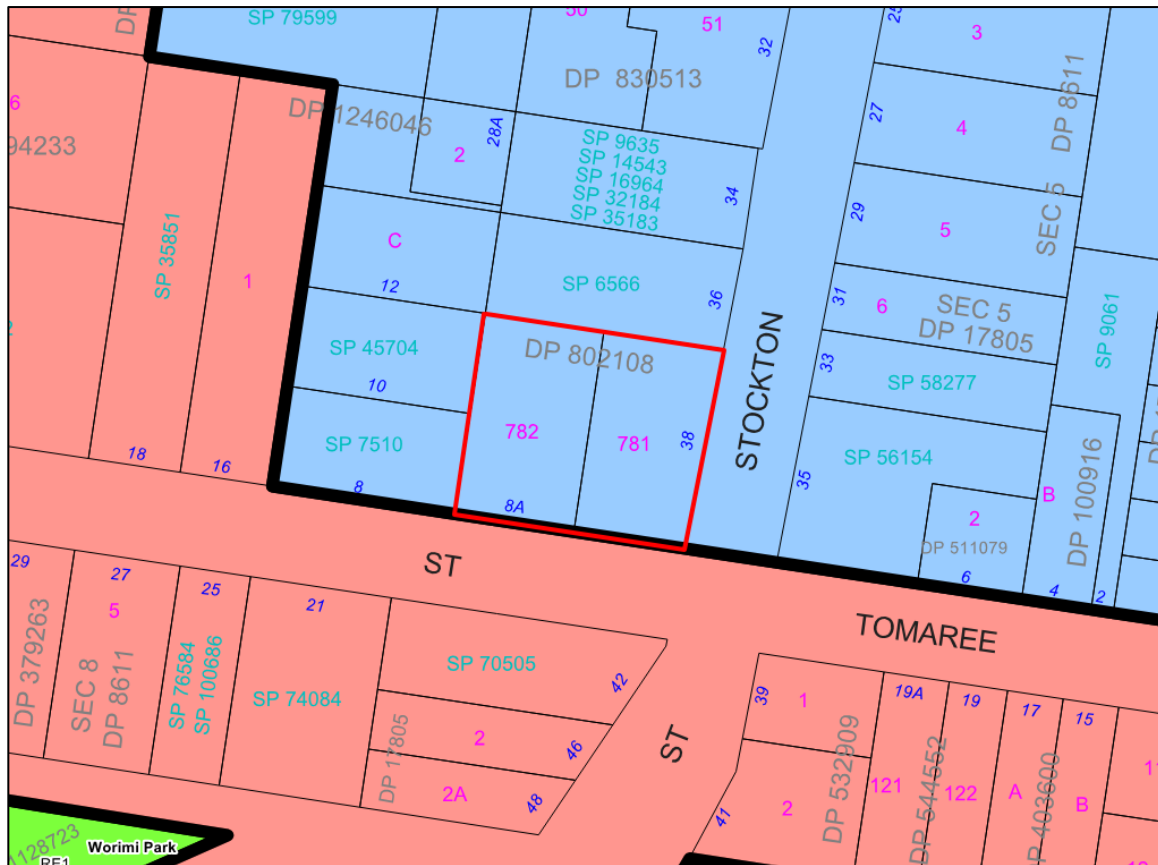


Figure 11. Zoning map

According to the definitions in Clause 4 (contained in the Dictionary), the proposal satisfies the definition of a residential flat building, retail and commercial premises (shop top housing) which are permissible uses with consent in the Land Use Table in Clause 2.3.

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

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

The proposal is considered to be consistent with these zone objectives as the proposal provides a residential development that will contribute to a vibrant and active local centre and includes ground floor business and retail premises.

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 4** below.

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Comply
Subdivision (CI 2.6)	Land to which this Plan applies may be subdivided, but only with development consent.	The proposed development involves strata title subdivision which is permitted by this clause.	Yes
Minimum subdivision lot size (CI 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 strata subdivision of units. However, this clause does not apply as per (cl 4.1(4)).	N/A
Height of buildings (CI 4.3(2))	28m	The proposed development has a maximum height of 27.96m and is therefore compliant.	Yes
Floor space ratio (CI 4.4)	3:1	The proposed development FSR is 2.75:1 and is therefore compliant.	Yes
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 requirements of Clause 7.22 of the LEP and accordingly, a Clause 4.6 request has been provided with the application for the non-compliance with the active street frontage clause. The Clause 4.6 assessment is at Attachment C .	Yes
Heritage (CI 5.10)	Clause 5.10 specifies the requirements for consent and associated	There are no local or state heritage listed items on the site.	Yes

assessment requirements for impacts relating to European and Aboriginal heritage.

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 remediation works undertaken 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.

Flooding Planning (CI 5.21)	Development consent must not be granted to development on land the consent authority considers to be within the flood planning area unless the consent authority is satisfied the development complies with the following matters identified in 5.21(2): (a) is compatible with the flood function and behaviour on the land, and (b) will not adversely affect flood behaviour in a way that results in detrimental increases in the potential flood affectation of other development or properties, and (c) will not adversely affect the safe occupation and efficient evacuation of people or exceed the capacity of existing evacuation routes for the surrounding area in the event of a flood,	The site is mapped as being within a flood planning area. Flood modelling was undertaken for the proposal which demonstrated that the site is flood free in all events up to and including the Probable Maximum Flood. This conclusion was supported by Council's Development Engineer. Noting this, the proposal is consistent with this clause in that the proposal is compatible with the flood function and behaviour of the land, will not adversely affect flood behaviour and will not increase the risk to life or property.	Yes
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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 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

Special flood considerations (CI 5.22)	Clause 5.22 applies to development defined as being sensitive and hazardous development or land that the consent authority considers to be land that in the event of a flood, may— (i) cause a particular risk to life, and	Based on the flood modelling undertaken which determined that the site is not flood prone, the proposal is not considered to be a sensitive and hazardous development.	Yes
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(ii) require the evacuation of people or other safety considerations.

Acid sulfate soils (CI 7.1)	The site is mapped as containing potential Class 5 Acid Sulfate Soils (ASS). Under Clause 7.1, on land mapped 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.	Whilst the proposal does involve excavations below 5m, a Geotechnical Report was prepared for the proposal by Tetra Tech Coffey which undertook fielding screening tests. These tests indicated no presence of ASS on the site. It was therefore concluded that, an Acid Sulfate Soils Management Plan was not required. Notwithstanding, the report recommended that an Unexpected Finds Protocol (UFP) be put in place during works. A condition has been recommended accordingly. The proposal therefore meets the requirements of this Clause.	Yes
Earthworks (CI 7.2)	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— (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development, (b) the effect of the development on the likely future use or redevelopment of the land, (c) the quality of the fill or the soil to be excavated, or both, (d) the effect of the development on the existing and likely	The proposal includes earthworks to construct the proposed basement levels. The requirements of this clause have been considered as follows: • The proposal is not likely to result in any detrimental effect on drainage patterns and soil stability in the locality of the development. • The earthworks will facilitate future use of the site. • A condition has been recommended that requires that all imported and exported fill is to be VENM or a material identified as being	Yes

amenity of adjoining properties,
 (e) the source of any fill material and the destination of any excavated material,
 (f) the likelihood of disturbing relics,
 (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
 (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

subject to a resource recovery exemption by the NSW EPA.

- The Geotechnical Report discusses risk to neighbouring properties. It is considered that excavations required to facilitate the proposal may have the potential to impact neighbouring properties. 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. A dilapidation report of neighbouring properties was recommended in the Geotechnical Report and has also been included as a recommended condition.
- Minimal fill is expected. However a condition has been included requiring that all fill must be VENM or ENM.
- Given the disturbed nature of the site, the likelihood of disturbing relics is considered low. Notwithstanding, conditions regarding unexpected finds

have been recommended.

- 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.

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 is proposed off Tomaree Street.	Yes
Active Street Frontages (CI 7.22)	Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that, after the erection or change of use— (a) all premises that face the street on the ground floor of the building will be used for the purposes of business premises or retail premises, and	This clause applies to the sites street frontage to Stockton Street. The development proposes two business premises on the ground floor and an area of communal open space and is therefore not wholly compliant with this control. A Clause 4.6 variation has been submitted with the application.	No

(b) those premises will have active street frontages.

Minimum building street frontages for development in Zones R3 and E1 (CI 7.23)	A building erected on land to which this clause applies must have at least 1 street frontage of 15 metres or more.	Both of the sites street frontages exceed 15m.	Yes
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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

Clause 7.22 of the LEP requires that:

Development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that, after the erection or change of use—

- (a) all premises that face the street on the ground floor of the building will be used for the purposes of business premises or retail premises, and*
- (b) those premises will have active street frontages.*

This clause applies to the sites street frontage to Stockton Street. The development proposes two business premises on the ground floor and an area of communal open space and is therefore not wholly compliant with this control. A Clause 4.6 variation has been submitted with the application.

Preconditions to be satisfied

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

It is noted that in September 2023, the NSW Government published amendments to Clause 4.6 of the Standard Instrument which changes the operation of the clause across all LEP's. The amendment included savings provisions that allow for DA's made on or before 1 November 2023 to be determined as if the changes had not commenced. The DA was lodged after 1 November 2023 (being 14 November 2024) and therefore has been assessed against the amended Clause 4.6 provisions.

The preconditions are:

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

These matters are considered in **Attachment 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 Plan 2014* ('the DCP')

Chapter B1 – Tree Management

The proposal seeks consent for the removal of 10 existing trees on the site. The Arborist Report prepared for the proposal by Abacus Tree Services identifies the vegetation on the site as primarily consisting of exotic tree species within some small native trees and shrubs.

A tree protection plan was prepared to allow for the retention of 1 tree being a Camphor Laurel. Camphor Laurel is listed as a Priority Weed species in the Hunter Region of NSW. As such, Council's Natural Systems team noted that it was preferable for this tree to be removed and replaced with a suitable native tree which has been recommended as condition of consent.

Overall, Council's Natural Systems team supported the proposed vegetation removal on the site.

Chapter B2 – Flora and Fauna

This chapter applies to development that has the potential to impact native flora and fauna, contains a biosecurity risk, and contains land mapped as koala habitat. The development is not considered to have the potential to impact native flora and fauna, is mapped as being clear of koala habitat with no feed trees identified on the site and has not been identified as containing a biosecurity risk (weeds). As such, this chapter does not apply.

Chapter B3 – Environmental Management

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

Air Quality

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

Noise

Both a Construction Noise Management Plan (CNMP) and a Noise Impact Assessment (NIA) was prepared for the proposal by Engineering Science.

The CNMP assessed the potential noise impacts that may occur during construction including those associated with excavation. The assessment found that some construction activities are likely to exceed the noise management levels, however, can be mitigated subject to the implementation of the recommended strategies in the CNMP. A condition has been recommended requiring that the mitigation measures within the CNMP are complied with during construction works.

The NIA assessed the potential impact from the operation of the proposed development on the nearest noise sensitive receivers. The NIA concluded that with the incorporation of appropriate noise mitigation measures, such as the use of acoustic attenuators and roof extraction systems for the mechanical plant and carpark exhaust, the development is expected to comply with all relevant noise emission criteria. Notwithstanding, the noise mitigation measures to be adopted are not fully specified within the NIA provided. Therefore, Council's Environmental Health officer recommended that conditions be included requiring that prior to the issue of a construction certificate, a suitably qualified acoustic consultant verifying that the appropriate noise mitigation measures have been incorporated into the construction documentation with further verification to be provided prior to the issuing of an occupation certificate. This condition has been recommended accordingly.

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

Earthworks

The proposal includes earthworks to construct the proposed basement levels and infiltration tank. A bulk earthworks plans was prepared for the proposal by ADW Johnson 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 for the proposal by ADW Johnson. The stormwater systems has been designed as follows:

- All roof water is to be directed to a 5kL rainwater tank located on the ground floor.
- Overflows from the tank are directed to a water quality chamber.
- Overflows from the water quality chamber are directed to an infiltration tank. The infiltration tank has been designed to infiltrate all flows from storm events up to and including the 1% AEP event.
- Runoff external to the buildings is to be captured in grated surface inlet pits fitted with litter baskets. Before being conveyed to the infiltration tank.
- An emergency overflow riser is to be provided to ensure any overflows from the infiltration tank are safely discharged to a stormwater discharge point on Stockton Street.
- The stormwater design has a treatment train to meet Council's stormwater quality requirements, consisting of the rainwater tank, an Ocean Protect Storm Filter chamber fit with Psorb Storm Filter cartridges.

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

Chapter B5 – Flooding

This section applies to all development on flood prone land. The subject land is mapped as being within the Flood Planning Area. Flood modelling was undertaken for the proposal which demonstrated that the site is flood free up to and including the Probable Maximum Flood. This conclusion was supported by Council's Development Engineer. Noting this, it is considered the requirements of this chapter do 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 and remediation works undertaken 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 WGA. The TIA determined that the proposal would generate the following vehicle trips per hour:

DEVELOPMENT TYPE	SIZE / NO.	PERIOD	INBOUND	OUTBOUND	TOTAL (TWO-WAY)
Residential Flat Building	48 dwellings	AM Peak	8 vph	18 vph	25 vph
		PM Peak	9 vph	6 vph	15 vph
Commercial (Office & Business)	181 sqm	AM Peak ¹	4 vph	-	4 vph
		PM Peak	-	4 vph	4 vph

¹ Evening peak hour traffic generation rate applied to AM peak.

Figure 12. Anticipated traffic volumes as per the TIA

As per **Figure 12** above, the proposal is anticipated to generate up to 29 new vehicular movements during the critical AM peak demand period.

The applicant utilised SIDRA modelling to assess potential impacts to the surrounding road network under existing and future traffic demands through to the 10 year traffic forecast. The modelling undertaken indicated that the site access and the adjacent unsignalised intersection of Stockton Street / Tomaree Street will continue to operate well with minimal queuing and delays during that time. Overall, the TIA found that the proposed development will have a negligible impact on the safety and operation of the surrounding road network.

On-site Parking Provisions

Figure BU identifies car parking requirements for specific land uses. The parking requirements are shown in **Table 5** below.

Table 5: Consideration of the LEP Controls

Use	Control
Residential Flat Building	1 car space for one and two bedroom dwellings 2 car spaces for three > bedroom dwellings 1 visitor space for every three dwellings
Business Premises	1 car space per 40m ² floor area 1 bicycle space per 200m ² floor area

Due to the absence of specific car parking rates for retail uses, the parking requirements for business premises has been used to assess the retail premises car parking requirement.

Based on the above, the residential flat building component is required to have 56 car parking spaces for the units and 16 visitor car parking spaces. The retail and business premises are required to have 5 car parking spaces and one bicycle space. Resulting in a total requirement of 77 car parking spaces.

A total of 83 car parking spaces is proposed. This includes:

- 16 visitor car parking spaces
- 5 car parking spaces allocated to the commercial premises (including one accessible space). A bicycle rack is proposed in the lobby, adjacent to the business premise that is located on the corner of the building.
- 61 car parking spaces allocated to the residential units (excess of 5 car parking spaces).

The proposed development is therefore compliant with the DCP car parking requirements.

It is noted that as a result of the proposed new crossover from Tomaree Street, 3 on-street car parking spaces will be lost. However, an additional 5 will become available due to the closure of the existing crossover to Stockton Street, resulting in a net increase of 2 on-street car parking spaces along the site frontage.

On-site Parking Access

A new crossover is proposed off Tomaree Street providing access to the ground floor and basement level car parking and service areas. The TIA determined that the access driveway width provides adequate site lines.

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

Visitor Parking and Loading Facilities

The visitor car parking is clearly identified on the plans. A condition has been recommended requiring that visitor car parking is sign posted.

The proposed service areas are located on the ground floor within the building, away from residential uses and are therefore consistent with control B8.18.

The parking layout provides direct pedestrian paths to building entries.

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. One car park has been identified as having an EV charger. However, a note has been included on the plans stating that all parking spaces associated with the residential units are to be made EV capable as per this control. In addition, a condition has been recommended.

Chapter C2 – Commercial

This section applies as the development includes premises defined as commercial premises.

Height

Control C2.1 requires that height is consistent with the maximum building height stipulated in the PSLEP. The proposed height is consistent with the height limit in the LEP.

Site frontage and setbacks

As per control C2.6, where a building is higher than 10.5m, the minimum site frontage is required to be 20m. The site frontage exceeds 20m, although the height is not as a result of the proposed commercial uses.

Control C2.7 requires that development is built to the front boundary line for the ground and first floor. The two business premises proposed on the ground floor fronting Stockton Street are built to the sites boundary. The premises located along the frontage to Tomaree Street are not built to the boundary. However, this is considered suitable as the building itself is built to the boundary and provides areas of seating directly adjacent to the retail premises.

Controls C2.8 – C2.10 provide controls for development that exceed two storeys and given the commercial uses are located on the ground floor only, they are not considered to apply to the proposal.

Control C2.11 requires that development be built to the side boundary to maximise continuous active street frontage, except where side access is provided. Given the development is a mixed use development, much of the development frontage to Tomaree Street consists of the access driveway and the lobby. The structure is built to the boundary however, the commercial premises are not. Given the mixed use nature of the development, this is considered to be suitable.

Control C2.12 requires that a commercial development that is adjacent to a lot that is zoned or used for residential purposes or a public reserve is to provide a minimum rear setback of 5m. The proposed commercial premises are appropriately setback from existing residential uses.

Control C2.15 states that the building mass does not result in unreasonable loss of amenity to adjacent properties or the public domain. The building mass does not result in unreasonable loss of amenity, noting that the commercial component is located on the ground floor only.

Control C2.16 states that building proportion is complimentary to the form, proportions and massing of existing building patterns. The proposed development is considered to be consistent with the existing and desired built form of the area.

Facades

Control C2.17 states that building facades are to use materials, colours and architectural elements to reduce bulk and scale. The commercial component of the development is located on the ground floor and is therefore not considered to result in adverse bulk and scale. Notwithstanding, a mixture of material and finishes have been used which clearly define each premises.

Controls C2.18 requires that development provides continuity of an active street frontage for localities where business premises or retail premises predominately face the street and have direct pedestrian access from the street. Stockton Street has a mixture of uses, predominately being commercial uses that face the street and have direct access from the street. Two business premises have been designed to face Stockton Street. Given the sites slope, only

one is accessed directly from Stockton Street whilst the other is accessed from the lobby area on Tomaree Street. Notwithstanding, this premise provides windows facing directly to Stockton Street, assisting in its activation. Tomaree Street contains only residential development and therefore the retail premises proposed on this frontage is setback, which is considered acceptable.

Control C2.20 requires that development incorporates crime prevention through environmental design (CPTED) principles by providing passive surveillance to public spaces through building design and orientation. A CPTED report was prepared for the proposal by Perception Planning. The report found that the proposal meets the CPTED principles through:

- The boundaries of the site are clearly defined with the site entry being identifiable and secure, inclusive of both the residential and commercial components.
- Clear site lines are provided from both commercial premises and residential apartments.
- The landscaping design does not create 'blind' spots that allow opportunity for hiding.
- The orientation of apartments provides passive surveillance towards Stockton and Tomaree Streets providing as a deterrent for criminal activity and anti-social behaviour.
- Through design and use of appropriate lighting, concealment opportunities are limited.
- Access to commercial premises are separate from the residential component.
- Landscaping has been designed to create a sense of place.
- Ongoing space management will be done via the body corporate given the proposal includes strata subdivision.

Control C2.21 requires that commercial development provides paving to the public footpath for the entire length of the development street frontage. There is an existing footpath along both of the sites frontages. The footpaths are proposed to be retained.

Awnings

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

Building Entries

Control C2.23 requires that access points are recognisable from the primary street. Entries to the two business premises fronting Stockton Street are clearly recognisable. As noted above, one is accessed from the lobby area on Tomaree Street but remains recognisable.

The retail premises located along the Tomaree Street frontage is also clearly recognisable.

Building facilities and services

Control C2.25 requires that building facilities and services are located at the rear of the building. The building facilities and services are located within the building and therefore meet the intent of this clause.

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

Public Art

Control C2.27 requires that commercial development with a capital investment value over \$2 million and that provides frontage to the public domain shall incorporate public art. The commercial component of the development does not exceed \$2 million.

Shipping Container Stacks

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

Landscaping

Landscaping has been assessed against the ADG given the sites predominant use a residential flat building.

Specialised retail premises

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

Signage

N/A no signage is proposed.

Chapter D5 – Nelson Bay Centre

The site is within the Nelson Bay Centre, specifically within the village precinct and therefore this chapter applies. The proposed has been assessment against the provisions of this below.

General precinct provisions

Controls D5.1 – D5.2 requires that development preserves important vistas and ensures the street layout is consistent with Figure DJ. Important vistas will be maintained as a result of the developments compliance with setback and height limit controls. The street layout remains unchanged which is consistent with Figure DJ.

Control D5.3 requires that the roof design of developments does not adversely impact the public domain when viewed from buildings are higher elevations, when approaching the town centre and when viewed from the street. The proposed roof design is not considered likely to impact on the public domain and has been designed to be compliant with the LEP height limit whilst also taking into consideration the surrounding built form and natural topography of the area.

Control D5.4 requires that building materials are reflective of existing buildings with reference made to the Coastal Design Guidelines for NSW. The Coastal Design Guidelines for NSW suggests that highly reflective materials should be avoided and that materials, finishes and colours that are climate resilient and complement the coastal landscape be utilised. The proposed development is proposed to be constructed of pre-cast concrete panelling, stone cladding and compressed fibre cement of differing finishes. The proposed materials and finishes are considered to be climate resilient and consistent with the coastal landscape and therefore consistent with this control.

Control D5.5 requires that developments demonstrate design excellence through demonstrating consistency with the desired character statements, consider impacts to the public domain and the surrounding landscape in the design. An assessment against the desired character statement has been undertaken below. It is considered that the proposal is consistent with the desired character. The proposed development is not considered to result in adverse impacts to the public domain with overshadowing not significant and views not adversely impacted. In regard to considering the local topography, natural environment and vegetated ridgeline. The built for has been designed to respond to the ridgeline of Kurrara

Hill to the sites south, following a similar outline. The proposed development also complies with the height and FSR controls within the LEP which were adopted to promote and reinforce the natural topography of Nelson Bay whilst also ensuring that important views and vistas were retained.

Desired character – Village precinct

The proposed development is consistent with the desired character statement for the village precinct in that:

- Commercial uses are located on the ground floor fronting Stockton Street, providing activation and reinforcing the existing character and function of Stockton Street as one of the main shopping streets in the town centre. It is noted that a communal area is also located on the ground floor but due to the topography of the site is raised. Whilst not strictly commercial, the use as a communal space will provide activation to this portion of the site.
- The proposed development has been designed to ensure it does not visually dominate at the street level through the use of differing materials and finishes as well as the incorporation of landscaping into the design. Levels 5-7 are setback further from the street, reducing perceived bulk of the building further.

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)(iiia) – Planning agreements under Section 7.4 of the EP&A Act

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

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

Section 29 Residential Apartment Development

In accordance with *Section 29 Residential Apartment Development* of the Regulations, developments relating to residential apartment development must be accompanied by a statement by a qualified designer. As per s29, the statement must verify that the qualified designer designed, or directed the design of, the development. A design verification statement was provided by a registered architect. The proposal therefore meets the requirements of this section.

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

3.2 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.

The consideration of impacts on the natural and built environments includes the following:

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 a residential flat building comprising of 48 residential units with differing typologies. This will contribute to both housing diversity and supply in the local area. The development is consistent with the intended character of the area and Council's Local Housing Strategy and Housing Supply Plan.

Following construction, an additional three commercial uses will be provided within the town centre providing job opportunities whilst also contributing to the services provided within the local area and assisting in activating the street and overall town centre.

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

Built Environment

The proposed developments scale is larger than that of existing developments within the sites immediate surrounds. This is considered to be symptomatic of the area undergoing change due to recent amendments to building height limits within the Nelson Bay town centre. Notwithstanding, the proposed built form is considered to have a positive impacts on the built environment, providing a development that is consistent with the desired character of the area without resulting in adverse amenity impacts and through providing further activation within the town centre.

Natural Environment

The proposal seeks to remove all existing vegetation with the exception of one tree. The Arborist Report prepared for the proposal by Abacus Tree Services identifies the vegetation on the site as primarily consisting of exotic trees species within some small native trees and shrubs. The removal of this vegetation is not expected to have adverse impacts on the natural environment and was supported by Council's Natural Systems team.

A tree protection plan was prepared to allow for the retention of 1 tree, being a Camphor Laurel. Camphor Laurel is listed as a Priority Weed species in the Hunter Region of NSW. As such, Council's Natural Systems team noted that it was preferable for this tree to be removed and replaced with a suitable native tree which has been recommended as condition of consent.

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

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

- The proposal is consistent with the Port Stephens Local Housing Strategy and Housing Supply Plan which identifies that the Nelson Bay town centre as an area where focus should be on mid-rise and high-rise development this includes the provision of 960 new homes.
- The site is conveniently located within the Nelson Bay town centre
- The development is compatible with the desired character, bulk and scale of development in the area.

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

These submissions are considered in Section 5 of this report.

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

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

The commercial premises on the ground floor will positively contribute to the streetscape through activation whilst providing additional employment opportunities, and services to the area.

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

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 6**.

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 6: Concurrence and Referrals to agencies

Agency	Concurrence/ referral trigger	Comments (Issue, resolution, conditions)	Resolved
Concurrence Requirements (s4.13 of EP&A Act)			
N/A			

Referral/Consultation Agencies			
N/A			
Integrated Development (S 4.46 of the EP&A Act)			
WaterNSW	S89-91 – <i>Water Management Act 2000</i> water use approval, water management work approval or activity approval under Part 3 of Chapter 3	The application was referred to WaterNSW as the proposal requires a Water Supply Work approval under the Water Management Act 2000 (WM Act) relating to construction dewatering for the proposed basement level. WaterNSW issued a Request for Information requesting further geotechnical information. This information was provided and WaterNSW have since issued General Terms of Approval.	Y

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 7**.

Table 7: Consideration of Council Referrals

Officer	Comments	Resolved
Development Engineer	The application was referred to Council's Development Engineering team to review the proposal from a traffic, access, stormwater and flooding perspective. A number of requests for information were issued throughout the assessment of the application where responses were provided from the applicant. The application was ultimately supported by Council's Development Engineer subject to conditions which have been included in the recommended conditions of consent.	Y
Environmental Health	The application was referred to Council's Environmental Health officer who reviewed noise impacts and contamination documentation for the site. A requests for information was issued throughout with regard to potential noise impacts, where response an appropriate response was provided from the applicant. No concerns were raised with regard to contamination. The application was ultimately supported by Council's Environmental Health Officer subject to conditions.	Y
Natural Systems	The application was referred to Council's Environmental Planner for review of the potential ecology impacts resulting	Y

	from the proposed development. The proposed vegetation removal was supported due to it not being likely to result in adverse environmental impacts and provision of additional landscaping on site.	
Waste	The application was referred to Council's Waste Management Team for comment. The proposed waste management using a private waste contractor was supported by the Waste Management team.	Y
Spatial Services	The application was referred to Council's Spatial Services team to provide addressing. Addressing for each unit has been provided and has been included as a recommended advice note.	Y
Development Contributions	The application was referred to Council's Development Contributions Officer. It was determined that the proposal is subject so s7.11 contributions. A condition has been recommended.	Y

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

4.3 Community Consultation

The proposal was notified and advertised accordance with the Council's Communication and Engagement Strategy from 3 December 2024 until 22 January 2025.

The Council received a total of 69 unique submissions, comprising 1 objection and 68 submissions in favour of the proposal. The issues raised in the submission of objection are considered in **Table 8**. The submissions of support commented on the design quality of the development, the need for additional housing

Table 8: Community Submissions

Issue	No of submissions	Council Comments
Overdevelopment and inconsistent with the community vision of the area which seeks to keep high density development as a minimum.	1	The proposed development is compliant with all controls that seek to manage the bulk and scale of development including the height limit, the floor space ratio limit and the relevant separation distances with the Apartment Design Guide. It is noted that the height limits in Nelson Bay were increased and a floor space ratio limit introduced as a result of the Nelson Bay Town Centre Strategic Plan which undertook extensive community consultation. The Nelson Bay Town Centre Strategic Plan recognised the importance of the topography of Nelson Bay and its natural amphitheatre, not only to the streetscape but also to the community. Therefore,

		the density and height positioning for future development throughout the Nelson Bay centre was adopted to promote and reinforce the natural topography and ensure that important views and vistas were retained. The developments compliance with the LEP height limit and FSR controls demonstrates that the proposal is sympathetic to the surrounding area and the intent of the controls in maintaining and highlighting the natural topography of the area.
The acknowledgement of Aboriginal people is meaningless and the developer does not respect the traditional owners. No consultation was undertaken with local Aboriginal stakeholders. Objection to the development being called 'Kurrara Hill' due to its significance to Aboriginal people.	1	Noted. In regard to consultation, there is no specific requirement for consultation to be undertaken with Aboriginal stakeholders for this proposal. The application was notified and advertised by Council in accordance with Council's Community Participation Plan. In regard to the naming of the building, this is not included within the application and is not considered to be a planning matter.
Concern about contamination on the site due to the previous service station.	1	The site has been appropriately remediated and has been found to be suitable for residential purposes. This is discussed further in the assessment of Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

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 Contamination

One of the subject lots (38 Stockton Street) was previously utilised as a petrol station containing underground petroleum storage tanks causing the site to become contaminated, requiring remediation works to occur. This was raised in the initial briefing by the HCCRPP as requiring further information. A detailed discussion regarding contamination has been undertaken in the assessment under Chapter 4 of the State Environmental Planning Policy (Resilience and Hazards) 2021.

Both lots subject to the proposed development have been found to be suitable for residential purposes and therefore the proposal is considered to be acceptable from a contamination perspective.

5.2 Street Activation / Ground Floor Uses

The sites Stockton Street frontage is required to have an Active Street Frontage and therefore, Clause 7.22 of the PSLEP 2013 applies. As per s7.22(3), *development consent must not be granted to the erection of a building, or a change of use of a building, on land to which this clause applies unless the consent authority is satisfied that, after the erection or change of use—*

(a) all premises that face the street on the ground floor of the building will be used for the purposes of business premises or retail premises, and

(b) those premises will have active street frontages.

The plans lodged with the DA included two commercial premises and one residential unit on the ground floor fronting Stockton Street. Due to non-compliance with the CI 7.22 and the absence of a CI 4.6 variation request, Council requested the residential unit be removed.

The location of the proposed ground floor unit was in an area slightly raised from street level and therefore that applicant noted it would not be viable to have a business or retail premise in this area of the building. The Port Stephens Design Review Panel therefore recommended that the residential unit be removed and replaced with a communal area which would provide some form of activation to meet the intent of the of the PSLEP clause. The HCCRPP also raised concern with the amenity of the proposed ground floor unit in the initial briefing for the application.

The plans were amended which removed the ground floor residential unit and replaced it with an communal area which includes an indoor room with a kitchenette with the intent for it to be used as a 'work from home' space. This area connects directly to an outdoor terrace. A CI 4.6 variation request was also lodged for the non-compliance with this Clause. The proposed variation is supported by Council as the proposal meets in the objective of the clause by providing two business premises that front Stockton Street, which will attract pedestrian traffic.

5.3 Waste

The HCCRPP raised waste servicing as a key consideration in the initial briefing for this application. Waste storage areas are provided on the ground floor of the development with separate storage rooms provided for the residential units and the commercial premises. A Waste Management Plan (WMP) was prepared for the proposal by WGA which considers operational waste, finding the waste storage areas suitable for the proposed development.

The development is proposed be serviced via a waste contractor rather than Council. Swept paths were provided which demonstrates that the waste contractors service vehicle can appropriately access and service the development. The application was referred to Council's Waste Management Team who supported the use a private waste contractor. Due to the size of Council's waste service vehicles, the only other alternative option is kerb side collection which is not considered suitable due to the number of bins that would be required and the amount of street space the waste bins would take up on collection days causing disruption to available on-street car parking and the local traffic.

5.4 Flooding

The site is mapped as being within a flood planning area. Further flood modelling was undertaken by Platypus East Coast Pty Ltd for the site which demonstrated that the site is flood free for all flood event up to and including the Probable Maximum Flood event. The report provided by Platypus East Coast Pty Ltd therefore concluded that a Flood Emergency

Response Plan was no longer required for the proposal and that finished floor level requirements were not applicable. This conclusion was supported by Council's Development Engineer.

6. CONCLUSION

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

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

7. RECOMMENDATION

That the Development Application [DA No 16-2024-587-1] for the Construction of a Residential Flat Building (48 Units), two business premises and one retail premises, associated car parking, landscaping and strata title subdivision at 38 Stockton Street and 8A Tomaree Street, Nelson 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: Recommended Conditions of Consent
- Attachment B: SEPP Housing Assessment Table
- Attachment C: Clause 4.6 Variation Request Assessment
- Attachment D: Architectural Plans
- Attachment E: Arborist Report
- Attachment F: Applicant Clause 4.6 Variation Request
- Attachment G: Contamination Site Suitability Assessment Report
- Attachment H: Letter from Environment Protection Authority
- Attachment I: Arborists report
- Attachment J: Connecting to Country Statement
- Attachment K: Construction Noise Management Plan
- Attachment L: Design verification statement
- Attachment M: Draft Plan of Strata Subdivision
- Attachment N: Flood Assessment
- Attachment O: Geotechnical Report
- Attachment P: Landscape Plan
- Attachment Q: Noise Impact Assessment
- Attachment R: Stormwater Management Plan
- Attachment S: Survey Plan
- Attachment T: Traffic Impact Assessment
- Attachment U: Unexpected Finds Protocol
- Attachment V: Urban design review panel Minutes
- Attachment W: Visual Impact Assessment Report
- Attachment X: Waste Management Plan