

COUNCIL ASSESSMENT REPORT

Panel Reference	PPSHCC-61
DA Number	DA 59571/2020
LGA	Central Coast Council
Proposed Development	Demolition of existing structures and construction of four residential flat buildings, containing 131 units including 10 affordable housing units, basement parking and landscaping works at 89-91 Karalta Road, Erina
Street Address	89-91 Karalta Road, Erina Lot 1 and Lot 2, DP 259824
Applicant/Owner	Applicant – Cain King CKDS Architecture Pty Ltd Owner - D J & D E McNeish
Date of DA lodgement	5 November 2020
Total number of Submissions Number of Unique Objections	Two
Recommendation	Refusal
Regional Development Criteria (Schedule 7 of the SEPP (State and Regional Development) 2011	Capital Investment Value > \$30M CIV of \$43,023,453
List of all relevant s4.15(1)(a) matters	<ul style="list-style-type: none"> • <i>Environmental Planning & Assessment Act 1979 (EP&A Act)</i> • <i>Local Government Act 1993 (LG Act)</i> • <i>Roads Act 1993 (Roads Act)</i> • <i>Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act).</i> • <i>Biodiversity Conservation Act 2016 (BC Act).</i> • <i>State Environmental Planning Policy (State and Regional Development) 2011 (SEPP State and Regional Development)</i> • <i>State Environmental Planning Policy No 55 - Remediation of Land (SEPP 55)</i> • <i>State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development (SEPP 65)</i> • <i>Apartment Design Guide (ADG)</i> • <i>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (BASIX)</i> • <i>State Environmental Planning Policy (Koala Habitat Protection) 2019</i> • <i>Draft Central Coast Local Environmental Plan 2018 (CCLEP)</i> • <i>Draft Housing Diversity State Environmental Planning Policy (Housing Diversity SEPP)</i> • <i>Draft Design and Place State Environmental Planning Policy (Design and Place SEPP)</i> • <i>Gosford Local Environmental Plan 2014 (GLEP 2014)</i> • <i>Gosford Development Control Plan 2013 (GDGP 2013)</i>
List all documents submitted with this	Attachments: 1. <i>Reasons for Refusal</i>

report for the Panel's consideration	<ol style="list-style-type: none"> 2. <i>Amended Architectural Plans, dated 25/01/2021 prepared by CKDS Architecture (D14471193)</i> 3. <i>Landscape Plans, dated 04/05/2020, prepared by Xeriscapes (D14206173)</i> 4. <i>Independent Design Review, dated 28/01/2021 prepared by Ken Dyer (D14464789)</i> 5. <i>Statement of Environmental Effects including Clause 4.6 (Exceptions to Development Standards) of GLEP 2014 Variation Request for Building Height and FSR, dated 29/01/2021, prepared by Matthew Wales (D14471002)</i> 6. <i>Assessment Report and Consent for Subdivision DA - D/48585/2015 (D14656644)</i>
Clause 4.6 requests	<p><i>Gosford Local Environmental Plan 2014:</i></p> <ul style="list-style-type: none"> • Clause 4.4 – Floor space ratio • Clause 4.3 – Height of buildings • Clause 7.7 – Affordable Housing at 85-93 Karalta Road, Erina • Zone R1 – General Residential
Summary of key submissions	<ul style="list-style-type: none"> • Traffic, road safety and parking concerns • Removal of vegetation.
Report prepared by	Erin Murphy
Report date	12 August 2021

Summary of s4.15 matters

Have all recommendations in relation to relevant s4.15 matters been summarised in the Executive Summary of the assessment report? **Yes**

Legislative clauses requiring consent authority satisfaction

Have relevant clauses in all applicable environmental planning instruments where the consent authority must be satisfied about a particular matter been listed, and relevant recommendations summarized, in the Executive Summary of the assessment report? **Yes**
e.g. Clause 7 of SEPP 55 - Remediation of Land, Clause 4.6(4) of the relevant LEP

Clause 4.6 Exceptions to development standards

If a written request for a contravention to a development standard (clause 4.6 of the LEP) has been received, has it been attached to the assessment report? **Yes**

Special Infrastructure Contributions

Does the DA require Special Infrastructure Contributions conditions (S7.24)? **No**
Note: Certain DAs in the Western Sydney Growth Areas Special Contributions Area may require specific Special Infrastructure Contributions (SIC) conditions

Conditions

Have draft conditions been provided to the applicant for comment? **No**
Note: in order to reduce delays in determinations, the Panel prefer that draft conditions, notwithstanding Council's recommendation, be provided to the applicant to enable any comments to be considered as part of the assessment report

Executive Summary

The subject site is located on the southern side of Karalta Road. Adjoining development comprises low to medium density residential development to the west, Erina Fair Shopping Centre to the north and the Wood Glen Retirement Village to the east. The site is comprised of two lots being Lot 1 and Lot 2, DP 259824 - 89 and 91 Karalta Road, Erina. NSW 2250. The

site is zoned R1 General Residential under the *Gosford Local Environmental Plan 2014* (GLEP 2014).

The application seeks development consent for the redevelopment of the subject site, consisting of 4 x 3-5 storey residential flat buildings, containing 131 units, with 10 being proposed as affordable housing units, 2 levels of basement parking for 226 cars and associated landscaping and civil works.

Development consent for the subdivision of five lots into six lots (including the subject site) and a new road was granted approval on 22 August 2016 under Development Consent 48585/2015. This consent lapses on 22 August 2023. The proposed development relies upon the new road that is to be constructed under this consent. This subdivision and construction of the road has not commenced.

Clause 7.7 – Affordable Housing at 85-93 Karalta Road, Erina of the GLEP 2014 applies to the site. The objective of this clause is to increase the supply of affordable rental housing for very low, low, and moderate-income earning households by providing incentives for the development of new affordable rental housing. Under clause 7.7, bonus height and floor space ratio (FSR) provisions apply if the development includes at least one dwelling that contains 2 bedrooms and at least 80m² of the gross floor area (GFA) of the development is used for the purpose of affordable housing. In this regard, the following additional height and FSR may be applied:

- maximum building height of 13.75m (base of 11m)
- maximum floor space ratio of 1:1 (base of 0.85:1)

The proposal relies upon utilising the bonus provisions under clause 7.7, proposing 10 affordable housing units, four of which are 2 bedroom units, with a total GFA of 649m². A written request has been provided by the applicant in accordance with clause 4.6 of GLEP 2014, for a contravention to both the bonus height and FSR development standards of a maximum of 14.8% and 20.5% respectively.

The written requests are considered to be deficient in relation to demonstrating compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl. 4.6(3)(a)) and that there are sufficient environmental planning grounds to justify contravening the development standard (cl. 4.6(3)(b)).

The assessment of the application has identified a number of design issues associated with the proposed development including the significant height and FSR non-compliance, as well as inconsistencies with the provisions of *State Environmental Planning Policy No 65 - Design Quality of Residential Apartment Development* (SEPP 65) and the Apartment Design Guide in relation to site context and character, excessive building length, bulk and scale, natural cross ventilation and poor common circulation spaces.

The application has not adequately addressed the provisions of Clause 104 of *SEPP (Infrastructure) 2007* as insufficient information has been provided to adequately demonstrate that road congestion and efficiency will be satisfactory upon development of the land.

The application has been assessed having regard for the matters for consideration under Section 4.15 of the *Environmental Planning & Assessment Act 1979* (EP&A Act) and other relevant instruments, plans and policies. The application seeks a number of variations to *Gosford Local Environmental Plan 2014* (GLEP 2014), *Gosford Development Control Plan 2013* (GDCP 2013) and the *Apartment Design Guide* (AGD), the extent of which are not supported.

RECOMMENDATION

- A. That the Hunter and Central Coast Regional Planning Panel refuse Development Application DA 59571/2020 for the proposed demolition of existing structures and construction of four residential flat buildings, containing 131 units including 10 affordable housing units, basement parking and landscaping works, at Lot 1 and Lot 2, DP 259824, being No's 89 and 91 Karalta Road Erina, NSW, for the reasons detailed in the schedule attached to the report and having regard to the matters for consideration detailed in section 4.15 of the Environmental Planning and Assessment Act 1979 and other relevant issues.***
- B. The those who have made written submissions be notified of the Panel's decision.***
- C. The Public Authorities be notified of the Panel's decision.***

The Site and Surrounds

The subject site is known as 89-91 Karalta Road, Erina and is legally described as Lot 1 and Lot 2 in DP 259824.

The site is located on the southern side of Karalta Road. Adjoining development comprises low to medium density residential development to the west, Erina Fair Shopping Centre to the north and Wood Glen Retirement Village to the east. The topography of the site falls approximately 15m from the eastern boundary towards the western boundary. The site has a land area of 10,714m².

The site currently contains two single storey attached dwelling houses, associated outbuildings and extensive vegetation, all of which will be removed as part of the proposed development. The site is identified as "bushfire prone land" on Councils bushfire maps. The site is zoned R1 General Residential under Gosford LEP 2014.



Figure 1 - Locality Plan

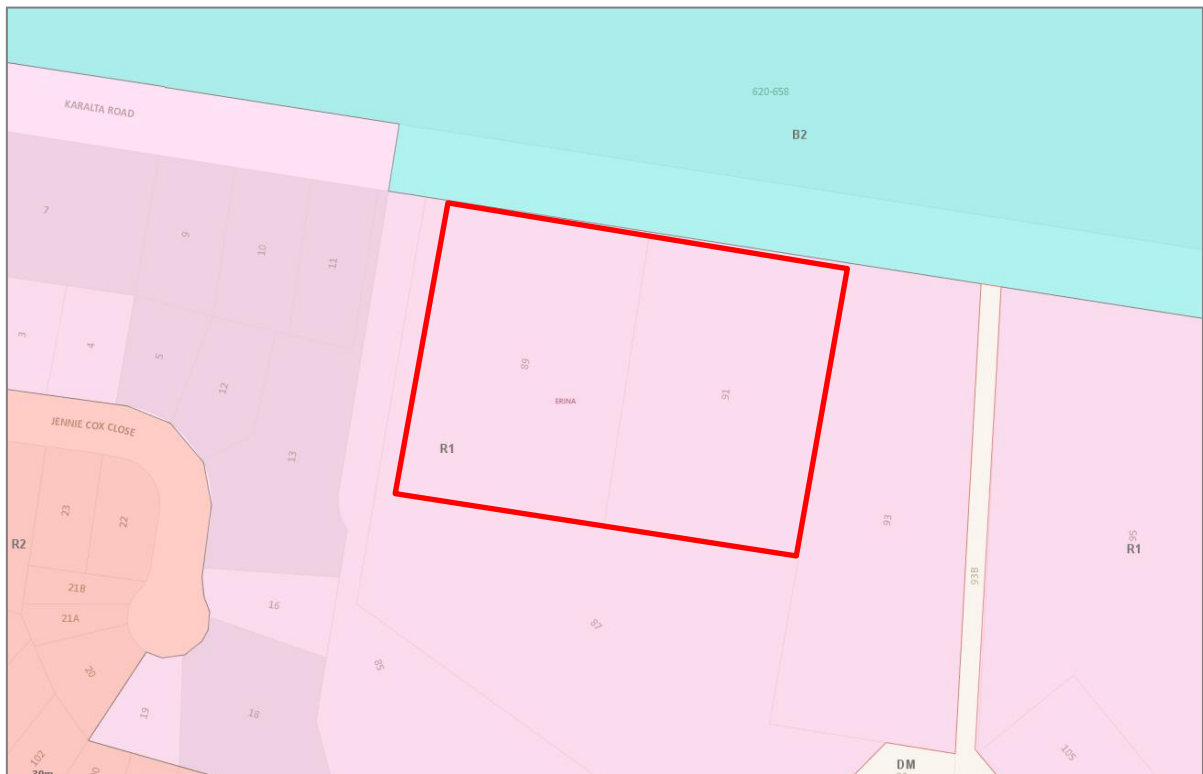


Figure 2-Zoning Map

Planning History

D/48585/2015 - Development Consent for the subdivision of five lots into six lots and a new road was granted approval on 22 August 2016, see Figure 3. This consent lapses on 22 August 2023, including the additional 2 years afforded by the amendments to s.4.53 of the *Environmental Planning and Assessment Act 1979* (EP&A Act 1979) brought about by the *COVID-19 Legislation Amendment (Emergency Measures – Miscellaneous) Act 2020 (NSW)*.

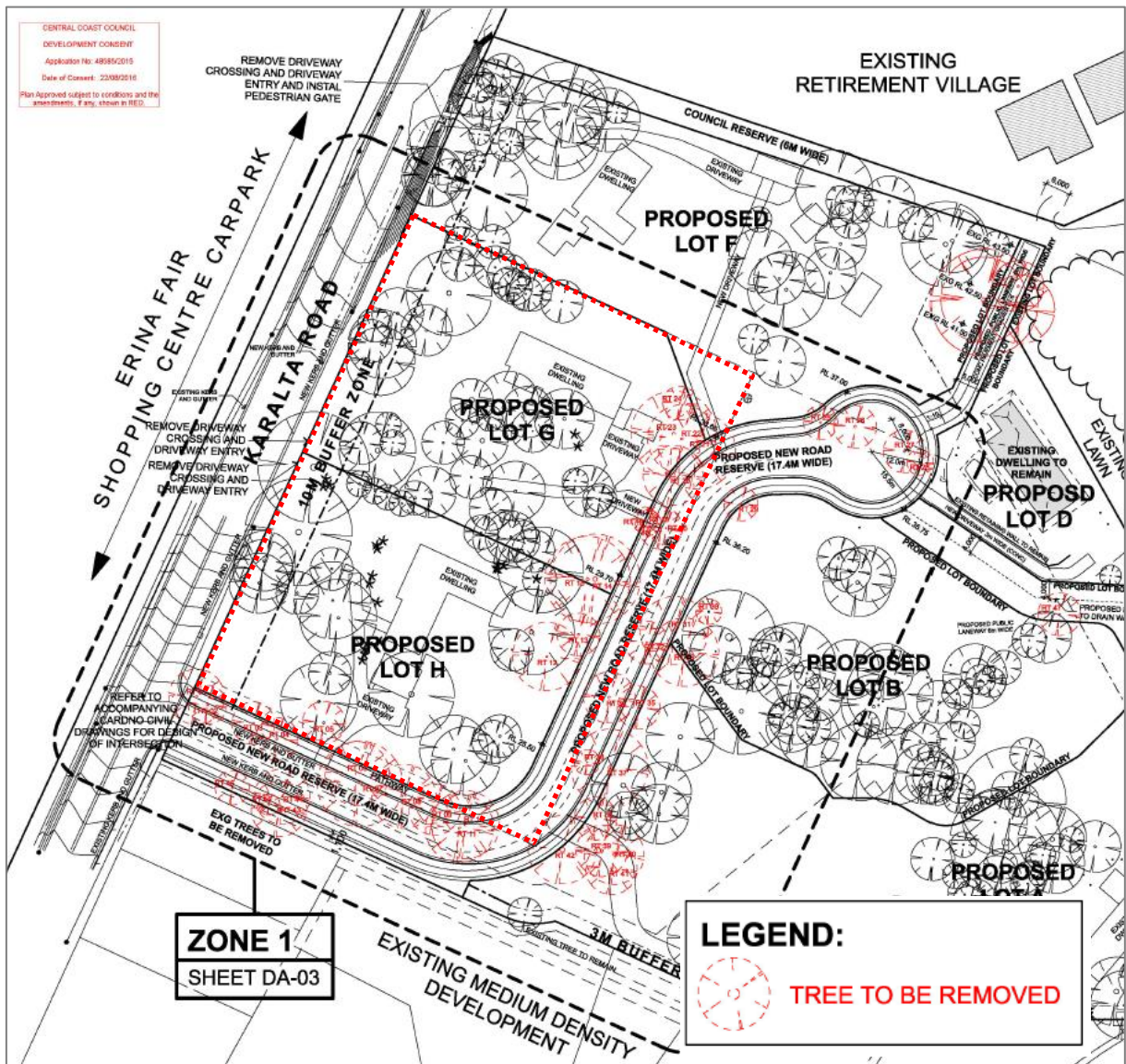
The proposed development will be accessed by way of the new road approved under development application 48585/2015, which is to be constructed to the south of the site. This subdivision and construction of the road has not commenced.

Development consent 48585/2015 included the removal of approximately 47 trees along the eastern and southern boundaries, where the new road is to be built, as shown in Figure 4. The subdivision consent also included various restrictions on the land including:

- Easements to drain water.
- Prohibition of direct vehicular access to and from Karalta Road in respect to proposed lots F, G and H.
- Prohibition of buildings and development within the 10m buffer area along Karalta Road except for landscaping, fencing and services.
- Maintaining of a 20m wide asset protect zone (APZ) along the south-eastern boundary of the site with Kincumber Mountain Reserve.
- Requirement for the land to be managed under an approved Vegetation Management Plan for the conservation of vegetation. A public positive covenant is required to be created to require the implementation of the Vegetation Management Plan.

The current site area of the two lots (being Lot 1 and Lot 2, DP 259824) is 10,714sqm. The site area, post subdivision, being proposed Lots G and H, will be 9,501sqm.





DA50731/2016 – development consent was granted at 91 Karalta Road on 23 April 2018 for a four storey residential flat building with 46 units. This consent was subject to a deferred commencement condition relating to the completion of the subdivision works under D/48585/2015 within 24 months. The 24-month period may be extended by 2 years, to 23 April 2022, in accordance with s.4.53 of the EP& A Act 1979.

DA50740/2016 - development consent was granted at 89 Karalta Road on 29 June 2018 for a four storey residential flat building with 45 units. This consent is subject to a deferred commencement condition relating to the completion of the subdivision works under development consent 48585/2015 within 24 months. The 24-month period may be extended by 2 years, to 29 June 2022, in accordance with the provisions of s.4.53 of the EP& A Act 1979.

Application Background

A Pre- DA meeting was held on 13/12/2019 for the demolition and clearing of land for the construction of 152 residential apartments and 230 basement parking spaces. It is noted that this proposal included 25% of affordable housing on the site. The advice noted that the following would need to be addressed/provided:

- State Environmental Planning Policy (Koala Habitat Protection) 2019
- State Environmental Planning Policy No.55 – Remediation of Land (SEPP 55)
- The Draft Central Coast Local Environmental Plan (CCLEP)
- Social Impact Assessment
- It was noted that the proposed development will result in various departures with height, façade treatment and articulation. It was recommended the application is supported by façade treatment plans and is well articulated to break up the lengths of the exterior walls.
- It is understood and was confirmed at the meeting that completion of the subdivision approved under development consent 48585/2015 would be required prior to commencement of any future development of the land.

The original application was lodged on 23/09/2020 for Staged development application for Residential Flat Buildings and Demolition of Existing Dwellings. This application was rejected on 8/10/2020 for the following reasons:

- The application and SEE did not address SEPP Infrastructure 2007, SEPP 55 Contamination of Land, SEPP Koala Habitat Protection 2019 or the Draft Central Coast Local Environmental Plan 2018 (CCLEP).
- The application did not adequately identify or address the ecological environmental impacts of the development, with significant issues with the submitted BDAR and no discussion of impacts on potential Koala habitat.
- The application did not adequately explain how the objectives of the Apartment Design Guide have been achieved.
- The application was neither staged nor integrated and had been incorrectly identified as these on the application form.

Several other issues were raised including:

- Inadequate Clause 4.6 request for both building height and floor space ratio, particularity as it did not address Clause 7.7 of the GLEP 2014 regarding supply of affordable rental housing on the site.
- No Social Impact Statement.

-
- Traffic Report was in draft form.
 - Waste issues - 10.7 m HRV indicated instead of 12.5 m HRV waste vehicle.

A review of the rejection with additional information was lodged on 21/10/2020 with some additional information. The application was accepted and lodged on 5/11/2020.

Additional information was requested 19/11/2020 including:

- Updated BDAR report to address various issues and deficiencies (previously raised in rejection)
- Koala Assessment Report to address State Environmental Planning Policy (Koala Habitat Protection) 2019 (previously raised in rejection)
- NaTHERS stamped plans
- Updated GFA diagram to correctly calculate GFA
- Scale to be provided on the plans
- Landscaping details of soil volume, depth and plant species for planting on structures and clarification of where 'living wall privacy screens' are located
- Further detail on compliance with SEPP 65 and the Apartment Design Guide:
 - Separation not clearly discussed and justified
 - single aspect apartments counted as naturally cross ventilated
 - A number of units indicate natural cross ventilation is achieved 'roof vents' with no details of roof vents or indication on the roof plans
- The Clause 4.6 requests did not adequately address Clause 7.7 'Affordable housing at 85–93 Karalta Road, Erina', which specifies the site-specific height and FSR controls for the site and information on whether the control was being varied (previously raised in rejection).
- No Social Impacts Statement (previously raised in rejection)
- Waste issues - 10.7 m HRV indicated instead of 12.5 m HRV waste vehicle (previously raised in rejection).

Additional information was provided 8/12/2020, with an updated BDAR and Koala Habitat report submitted on 16/12/2020.

One notable change to the proposal was the increase of affordable housing units from 1 to ten, while the overall number of units at 131, remained the same.

Further additional information was requested 12/01/2021 including:

-
- Clarification on which units were allocated as affordable housing and calculation of their combined GFA, as these were not shown on the plans
 - Civil engineering plans of proposed vehicle accesses, circulation roadways, parking aisles and car parking
 - Updated Water Cycle Management Plan consisting of a written report and plans
 - Traffic report to include SIDRA modelling (2020 & 2030)
 - Soil and Water Management Plan as required as per Clause 6.3 of the Gosford DCP 2013.
 - Inconsistencies between approved subdivision plan (under D/48585/2015) and Architectural Plans.
 - Existing site area being used rather the site area following subdivision (which the application is reliant upon) and associated FSR implications.

Additional information was provided on 03/02/2021, including:

- Amended plans to show location of affordable housing and the units are shared across level and size/unit types. The total GFA that is allocated to affordable housing is 649.3sqm across 10 units.
- Civil engineering plans of proposed vehicle accesses, circulation roadways, parking aisles and car parking and updated Water Cycle Management Plan.
- Arguments that SIDRA modelling is not required as *"SIDRA modelling was undertaken by Cardno for 200 dwellings on the subject site, with traffic volumes for 2016 and 2026 utilised...Traffic volumes between 2016 and 2020, and between 2020 and 2030 would only have increased by approximately 4%, based on typical traffic growth rates utilised by TfNSW of 2% per annum."*
- Amended plans to show approved subdivision shape, southern end of Building D reduced/setback and associated change to units.
- Minor reduction on overall GFA from 11,780sqm to 11,447sqm, however number of units stay the same.
- Changes to all figures on GFA plans, even on 3 buildings with no design changes, with no explanation.
- Deletion of cycle storage room for 35 bikes on the ground floor of Building D. 16 cycle parking spaces are provided within the basement only. This is a worse outcome and no discussion of this has been included.

- Building D has smaller servicing spaces at ground floor. Two additional units are proposed at ground floor of Building D, presumably to replace the units 'lost' by the setting back of the southern end of Building D.
- Applicants comments on site area and FSR:

Based on the total site area of Lots 1 and 2 (ie: 10,714m²), the proposed floor space ratio is 1.07:1 as shown on Drawing No. DA1108 in the attached Architectural Plans prepared by CKDS Architecture. This represents a minor departure of 7% for the standard under Clause 7.7 of the Gosford LEP 2014.

*Based on the total site area of the proposed Lots G and H as per DA/48585/2015 of 9,501m² (ie: 4,772m² = proposed Lot G and 4,729m² = Lot H), the proposed floor space ratio is 1.2:1 as shown on Drawing No. DA1108 in the attached Architectural Plans prepared by CKDS Architecture. **This represents a larger departure of 17% for the standard under Clause 7.7 of the Gosford LEP 2014.***

It should be noted that it is not a 17% departure, but a 20.5% departure to the bonus FSR provision under clause 7.7 of GLEP 2014.

RPP briefing 11 February 2021

On 11 February 2021, a briefing was given to the Hunter and Central Coast Regional Planning Panel (the Panel). Minutes provided to the applicant and Council on 17 February 2021 noted the following:

- Lack of clarity in the application regarding the design of the development and its relationship to the subdivision approved under development consent D/48585/2015, particularly in relation to site boundaries and lot areas to be relied upon for the purposes of calculating floor space ratio.
- As the application relies upon the approved subdivision for access and lot configuration, the future subdivision site area is to be relied upon for calculation of FSR.
- Significant height and FSR non-compliance – noting the non-compliance is above the 'bonus' provisions of Clause 7.7 of the Gosford LEP 2014.
- Inadequate Clause 4.6 written requests.
- Poor urban design response, lack of context/ site analysis and appropriate transitions to lower scale residential development.
- Poor consideration of landscape setting, potential tree retention, and streetscape presentation.
- Excessive building lengths – building D in particular.

-
- Not consistent with ADG having regard for natural cross ventilation, buildings separation, privacy, common circulation.
 - The Panel notes that the applicant has had the benefit of Pre-DA comments, a detailed rejection letter and two requests for information letter by Council and there is still insufficient detail contained in application documentation.
 - Recently received amended plans noted, however it is understood that certain issues remain outstanding.
 - The application is to be reported to the Panel for determination as soon as possible.

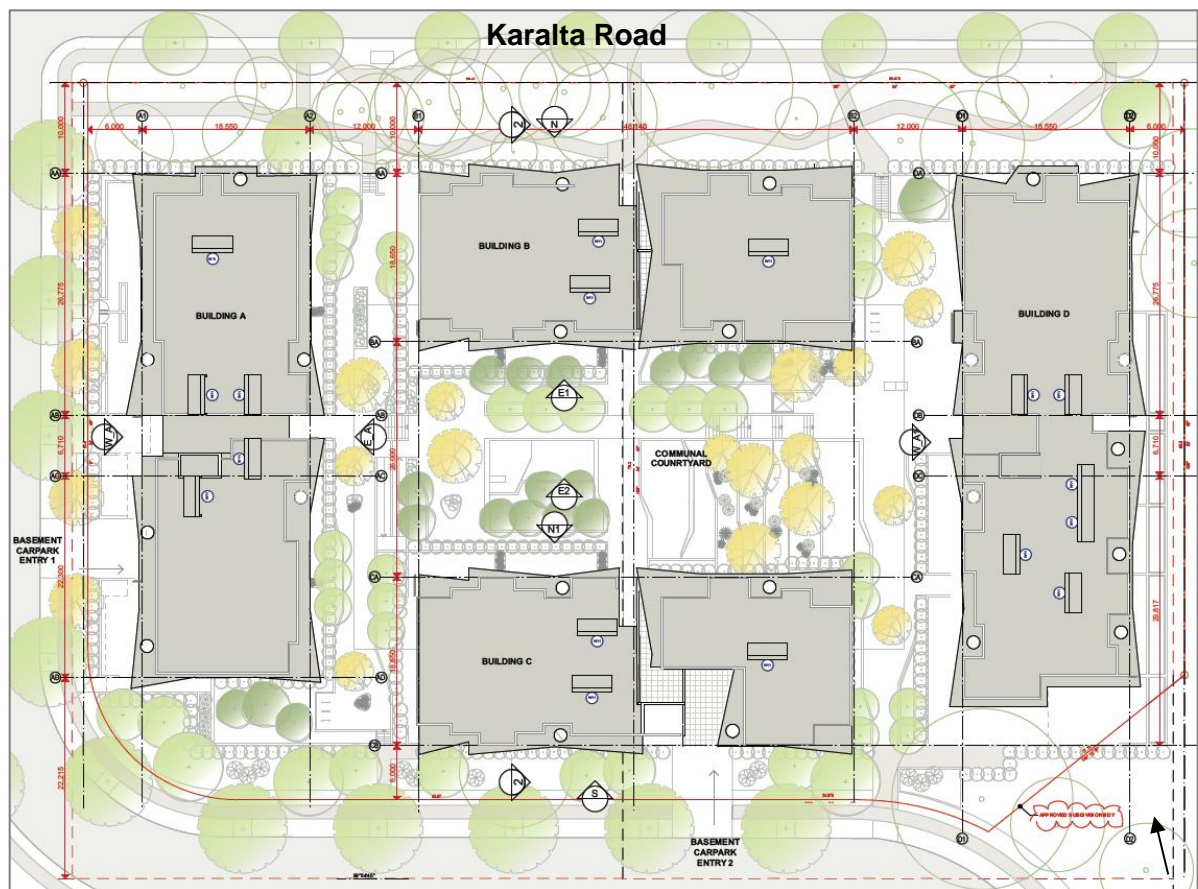
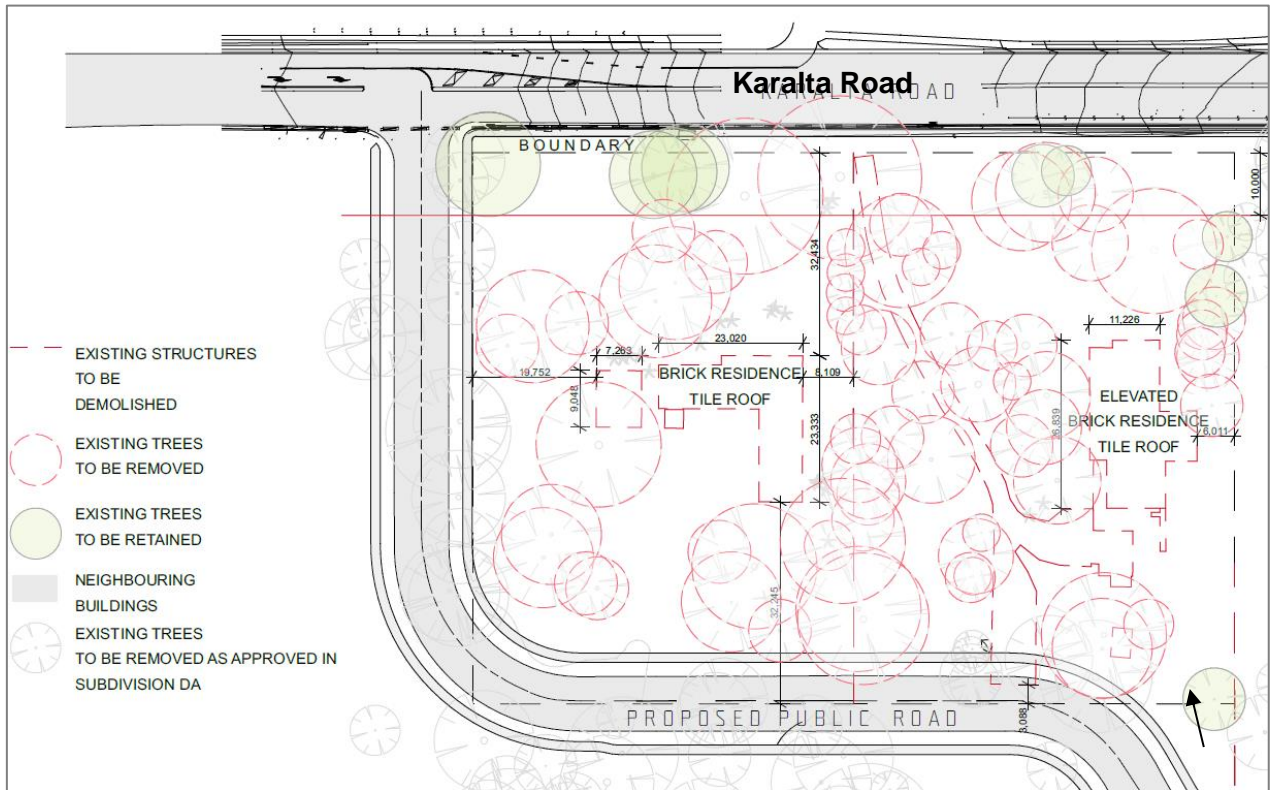
The Proposed Development

The application seeks development consent for the redevelopment of the subject site, including:

- The demolition of all structures on the site
- Construction of 4, 3-5 storey, residential flat buildings containing 131 units, with 10 being proposed as affordable housing units
- 2 levels of basement parking for 226 cars
- Removal of approximately 70 trees
- Associated landscaping works.

The proposed development relies on the subdivision approved under development consent 48585/2015 which includes a road for access to the site. The road works under subdivision 48585/2015 include a new intersection on Karalta Road and a new internal public road (from which the 131 units require access). Two basement car park entrances are proposed off the new road, on the western and southern boundaries.

The development will be undertaken in one single stage (refer figures 5-12).



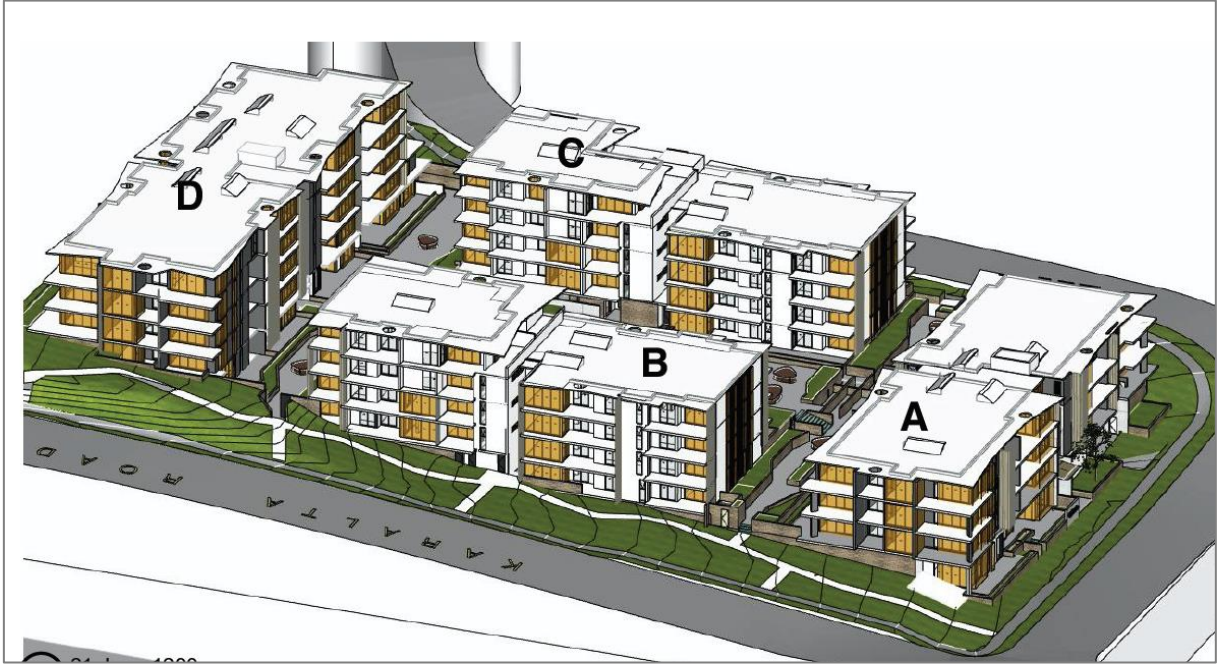


Figure 7 – Axonometric View

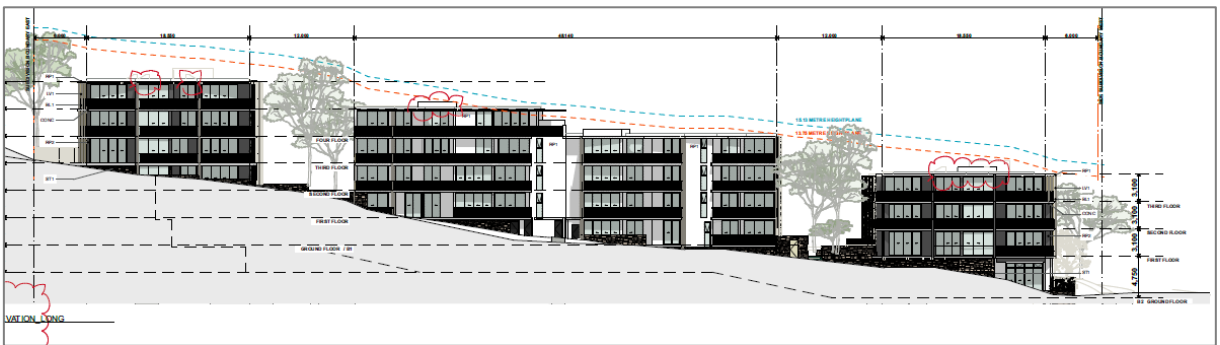


Figure 8 – Northern, Karalta Road elevation



Figure 9 – Western elevation, Building A, from new road

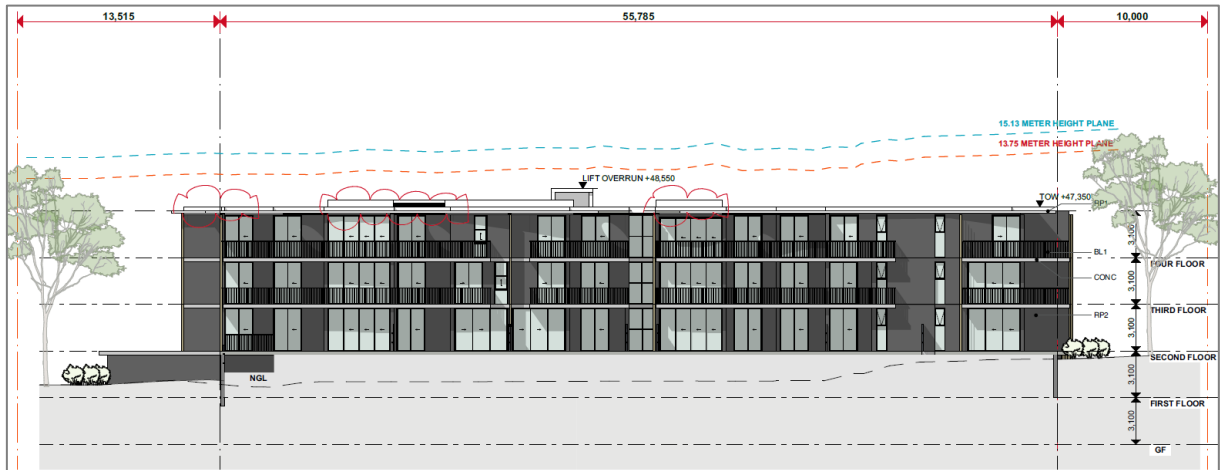


Figure 10 – Eastern elevation, Building D



Figure 11 – Long Section



Figure 12 – Photomontage

Internal consultation

The application has been referred to, and reviewed by, the following experts in Council:

- Development Engineer
- Transport Engineer
- Ecologist
- Waste Servicing Officer
- Social Planner
- Water and Sewer

Ecologically Sustainable Principles

The proposal has been assessed having regard to ecologically sustainable development principles. Insufficient information has been provided to demonstrate that the proposal is consistent with the principles and with regard to erosion and sediment control and the disturbance of any endangered flora or fauna habitats. The amended plans have not included an updated BASIX assessment or certificate in relation to sustainability.

Climate Change

The potential impacts of climate change on the proposed development have been considered by Council as part of its assessment of the development application. This assessment has included consideration of such matters as potential rise in sea level; potential for more intense and/or frequent extreme weather conditions including storm events, bushfires, drought, flood and coastal erosion; as well as how the proposed development may cope, combat, withstand these potential impacts.

The proposed development is located on bushfire prone land and a Bushfire Safety Authority has been granted by NSW Rural Fire Service.

Assessment

This application has been assessed having regard for the matters for consideration specified under section 4.15 of the EP&A Act, and other relevant instruments, plans and policies.

s. 4.15 (1)(a)(i) of the EP&A Act: Provisions of any environmental planning instruments/Plans/Policies

State Environmental Planning Policies (SEPP's)

State Environmental Planning Policy (Koala Habitat Protection) 2019

The subject site is mapped within the Koala Development Application mapping. Clause 9 of the SEPP states as follows:

(1) Before a council may grant consent to a development application for consent to carry out development on land to which this Part applies that it is satisfied is a potential koala habitat, it must satisfy itself as to whether or not the land is a core koala habitat.

(2) The council may be satisfied as to whether or not land is a core koala habitat only on information obtained by it, or by the applicant, from a person with appropriate qualifications and experience in biological science and fauna survey and management.

(3) If the council is satisfied—

(a) that the land is not a core koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or

(b) that the land is a core koala habitat, it must comply with clause 10.

The ecological assessment report prepared by Niche Environment and Heritage has included an assessment of the likelihood of impacts to Koala. The report provides that whilst the site contains highly suitable koala habitat, no evidence of koalas was recorded on site during surveys. Given the lack of koala presence and recent records of the species within 2.5 km of the site, the habitat present does not meet the definition for core Koala habitat as provided in the Koala SEPP and Guideline. Therefore, the preparation of a Koala Assessment Report is not required.

State Environmental Planning Policy (Infrastructure) 2007

Clause 104 Traffic-generating development

Clause 104 Traffic-generating development applies as the proposed development is considered a traffic generating development within schedule 3 as it involves proposed more than 200 parking spaces.

Clause 104 requires the consent authority to take into consideration any submission by RMS (now Transport for NSW) as well as the accessibility of the site, including the efficiency of movement of people and any potential traffic safety, road congestion or parking implications of the development.

As required, the application was referred to Transport for NSW (formerly RMS). Transport for NSW did not object to the proposal in principle, however made several comments as detailed under the External Consultation - Transport for NSW heading. As discussed in this section, the Traffic report was relying on 2015 information and the applicant's Traffic consultant had misunderstood the subdivision history and capacity of dwellings on the site and wider subdivision.

The application has not adequately addressed the provisions of Clause 104 of *State Environmental Planning Policy (Infrastructure) 2007* as insufficient information has been provided to adequately demonstrate that road congestion and efficiency and pedestrian movements will be satisfactory upon development of the land.

State Environmental Planning Policy 55-Remediation of Land (SEPP 55)

Clause 7 of SEPP 55 requires the consent authority to consider whether the land is contaminated before the granting of consent. The proposed development involves ground disturbance through the excavation of the site to accommodate basement carparking and the construction of footings for the proposed new buildings.

Clause 7(2) of SEPP 55 requires a preliminary contamination investigation to be undertaken for any land as specified by Clause 7(4), being:

- (4) *The land concerned is—*
- (a) *land that is within an investigation area,*
 - (b) *land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out,*
 - (c) *to the extent to which it is proposed to carry out development on it for residential, educational, recreational or child care purposes, or for the purposes of a hospital—land—*
 - (i) *in relation to which there is no knowledge (or incomplete knowledge) as to whether development for a purpose referred to in Table 1 to the contaminated land planning guidelines has been carried out, and*
 - (ii) *on which it would have been lawful to carry out such development during any period in respect of which there is no knowledge (or incomplete knowledge).*

The land is not in an investigation area. Previous and current land uses are large lot residential. As such, a preliminary contamination investigation is not deemed necessary and it is considered that the site is suitable for the proposed development regarding land contamination and the provisions of SEPP 55.

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004

The application is not supported by a BASIX certificate and has not demonstrated how the proposal will meet the NSW government's requirements for sustainability.

State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development

The proposal is subject to the requirements of *State Environmental Planning Policy No. 65 – Design Quality of Residential Apartment Development* (SEPP 65). SEPP 65 provides that in determining an application for a residential flat development, the consent authority is to take into consideration a number of matters relating to design quality, including 9 design quality principles and the Apartment Design Guide (ADG).

An independent review was requested under Council's Urban Design Panel Process and comments were provided by the independent urban designer / architect on 28 January 2021 (see **Attachment 4**). This review noted the following issues:

- Height non-compliance – not supported as the site has already been allocated a substantial incentive increase of 2.75m so any variation is compounded. The non-compliance contributes to the overall density of the site reducing amenity and privacy, contributes to overshadowing and the amount of solar access, and adds to the building bulk reducing the character of the precinct and impact on streetscape.

-
- FSR non-compliance – not supported. This variation is not ‘minor’ and contributes to the variation and non-compliance to height limitations, contributes to the overall density of the site reducing amenity and privacy, adds to the building bulk and length reducing the character of the precinct and impact on streetscape.
 - The additional FSR also creates demand on carparking and traffic flow, and site services like water, sewer and waste collection.
 - The variation to FSR is not ‘minor’ as:
 - The site has already been allocated a substantial incentive increase in Gross Floor Area (GFA);
 - The proposed GFA exceeds that allowed by an additional 1,066m²; and
 - This increase in GFA can equate to approximately 14 additional 2 bed units which is not a minor variation.

Note: Based on the total site area of the proposed lots as approved under development consent 48585/2015 (9,501m²), the proposed floor space ratio is 1.2:1. This represents a departure of 1,946.6m² or 20.5% variation from the 1:1 FSR specified under clause 7.7, or the equivalent of 26 x 2 bedroom apartments.

- The pedestrian entry zones within the building design are not adequately reinforced or identifiable.
- No bicycle parking nominated.
- Solar Access - Objectives have been adequately addressed but the Design Criteria has not been fully complied with in the design. The calculations in the documentation do not correlate to this Review – only 89 units or 67% achieve 3 hours solar access.
- Natural ventilation - Although the numerical figure has been achieved, the effectiveness of the units’ ventilation into the building slot at the stair wells is questioned. This is a dead corner or pocket with airflow being minimal. The redesign of the common stair areas into a “through flowing” zone with louvres would create natural air flow for this to operate effectively.
- Common circulation and space – 9-11 off a core. Where a development is unable to achieve the design criteria, a high level of amenity for common lobbies, corridors and apartments should be demonstrated. The current design does not provide a high level of amenity to the common lobby or circulation zones including:
 - sunlight and natural cross ventilation in apartments
 - access to ample daylight and natural ventilation in common circulation spaces
 - common areas for seating and gathering
 - generous corridors with greater than minimum ceiling heights
 - other innovative design solutions that provide high levels of amenity

-
- The current design does not provide a high level of amenity to the common lobby or circulation zones. The applicant has applied for additional GFA yet has not provided any suitable space of amenity in these common circulation zones. These zones should be redesigned to accommodate a sense of openness to provide a continuous vista upon entry through to the common area. There is an opportunity to open up and lighten the building at these points. These common circulation zones should be permeable to break the linear façade and provide connections through the entire site.
 - The proposal is seeking variation to the FSR and density of the site which appears to have compounded non-compliances in height, solar access, ventilation, and general bulk of the development. There is also a lack of amenity in the common circulation zones and a missed opportunity to provide better site connectivity and permeability.

The proposed development has not demonstrated that adequate regard has been given to the following design quality principles contained within State Environmental Planning Policy No. 65 with respect to Principle 1: Context and Neighbourhood Character, Principle 2: Built Form and Scale, Principle 3: Density, Principle 4: Sustainability, Principle 5: Landscape, Principle 6: Amenity and Principle 9: Aesthetics.

1. Context and Neighbourhood Character

It is acknowledged the site may benefit from bonus height and density provisions via Clause 7.7 of the GLEP 2014. However, the proposed FSR, building height and excessive building lengths result in an undesirable character of long and large unarticulated buildings, which will not respond to the surrounding lower scale residential properties or create a desirable future character for the area.

2. Built Form and Scale

The non-compliance with both the floor space ratio and building height controls, coupled with the excessive building lengths, result in an undesirable built form outcome, which will not respond to the lower scale residential to the east and west or create a desirable future character for the area. Whilst the site benefits from bonus height and FSR provisions, which is not afforded other surrounding properties, the proposed development should still be designed to be sympathetic to existing and future surrounding development by providing appropriate setbacks, privacy, amenity and landscaping opportunities and have regard for its site context.

3. Density

The proposal results in a significant departure from the FSR development standard specified under clause 7.7 of GLEP 2014. The site has already been allocated a substantial incentive increase via Clause 7.7 of the GLEP 2014. The proposal exceeds the bonus FSR of 1:1 by 20.5%, or 1,946.6m², the equivalent of 26 x 2 bedroom apartments.

The written request to vary the development standard is considered deficient in that it has not demonstrated how compliance with the development standard is unreasonable or

unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify a contravention to the development standard.

Moreover, insufficient information has been provided to demonstrate that a high level of amenity for residents and each apartment, with particular regard to circulation spaces and natural cross ventilation, can be achieved. The non-compliance with both the floor space ratio and building height controls, along with the excessive building lengths and internal amenity concerns, results in an undesirable built form outcome and a design which does not respond to its site context.

4. Sustainability

An updated BASIX certificate has not been provided with the amended plans to demonstrate compliance with mandatory minimum sustainability standards.

In addition, a development of this size and significance is an opportunity to encourage and demonstrate sustainable design and could include sustainability measures such as solar and wind power generation and storage, storm and grey water recycling and a high level of passive solar design. A commitment to sustainability has not been demonstrated.

5. Landscape

The ADG requires the deep soil zones to have a minimum of 7% of the site area. The application complies with this numerical standard but locates almost all landscaping in a single strip at the north of the site. The northern 10m landscape setback will achieve over 1200m² or 13% deep soil area, with some additional areas with a lesser dimension, achieved along other boundaries.

Deep soil zones and landscaping should be an integral part of the design. They should complement the existing natural features, provide outlook from units, provide adequate areas for significant landscaping to screen and soften the building and adjoining developments and contribute to the building's setting.

There should be consolidated deep soil areas and setbacks on side boundaries adequate for significant trees to provide screening and outlook, visual separation and to disguise the scale of the building. A small number of significant trees can be more effective at disguising scale and providing screening than large areas of low shrubs and ground cover. The eastern boundary does not include any tree plantings and does not benefit from the street tree plantings and additional separation created by the new road to the western and southern boundaries.

6. Amenity

Insufficient information has been provided to demonstrate that adequate amenity has been achieved with particular regard to common circulation space and natural cross ventilation.

7. Safety

The application provides balconies and windows that overlook the street and common areas to provide an appropriate level of passive surveillance.

8. Housing Diversity and Social Interaction

The application provides 1, 2 and 3 bedroom units and 10 affordable housing units to cater for a variety of residents.

9. Aesthetics

The external appearance of the buildings is homogeneous and bland in both form, colours and materials, with little variation between the four buildings. The form is very linear, and the scale is exacerbated by the excessive building lengths.

The composition could benefit from the introduction of breaks within each of the buildings as well as the introduction of vertical building elements and contrasting materials to compliment the horizontal elements and provide further articulation.

Apartment Design Guide

A detailed assessment of the proposal of against the Apartment Design Guide (ADG) is provided below.

Design Criteria	Required	Proposed	Compliance
3D-1 Communal Open Space	Minimum communal open space area 25% of the site	The large internal courtyard is approximately 1800sqm, coupled with the 10m landscape setback to the northern boundary which is approximately 1200sqm equates to over 30% of the site being available for communal open space	Whilst numerically the proposal may achieve compliance, the reliance upon the 10m front setback for the purposes of useable communal open space is considered unreasonable as this area may not be useable or desirable given it is located within the front setback, adjacent to Karalta Road and the public domain which is also opposite a major shopping centre, which may result in minimal privacy being provided for residents. It is considered the front setback area is more conducive to providing

Design Criteria	Required	Proposed	Compliance
			landscaping to screen the building and enhance the streetscape presentation of the building -not for the purposes of communal private open space for use by residents.
	50% direct sunlight to principal usable part for min 2 hrs between 9am and 3pm mid-winter	<p>Despite the fact the northern 10m landscape setback will achieve a high level of solar access all day, given its location, this area is not considered to provide residents with opportunities for group and individual recreation and social interaction. The amenity and outlook for residents in the northern setback is considered unsatisfactory and should therefore not be counted as the principal usable communal open space area.</p> <p>The internal courtyard, considered to be the primary communal open space area, will achieve solar access to approximately 50% of the space in between 12 and 3pm mid-winter.</p>	Yes
3E-1 Deep Soil Zone	Minimum 7% of the site, with minimum dimension 6m for a site greater than 1,500m ²	The northern 10m landscape setback will achieve over 1200m ² or 13% deep soil area, with some additional areas with a lesser dimension, achieved along other boundaries.	Whilst the northern setback complies numerically, the guide encourages deep soil zones to retain existing significant trees and to allow for the development of healthy root systems. In this regard, there is a discrepancy between the civil works plans and architectural plans, ecology, arborist and bushfire reports. The architectural plans, bushfire, arborist and ecology reports discuss retention of existing mature trees along the northern boundary (albeit, in

Design Criteria	Required	Proposed	Compliance
	<p>On some sites, it may be possible to provide a greater area for deep soil zones. Sites greater than 1500m² 15% should be achieved, if possible.</p>		<p>slightly different configurations). The civil plans identify the front setback as containing a large detention basin and stockpiling of materials with the opportunity to retain any existing vegetation within this front setback unlikely.</p> <p>Limited opportunity has been provided for additional deep soil planting opportunities that would meet the design guidance criteria and assist in achieving closer to 15% of the site for deep soil planting.</p>
3F-1 Visual Privacy	<p>Separation from boundaries and buildings (habitable rooms and balconies):</p> <p>6m (up to 12m / 4 storeys in height) 9m (up to 25m / 5-8 storeys in height)</p> <p>Separation distances between building on the same site should combine the required building separation required,</p>	<p>Northern boundary / Building B – is to the street frontage of Karalta Road and 10m is achieved</p> <p>Easter boundary / Building D – a 6m setback to the building line is achieved, however there are slight encroachments by balconies of 1m. Given a similar form of development is likely to occur to the west, 6m should be achieved here so as to not unreasonably hinder development to the west.</p> <p>Western boundary / Building A – is to the new street frontage. A 6m setback to the building line is achieved, however there are slight encroachments by balconies of 1m. Given that this building benefits from the additional separation created by the new road, there are no unreasonable privacy impacts.</p> <p>Southern boundary / Building C – is to the new street frontage. A 6m setback to the building line is</p>	<p>Generally compliant except for the encroachment of balconies along the eastern boundary, which have not been adequately justified, nor has adequate screening or other appropriated privacy measures been provided to respond appropriately to the adjoining property to the east.</p>

Design Criteria	Required	Proposed	Compliance
		<p>achieved, however there are slight encroachments by balconies of 1m. Given that this building benefits from the additional separation created by the new road, there are no unreasonable privacy impacts.</p> <p>Between buildings - a 12m setback is achieved between all building on the site with the exception of slight encroachments by balconies of a maximum of 1m. In these cases, privacy screens have been proposed which adequately deal with visual privacy.</p>	
3J-1 Bicycle and Car Parking	Minimum parking provided in accordance with the car parking requirements prescribed by the relevant council,	<p>1.5 spaces required per dwelling plus 0.2 spaces per dwelling for visitor parking</p> <ul style="list-style-type: none"> • $131 \times 1.5 = 196.5$ spaces • $131 \times 0.2 = 26.2$ spaces • Total = 223 • 226 spaces provided <p>Resident vehicle parking is provided in excess GDCP 2013 requirements.</p>	Yes
	Secure undercover bicycle parking should be provided that is easily accessible from both the public domain and common areas	16 cycle parking spaces are provided within the basement	Yes
4A-1 Solar and Daylight Access	Living rooms and private open space of at least 70% of apartments receive a minimum of 3hrs sun between 9am and 3pm mid-winter	The applicant states that 70% is achieved. The independent architectural review states that 67% of units achieve 3 hours of solar access.	No - on a site this large it is expected the design of the development would be able to achieve this requirement through appropriate siting on the site.
	Maximum of 15% of apartments receive no direct sun between 9am and 3pm mid-winter	13%	Yes
4B-3 Natural Ventilation	Min 60% of apartments cross ventilated in the first 9 storeys of the building	The applicant states that 83 of the 131 apartments (63%) are naturally cross ventilated.	Insufficient information has been provided to satisfy assessment staff that the number of apartments quoted as

Design Criteria	Required	Proposed	Compliance
		<p>However, a number of single aspect apartments are counted as naturally cross ventilated based on indents/slots within the building façade (see Figure 13 below).</p> <p>This appears to apply to 18 units, which would reduce natural cross ventilation to 65/131 or 49.6%. This is well below the 60% requirement under the ADG.</p> <p>An engineering report, prepared by GHD, has been provided by the applicant that outlines that the difference in wind pressure coefficients between inlet and outlet will drive the airflow through the apartments.</p> <p>The effectiveness of the units' ventilation into the building indents/slots is questioned. These are a dead corner or pockets with airflow being minimal.</p>	being compliant, will be capable of being cross-ventilated.
4C-1 Ceiling Heights	Minimum 2.7m	3.1m floor to floor heights provided which will allow for 2.7m floor to ceiling.	Yes
4D-1 Apartment Size	Studio: 35sqm 1 bedroom: 50sqm 2 bedroom: 70sqm 3 bedroom: 90sqm (5sqm per additional bathroom)	Complies	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	All habitable rooms have a window within the external wall.	Yes
4D-2 Room depths	Habitable room depths and maximum 8m depth for open plan layouts.	Complies	Yes
4D – 3 Layout	Bedroom and living room sizes – 9 & 10sqm bedrooms with min 3m	The applicant has indicated compliance with this requirement.	Yes

Design Criteria	Required	Proposed	Compliance
	width, 3.6m-4m width living rooms		
4E-1 Balconies	1 bedroom: 8sqm, min 2m depth 2 bedroom: 10sqm, min 2m depth 3 bedroom: 12sqm, min 2.4m depth	The applicant has indicated compliance with this requirement.	Yes
	Podium/ground level private open space minimum 15sqm, minimum depth 3m	Unit 01A does not achieve a depth of 3m but provides 2.5m depth and an area of approximately 35m and is acceptable	No – but acceptable
4F-1 Common Circulation	Maximum of 8 apartments off a circulation core (although design guidance allows up to 12 apartments)	9 units off Block A core, 10 for Block B and C and 11 for Block D. A high level of amenity for common lobbies has not been achieved to justify the higher number	No
4G-1 Storage	1 bedroom: 6m ³ 2 bedroom: 8m ³ 3 bedroom: 10m ³ Note: Minimum 50% within unit	The applicant has indicated compliance with this requirement.	Yes (based on applicant's information)
4H Acoustic Privacy	Noise transfer is limited through the siting of the buildings and building layout	The design of the development has been sited to avoid noise transfer.	Yes
4J Noise and Pollution	The impact of external noise transfer and pollution are minimised through the siting and layout of the building.	10m setback from Karalta Road will mitigate traffic noise. Design generally complaint	Yes
4K Apartment Mix	A range of apartment types are provided to cater for different household types, and distributed throughout the building.	An acceptable mix of studio, 1, 2 and 3 bedroom units are provided	Yes
4L Ground Floor Apartments	Maximise street frontage activation and amenity.	There appears to be a disconnect between the street and the ground floor apartments. The Karalta Road frontage contains stonework fencing/retaining walls that are considered to detract from the appearance of the public domain. Unit 01A in the north west corner of building A is representing as partly subterranean.	It is considered more could be done to maximise street frontage activation.

Design Criteria	Required	Proposed	Compliance
4M Facades	Provide visual interest whilst respecting the character of the area.	<p>The pedestrian entry zones within the building design are not adequately reinforced or identifiable.</p> <p>The length of the buildings(48-58m) and the horizontal/linear and homogeneous nature of the blocks do not provide adequate visual interest and articulation.</p>	No
4N Roof Design	Roof features are incorporated in the roof design, respond to the street and provide sustainability features.	The roof design is acceptable and incorporates clerestory windows /vents but does not incorporate any other sustainability features.	No
4O Landscape Design	Landscape design is viable, sustainable, contributes to the streetscape and amenity.	<p>The Landscape Plan includes an appropriate mix of plantings, details of planter boxes, living wall system and irrigation have been provided.</p> <p>The landscape plan identifies the retention of existing significant vegetation within the 10m front setback. However, this is in conflict with the architectural and civil plans and bushfire requirements.</p>	No – it is unclear how the existing trees will be retained or how appropriate landscaping will be achieved along the northern boundary.
4P Planting on Structures	Appropriate soil depths are provided	<p>Planter box details indicate the minimum soil depths as recommended in these guidelines:</p> <ul style="list-style-type: none"> • Trees – minimum 1000mm planter box • Shrubs – minimum 500mm planter box • Groundcovers – minimum 300mm planter box 	Yes
4V Water	Water Management and Conservation is achieved.	An BASIX certificate has not been provided to demonstrate this.	Insufficient information provided.
4W Waste	Waste storage facilities are provided to minimise impacts on the streetscape, building entry an amenity of residents.	The waste truck servicing location indicated on the Ground Floor plan restricts other vehicle entry from the street and will impede other vehicles and poses a potential risk to the waste contractor servicing bulk waste bins at the rear of the waste truck. The proposal also requires transfer of recyclables and mobile garbage bins from upper level floors via the resident lift, which is not desirable	No

Table 1 – Apartment Design Guide Compliance Table

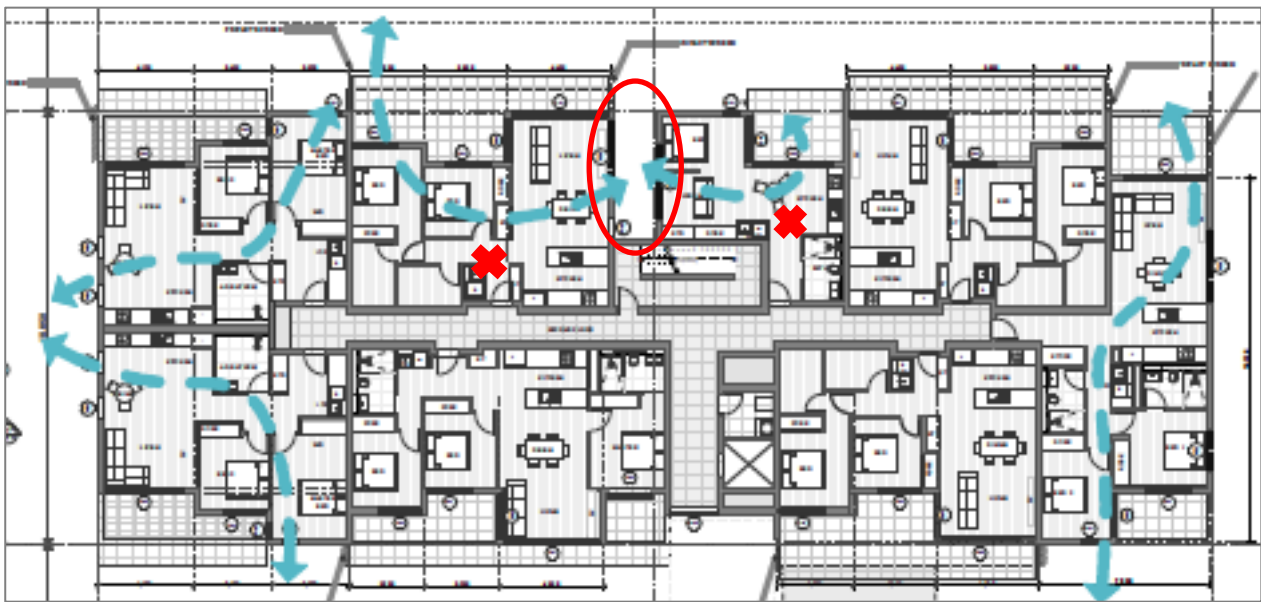


Figure 13 – Extract of architectural drawing DA-4003 SEPP65 cross ventilation diagram, red crosses showing example of where single aspect units are counted as naturally cross ventilated, relying on small slots on the same side of the building

State Environmental Planning Policy (State and Regional Development) 2011

The aims of *State Environmental Planning Policy (State and Regional Development) 2011* are to identify development that is State significant development, State significant infrastructure and critical State significant infrastructure or regionally significant development and to confer functions on the relevant state or regional planning panels to determine development applications. The categories of regionally significant development are identified in schedule 7 of the SEPP.

General development with capital investment value (CIV) of more than \$30 million is considered regionally significant development.

The proposed development has a capital investment value of \$43,023,453 and is identified as regional development for the purposes of this SEPP. The Hunter and Central Coast Regional Planning Panel is therefore the consent authority for this application.

Gosford Local Environmental Plan 2014 (GLEP 2014)

Zoning and Permissibility

The site is zoned R1 General Residential under Gosford LEP 2014 (see Figure 2- Zoning Map).

The proposed development is a residential flat building, which is permissible in the zone with consent.

residential flat building means a building containing 3 or more dwellings, but does not include an attached dwelling or multi dwelling housing.

The objectives for the R1 General Residential zone are:

-
- *To provide for the housing needs of the community.*
 - *To provide for a variety of housing types and densities.*
 - *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
 - *To ensure that development is compatible with the desired future character of the zone.*
 - *To promote best practice in the design of multi dwelling housing and other similar types of development.*
 - *To ensure that non-residential uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for multi dwelling housing or other similar types of development.*

The proposed development has provided a mix of residential units including affordable housing, which is supported in principle. However, the proposal has not adequately demonstrated that that development is compatible with the desired future character of the zone or that it exhibits best practice design given its excessive bulk and scale and amenity issues.

Clause 7.7 Affordable Housing at 85-93 Karalta Road, Erina

Clause 7.7 of GLEP 2014 applies to the site as the site is mapped "Area 1, Karalta Road" on the Development Incentives Application Map, see **Figure 14**. The objective of this clause is to increase the supply of affordable rental housing for very low, low, and moderate-income earning households by providing incentives for the development of new affordable rental housing.

Under this clause, a residential flat building can utilise bonus height and FSR if the development includes at least one dwelling that contains 2 bedrooms and at least 80m² of the gross floor area of the development is to be used for the purpose of affordable housing, despite the provisions of clause 4.3(2) and 4.4(2) of GLEP 2014. Under clause 4.3(2), the maximum building height shown for the land is 11 metres and under clause 4.4(2), the maximum floor space ratio applying to the land is 0.85:1. The bonus provisions which apply to the land are 13.75m and 1:1 respectively.

It is noted that the application proposes 10 affordable housing units, four of which are 2 bedroom units, with a total GFA of 649sqm. As such, the development has the ability to utilise the bonus provisions provided under clause 7.7 of GLEP 2014.

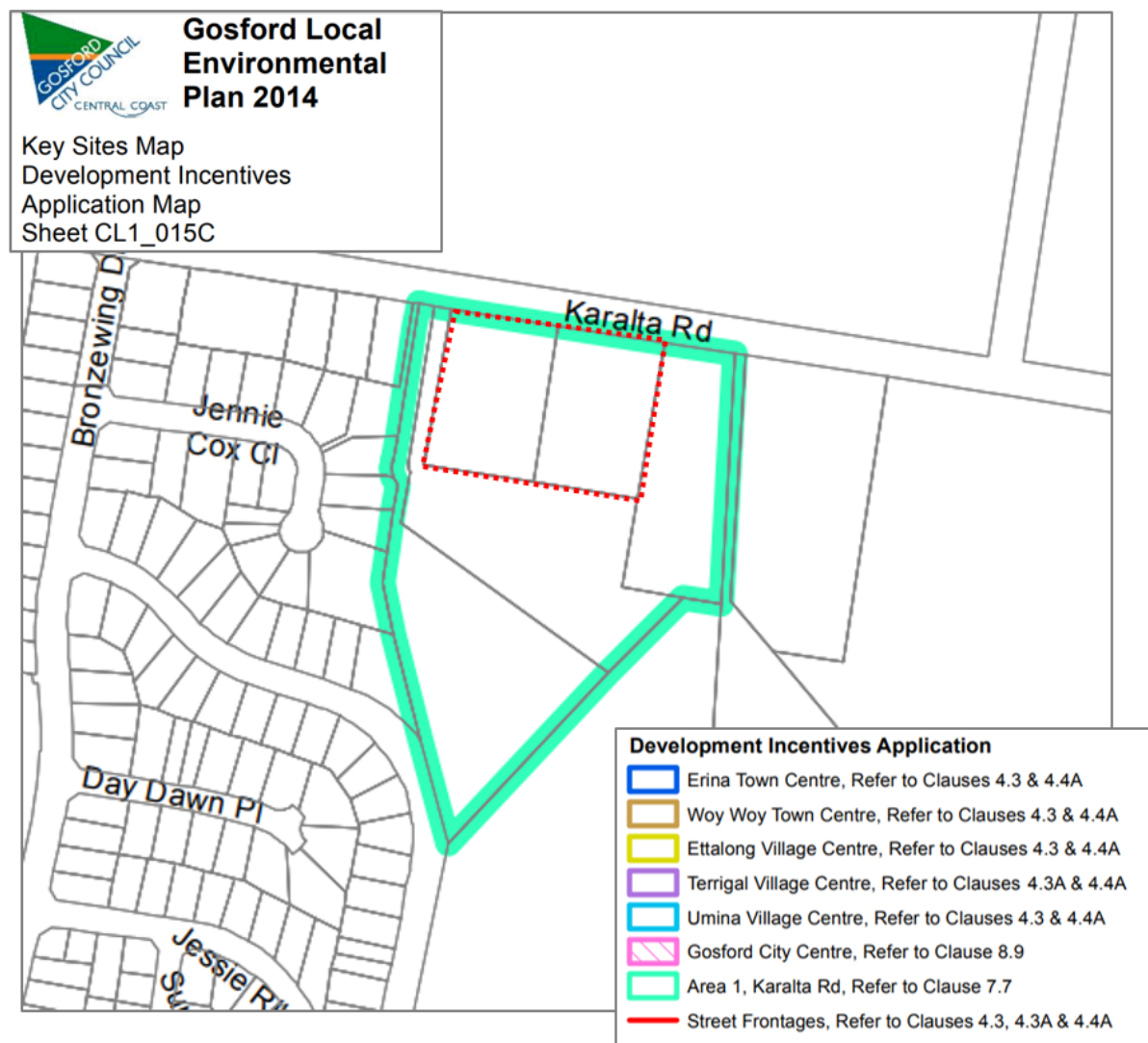


Figure 14 – Development Incentives Map extract (site shown dotted red)

Clause 4.3 Height of Buildings

The provisions of clause 4.3 refer to the mapped building height applying to the land. The applicable height control indicated on the GLEP 2014 Height of Buildings map is 11m. However, the maximum building height for development to which Clause 7.7 of the GLEP 2014 applies is 13.75m.

The maximum building height of each building is included in Table 2 below.

Building	Maximum Height Proposed	Variation to bonus 13.75m
A	14.75m	1m / 7%
B	15.28m	1.53m / 11.1%
C	15.79m	2.04m / 14.8%
D	15.65	1.9m / 13.8%

Table 2: Maximum Building Height of each building

In accordance with clause 4.6 (Exceptions to Development Standards) of GLEP 2014, the applicant has submitted a written request seeking to justify the contravention to the development standard for height, as specified on the building heights map. This has been provided in **Attachment 5** and is discussed further below.

The objectives of Clause 4.3 are:

- a) *to establish maximum height limits for buildings,*
- b) *to permit building heights that encourage high quality urban form,*
- c) *to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight,*
- d) *to nominate heights that will provide an appropriate transition in built form and land use intensity,*
- e) *to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,*
- f) *to protect public open space from excessive overshadowing and to allow views to identify natural topographical features.*

The buildings are excessive in bulk and scale. They are long and homogenous with little articulation and there are concerns regarding the internal amenity of the units, as discussed above in the SEPP 65 section. In addition, the siting of the buildings has not complemented the natural topography of the site. Accordingly, it is considered the development does not achieve high quality urban form.

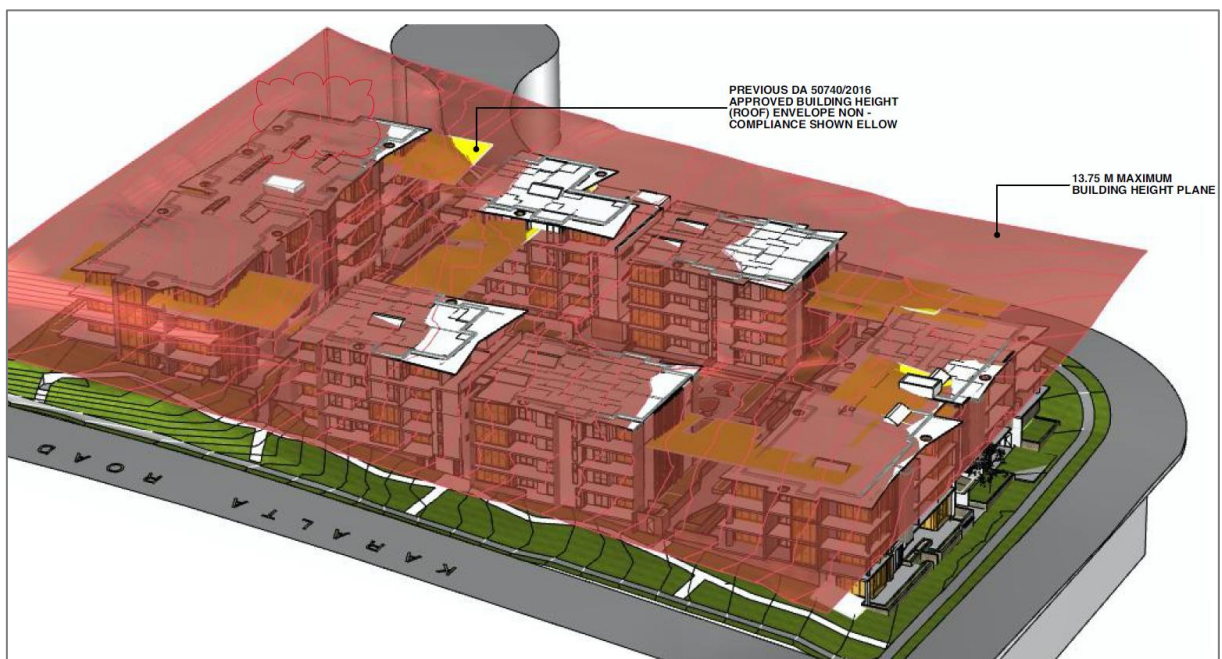


Figure 15 - Height Plane Diagram – Drawing DA-4005

Clause 4.4 Floor Space Ratio

The provisions of Clause 4.4 establish the Floor Space Ratio for the land. The site is identified on the GLEP 2014 FSR map as being 0.85:1.

Clause 4.4(2A)(c) includes exceptions to the mapped FSR for residential flat buildings that have on-site car parking that is not located in the basement. In this regard, the FSR applicable is 0.6:1 rather than the mapped FSR. As the proposed development incorporates all car parking associated with the development within the basement, the reduced FSR is not applicable and the FSR applicable to the site, having regard to the provisions of clause 4.4, is 0.85:1.

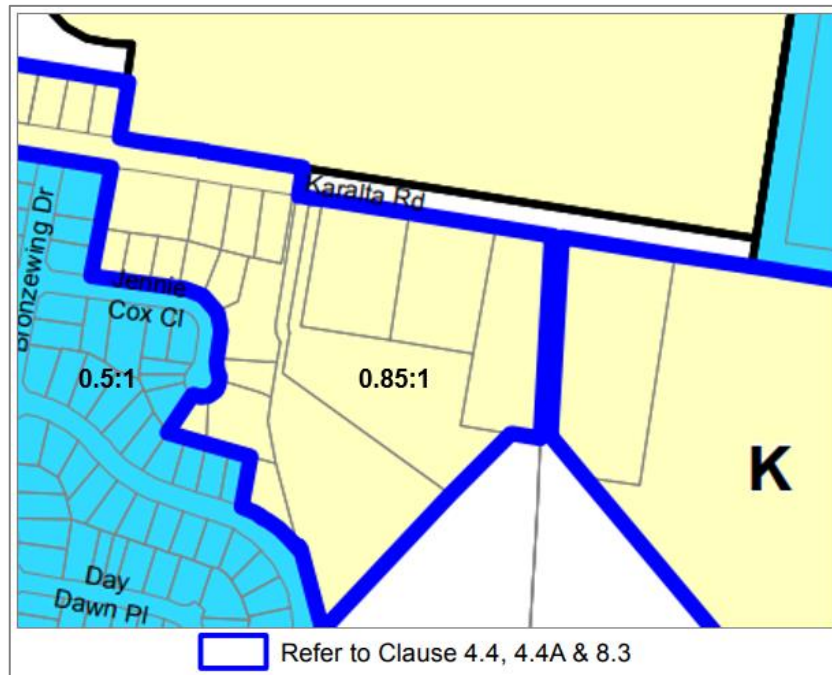


Figure 16 - FSR Map extract (Note Clause 4.4 is Floor Space Ratio, Clause 4.4A relates to town centres and village centres and is not applicable and Clause 8.3 has been repealed).

Under clause 7.7, the maximum FSR for the development can be increased to 1:1.

The proposed FSR is 1.2:1, based on the post-subdivision site area of 9,501m². This results in a 1946.6m² or 20.5% departure from the 1:1 FSR.

In accordance with clause 4.6 (Exceptions to Development Standards) of GLEP 2014, the applicant has submitted a written request seeking to justify the contravention to the development standard for floor space ratio, as specified on the floor space ratio map. This has been provided in **Attachment 5** and is discussed further below.

The objectives of clause 4.4 are as follows:

- (a) *to establish standards for the maximum development density and intensity of land use,*
- (b) *to control building density and bulk in relation to site area in order to achieve the desired future character for different locations,*

-
- (c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*
 - (d) to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
 - (e) to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
 - (f) to facilitate design excellence by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design,*
 - (g) to ensure that the floor space ratio of buildings on land in Zone R1 General Residential reflects Council's desired building envelope,*
 - (h) to encourage lot amalgamation and new development forms in Zone R1 General Residential with car parking below ground level.*

The proposal does not achieve a density or bulk that is appropriate for the site and it does not sufficiently integrate with the streetscape and character of the area. The impacts resulting from the additional FSR are evident by the bulk and scale of the proposal, exacerbated by the unbroken excessive building lengths (48-58m), which is not consistent with the desired character of the area.

The proposal is over 40% 'larger' than the surrounding development, which have a maximum FSR of 0.85:1. Despite the bonus provisions provided under clause 7.7, there is still an expectation that any development on the site would appropriately respond to existing adjoining development and future development anticipated in accordance with the current planning controls.

The proposal also results in poor amenity outcomes in terms of the circulation spaces within the building as well as questionable ability to achieve natural cross ventilation, given the excessive building lengths and internal layout. The proposal does not achieve design excellence, with limited articulation and modulation. The proposal has, however, located all parking within a basement.

4.6 Exceptions to Development Standards – Building Height

The proposed development breaches the maximum building height development standard provided under clause 7.7 (Affordable Housing at 85-93 Karalta Road, Erina), being 13.75m.

The applicant has chosen to utilise the bonus provisions under clause 7.7 of GLEP 2014. The maximum building height of 13.75m is breached by a maximum of 2.04m or 14.8% on the site, and this occurs at Building C, which has a proposed height of 15.79m.

The objectives of Clause 4.6 are to:

-
- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Unreasonable or Unnecessary and Environmental Planning Grounds

In accordance with Clause 4.6(4)(a)(i), development consent must not be granted for a development that contravenes a development standard unless:

- The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated in subclause (3).

Subclause 4.6(3) provides:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

A Clause 4.6 (Exceptions to Development Standards) variation for the non-compliance associated with building height was provided by the applicant and is included at **Attachment 5**.

The applicant states that:

In this instance, the minor variation to the building height ensures that the proposed development achieves its maximum site yield and is in line with Council's long-term objective to maximise yield outcomes in the Somersby to Erina Corridor under the Somersby to Erina Corridor Strategy.

The relevant key recommendations of the Strategy can be summarised as:-

- (i) *creating a land use strategy that allows for, and infrastructure that supports, population increase of 6,395 residents in the Corridor between 2016 and 2036. This equates to approximately 8.5% of the anticipated growth of 75,500 for the Central Coast over the next 20 years;*

-
- (ii) *creates adequate employment lands and opportunities in centres for an increase of 9,866 jobs in the Corridor between 2016 and 2036 - 39% of the Central Coast LGA's anticipated growth in this time; and*
 - (iii) *focus residential development in existing centres in the short to moderate term of Gosford City Centre, East Gosford and Point Frederick with the most density in Gosford City Centre – reinforcing its role as the capital city of the Central Coast.*

It is the applicants view that strict compliance with the Maximum Building Height development standard is considered to be unreasonable in this particular case as the proposed variation simply seeks to maximise the site outcomes in line with the Somersby to Erina Corridor Strategy and improve the availability of high quality residential accommodation without any significant impact on the adjoining properties or the streetscape.

It also proposes a high quality residential interface with the proposed internal road frontage in line with the Gosford Development Control Plan 2013 (Chapter 5.2 – Erina). It will ensure a more viable development and higher standard of residential yield compared to that which would otherwise be provided should strict adherence to the LEP standard be applied. The proposal is an efficient use of the land which delivers social, economic and environmental benefits to the local community.

With regards to the question as to whether there are sufficient environmental planning grounds to justify contravening the development standard, it should be noted that the subject site has particular circumstances in relation to its strategic location which has triggered the specific design response. The site is located in close proximity of Erina Fair (immediately opposite to the north) and the Erina town centre (750 metres to the west) which generate high demand for residential accommodation and necessitate an affordable housing response. Karalta Road directly connects Erina Fair to the Erina town centre.

The proposed development (with minor variation to building height) is direct response to the high demand for high quality residential floor space and affordable housing which has also underpinned ongoing development on the adjoining and adjacent sites.

By allowing the variation to the FSR results in a more efficient and orderly use of the land that meets the growing demand for high quality residential accommodation (with an affordable housing component) and will produce a better outcome than would otherwise be the case if strict adherence to the standard were observed. In relation to this clause, it is considered that the objection to the Maximum Building Height standard is well founded.

The applicant concludes that the proposal will deliver a better planning outcome than one that strictly complies with the 13.75m building height control for the following reasons:

- (iv) *strict compliance would not be responsive to the intent of the Gosford Local Environmental Plan 2014 objectives and the intent of the Somersby to Erina Corridor Strategy;*

-
- (v) *strict compliance would not be responsive the need to provide affordable housing under Clause 7.7 of the Gosford LEP 2014*
 - (vi) *strict compliance would not be responsive to the high demand for high quality residential accommodation close to Erina Fair and the Erina town centre;*
 - (vii) *strict compliance would restrict floor space outcomes to the extent that the alternative would be an underutilisation of the site in an area close to Erina Fair that seeks higher density outcomes; and*
 - (viii) *strict compliance would not meet the emerging and desired future character of the precinct*

Comment

The Clause 4.6 request focuses largely on "Council's long-term objective to maximise yield outcomes in the Somersby to Erina Corridor under the Somersby to Erina Corridor Strategy". The applicant states that compliance with the building height standard would be unreasonable as the exceedance 'simply seeks' to maximise the site outcomes and allow for a higher yield.

No environmental planning grounds have been adequately specified. Providing "greater yield in a desirable location, being the Somersby to Erina Corridor", is not considered sufficient environmental planning grounds. It is not a strategy that is unique or particular to this site as the Somersby to Erina Corridor Strategy applies to large areas of Somersby, Mount Penang, Karingong, West Gosford, the Gosford City Centre, East Gosford and Erina.

The purpose of the Somersby to Erina Corridor Strategy is to support "State Government and Central Coast Council's decisions about land use planning" and "form a framework for guiding local planning strategies and assessing planning proposals (rezoning applications)". It does not suggest or allow for significant exceedances of established and site-specific height and FSR controls at the development application stage. The reliance upon the Strategy for a contravention to the building height development standard provided for under clause 7.7 is not considered sufficient environmental grounds.

The centre strategy for the Erina area recognises Erina Fair as a valuable shopping and entertainment magnet and focuses on the opportunity to create a new civic and community focus around Erina, with improved public domain and links to Erina Fair. The Erina centre strategy specifically notes that any increase in density and height must be considered at a precinct level, and not incrementally on a site by site basis (emphasis added):

*There are a number of issues in this area that need to be considered at a precinct level including traffic, transport, circulation and carparking, pedestrian circulation and linkages to Erina Fair and throughout the precinct, resolution of flooding and servicing issues to inform the capacity of this area to accommodate any consideration of residential uses, density increases of changes in building height. **It is important that these issues are considered at a precinct level and not incrementally on a site by site basis to ensure that any increase in capacity is distributed.***

The applicant states that a “high quality residential interface” is achieved which is consistent with the desired character of the area and the intent of Chapter 5.2 (Erina, 85-93 Karalta Road) under Gosford Development Control Plan (GDCP) 2013. This section of the GDCP 2013 is discussed further below, but provides brief building and character objectives and controls, which include “*Minimise the scale of new buildings...*” and “*Avoid the appearance of long and continuous buildings facing any front or side boundary*”. These objectives have not been achieved given the excessive bulk and scale and unbroken length of the building being between 48m and 58m.

The applicant’s justification does not demonstrate how compliance is unreasonable and unnecessary or how a better outcome is achieved for and from the development, apart from additional yield being achieved.

Consistency with Standard and Zone Objectives and the Public Interest

In accordance with Clause 4.6(4)(a)(ii), development consent must not be granted for a development that contravenes a development standard unless:

- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

The objectives of the R1 General Residential Zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that development is compatible with the desired future character of the zone.*
- *To promote best practice in the design of multi dwelling housing and other similar types of development.*
- *To ensure that non-residential uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for multi dwelling housing or other similar types of development.*

The objectives of Clause 4.3 Height of Buildings are:

- a) *to establish maximum height limits for buildings,*
- b) *to permit building heights that encourage high quality urban form,*

-
- c) *to ensure that buildings and public areas continue to receive satisfactory exposure to sky and sunlight,*
 - d) *to nominate heights that will provide an appropriate transition in built form and land use intensity,*
 - e) *to ensure that taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area,*
 - f) *to protect public open space from excessive overshadowing and to allow views to identify natural topographical features.*

The objective of Clause 7.7 Affordable Housing at 85-93 Karalta Road, Erina, *is to increase the supply of affordable rental housing for very low, low and moderate income earning households by providing incentives for the development of new affordable rental housing.*

Applicant's submission

The applicant's written request states:

In relation to the Underlying Objectives of the Standard of Clause 4.3 – Height of Building, the proposed development and the variation to the Maximum Building Height standard meets the underlying objectives by:-

- (i) being mindful of the maximum height limits for buildings but balancing compliance against good design and maximising site efficiency;*
- (ii) allowing for building heights that encourage high quality urban form;*
- (iii) ensuring that the proposed buildings and public areas continue to receive satisfactory exposure to sky and sunlight;*
- (iv) proposing heights that will provide an appropriate transition in built form and land use intensity in line with Draft Somersby to Erina Corridor Strategy;*
- (v) ensuring that the taller buildings are located appropriately in relation to view corridors and view impacts and in a manner that is complementary to the natural topography of the area;*
- (vi) ensuring that public open space areas are protected from excessive overshadowing; and*
- (vii) allowing views to the surrounding natural topographical features*

The residential flat building is proposed at three (3) storeys and four (4) storeys and integrates satisfactorily within the future street context. The proposal will integrate with the existing higher density residential development to the west (low density and medium housing) and to the east (existing seniors housing) and compliment other development in the precinct. Further, the variation to the Maximum Building Height requirement will not hinder the promotion and co-ordination of the orderly and economic use and the development of the land including an affordable housing component. In fact, the proposal ensures the highest and best use of the subject site by capitalizing on the increasing need for good quality high density housing.

The proposed development and the minor variations to the FSR and building height meet the objectives of the zone in that the proposal:-

- (i) provides for good quality housing that meets the needs of the community;*
- (ii) provides a variety of unit sizes and types including an affordable housing component;*
- (iii) will be compatible with the desired future character of the precinct; and*
- (iv) has been designed to promote best practice in design for residential flat buildings*

Comment

In relation to the zone objectives the proposal is not compatible with the desired future character of the area due to the interface it presents to Karalta Road and the eastern and western boundaries. As previously discussed, the long, unbroken length of buildings that front these boundaries, the current lack of articulation, and the removal of existing established vegetation along the Karalta Road boundary, results in a development that does not adequately respond to the existing streetscape, adjoining properties or the public domain.

In relation to the building height objectives, the proposal does not achieve a high-quality urban form. In particular, the unbroken excessive building lengths, which are 48-58m, result in excessive bulk and scale. The resultant bulk and scale is not appropriate for the site and it does not sufficiently integrate with the streetscape and character of the area and the proposal fails to appropriately address or respond to adjoining lower scale development that is surrounding the site.

The applicant has stated that the proposal is 3-4 storeys, however, building D is five storeys in height. The applicant has not spoken to the topography of the site or provided commentary on how the buildings respond to this topography in relation to the building height exceedances and the interface to the public domain.

Council is not satisfied that the variation to the building height development standard is in the public interest because it is not consistent with the objectives of the building height

development standard and the objectives for the zone. The written request is unfounded and is not recommended for support.

As set out by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, to grant development consent for a development that contravenes a development standard, clause 4.6(4)(a) requires the consent authority to be satisfied that:

- a. the proposed development will be consistent with the objectives of the particular standard in question (cl 4.6(4)(a)(ii)),
- b. the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)),
- c. the written request adequately demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (cl 4.6(3)(a)), and
- d. the written request adequately establishes sufficient environmental planning grounds to justify contravening the development standard (cl 4.6(3)(b)).

The consent authority must form two opinions of satisfaction under cl 4.6(4)(a) to enliven the power of the consent authority to grant development consent (Initial Action at [14]). The consent authority must be satisfied that:

- a. the Applicant's written request has adequately addressed the matters required to be demonstrated by subcl (3) and;
- b. that the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objective of the zone in which the development is proposed to be carried out.

Having regard for the above, it is considered the Hunter Central Coast Regional Planning Panel cannot be satisfied of all matters under clause 4.6(3) and 4.6(4) so as to approve a contravention to the building height development standard specified under clause 7.7 of GLEP 2014.

Concurrence of the Planning Secretary

In accordance with Clause 4.6(4)(b)(ii), development consent must not be granted for a development that contravenes a development standard unless the concurrence of the Planning Secretary has been obtained.

In accordance with Clause 4.5(5) in deciding whether to grant concurrence, the Planning Secretary must consider:

- a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- b) the public benefit of maintaining the development standard, and
- c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

Planning Circular PS 20-002 issued 5 May 2020 states that Council may assume the concurrence of the Secretary of the NSW Department of Planning Industry & Environment when considering exceptions to development standards under clause 4.6.

The Secretary's concurrence may not be assumed by a delegate of council if the development contravenes a numerical standard by greater than 10%, however, this restriction does not apply to decisions made by independent hearing and assessment panels. The Regional Planning Panel is therefore empowered to determine the application if they are of a mind to grant consent to the application.

4.6 Exceptions to Development Standards – Floor Space Ratio

The proposed development breaches the 1:1 bonus FSR provisions specified under clause 7.7 (Affordable Housing at 85-93 Karalta Road, Erina) of GLEP 2014.

The proposed FSR is 1.2:1, based on the post subdivision site area of 9,501m². This results in a variation to the 1:1 FSR development standard of 1946.6m² or 20.5%.

The objectives of Clause 4.6 are to:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

Unreasonable or Unnecessary and Environmental Planning Grounds

In accordance with Clause 4.6(4) (a) (i), development consent must not be granted for a development that contravenes a development standard unless:

- The consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated in subclause (3).

Subclause 4.6(3) provides:

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

A Clause 4.6 (Exceptions to Development Standards) variation for the non-compliance associated with FSR was provided by the applicant and is included at **Attachment 5**.

The applicant states that:

The proposal seeks a variation to the maximum FSR from 1:1 to 1.07:1 based on the existing site area (and 1.2:1 post subdivision) which is higher than the maximum permissible FSR under the Gosford Local Environmental Plan 2014. This represents a minor variation of 7% (increasing to 17% post subdivision and road dedication)

The applicant was advised that, given the site relies upon the completed subdivision, the FSR should be calculated on the post subdivision site area of 9,501m² and not the current land area. The proposed FSR of 1.2:1 is a 20.5% non-compliance, not a 17% non-compliance as stated by the applicant.

A 1946.6m² or 20.5% departure from the bonus FSR of 1:1 provided for under clause 7.7 is proposed.

Applicant's submission

The applicant states that:

In this instance, the minor variation to the FSR is in line with Council's long- term objective to maximise yield outcomes in the Somersby to Erina Corridor under the Somersby to Erina Corridor Strategy (see Figure 5) adopted by Central Coast Council on the 9th December 2019...

In addition, the minor variation to the FSR is also in line with Council's long- term objective to increase the availability of affordable rental housing for very low, low and moderate income earning households.

The FSR variation is considered to be reasonable when considered within the context of the overall streetscape with its primary frontage to Karalta Road and secondary frontage to the proposed new road. It is also consistent with the intent of Chapter 5.2 – Erina, 85-93 Karalta Road under the Gosford Development Control Plan 2013.

In relation to the question as to whether compliance with the development standard unreasonable or unnecessary in the circumstances (Clause 4.6 Sub-clause (3)(a)), it is the applicants view that strict compliance with the Floor Space Ratio development standard is considered to be unreasonable in this particular case as the proposed variation simply seeks to maximise the site outcomes in line with the Somersby to Erina Corridor Strategy and improve the availability of high quality residential accommodation without any significant impact on the adjoining properties or the streetscape.

It also proposes a high quality residential interface with the proposed internal road frontage in line with the Gosford Development Control Plan 2013 (Chapter 5.2 – Erina). It will ensure a more viable development and higher standard of residential yield compared to that which would otherwise be provided should strict adherence to the LEP standard be applied. The proposal is an efficient use of the land which delivers social, economic and environmental benefits to the local community.

The variation will not adversely affect the amenity of the immediate locality or compromise the objectives of Clause 4.4 of the Gosford Local Environmental Plan 2014 (GLEP 2014) or Section 5(a)(i)(ii) of the EP&A Act.

In relation to this clause, it is considered that the objection to the Floor Space Ratio standard is well founded and that based on the details provided above, strict adherence to the development standard would appear to be unreasonable and unnecessary in the circumstances of this development application.

With regards to the question as to whether there are sufficient environmental planning grounds to justify contravening the development standard, it should be noted that the subject site has particular circumstances in relation to its strategic location which has triggered the specific design response. The site is located in close proximity of Erina Fair (immediately opposite to the north) and the Erina town centre (750 metres to the west) which generate high demand for residential accommodation. Karalta Road directly connects Erina Fair to the Erina town centre.

It should also be noted that the proposal provides for an affordable rental housing component for very low, low and moderate income earning households.

The proposed development (with minor variation to FSR) is direct response to the high demand for high quality residential floor space which has also underpinned ongoing development on the adjoining and adjacent sites and for the need for affordable rental housing.

By allowing the variation to the FSR results in a more efficient and orderly use of the land that meets the growing demand for high quality residential accommodation and will produce a better outcome than would otherwise be the case if strict adherence to the standard were observed. In relation to this clause, it is considered that the objection to the Floor Space Ratio standard is well founded.

The applicant concludes that the proposal will deliver a better planning outcome than one that strictly complies with the 1:1 FSR for the following reasons:

- (i) strict compliance would not be responsive to the intent of the Gosford Local Environmental Plan 2014 objectives and the intent of the Somersby to Erina Corridor Strategy;*
- (ii) strict compliance would not be responsive to the high demand for high quality residential accommodation close to Erina Fair and the Erina town centre;*
- (iii) strict compliance would not be responsive the need to provide affordable housing under Clause 7.7 of the Gosford LEP 2014;*
- (iv) strict compliance would restrict floor space outcomes to the extent that the alternative would be an underutilisation of the site in an area close to Erina Fair that seeks higher density outcomes; and*
- (v) strict compliance would not meet the emerging and desired future character of the precinct.*

Comment

The proposal has an FSR that exceeds the maximum 1:1 FSR stipulated by Clause 7.7 of GLEP 2014 by a substantial 1,946.6m², which is equivalent to 26 x 2 bedroom apartments. This is not considered 'minor'.

The Clause 4.6 request focuses largely on "Council's long-term objective to maximise yield outcomes in the Somersby to Erina Corridor under the Somersby to Erina Corridor Strategy". The applicant states that compliance with the FSR standard would be unreasonable as the FSR exceedance 'simply seeks' to maximise the site outcomes and allow for a higher yield.

No environmental planning grounds have been adequately specified. As previously noted above, providing "greater yield in a desirable location, being the Somersby to Erina Corridor", is not considered sufficient environmental planning grounds. It is not a strategy that is unique or particular to this site as the Somersby to Erina Corridor Strategy applies to large areas of Somersby, Mount Penang, Kariong, West Gosford, the Gosford City Centre, East Gosford and Erina.

The purpose of the Somersby to Erina Corridor Strategy is to support "*State Government and Central Coast Council's decisions about land use planning*" and "*form a framework for guiding local planning strategies and assessing planning proposals (rezoning applications)*". It does not suggest or allow for significant exceedances of established and site-specific FSR controls at the development application stage. The reliance upon the Strategy for a contravention to the floor space ratio development standard provided for under clause 7.7 is not considered sufficient environmental grounds.

As per the discussion above relating to the contravention to the building height development standard, the centre strategy for the Erina area should not be relied upon for a variation to the FSR bonus provisions provided for under clause 7.7, as the strategy looks at Erina as a precinct where developments should be considered at a holistic level, having regard for the broader planning issues such as traffic, transport, linkages, servicing etc.

The clause 4.6 request briefly discusses the provision of affordable rental housing. Whilst it is acknowledged that 10 affordable housing units exceeds the one unit required under clause 7.7 of GLEP 2014, the discussion in the written request regarding compliance with the FSR standard being unreasonable and unnecessary is based on "*maximising site outcomes*" and ensuring "*a more viable development and higher standard of residential yield compared to that which would otherwise be provided should strict adherence to the LEP standard be applied*". It doesn't properly outline why it is unreasonable or unnecessary for the development standard

The affordable housing units have a total GFA of 649.3m². The exceedance of the 1:1 'bonus' FSR is 1,946.6m². The affordable housing units represent a small proportion (33%) of the overall non-compliant GFA.

The applicant states that a "high quality residential interface" is achieved which is consistent with the desired character of the area and the intent of Chapter 5.2 (Erina, 85-93 Karalta Road) under the GDCP 2013. This section of the GDCP 2013 is discussed further below, but provides brief building and character objectives and controls, which include "*Minimise the scale of new buildings...*" and "*Avoid the appearance of long and continuous buildings facing*

any front or side boundary". These objectives have not been achieved given the excessive bulk and scale and unbroken length of the building being between 48 and 58m. The number of issues identified with the design of the development demonstrates the development is not of high- quality design, nor has it demonstrated sustainability measures, that would warrant a variation to the FSR development standard.

The applicant's justification does not demonstrate how compliance is unreasonable and unnecessary or how a better outcome is achieved for and from the development, apart from additional yield being achieved.

Consistency with Standard and Zone Objectives and the Public Interest

In accordance with Clause 4.6(4)(a)(ii), development consent must not be granted for a development that contravenes a development standard unless:

- the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

The objectives of the R1 General Residential Zone are:

- *To provide for the housing needs of the community.*
- *To provide for a variety of housing types and densities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To ensure that development is compatible with the desired future character of the zone.*
- *To promote best practice in the design of multi dwelling housing and other similar types of development.*
- *To ensure that non-residential uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for multi dwelling housing or other similar types of development.*

The objectives of Clause 4.4 Floor Space Ratio are:

- a) to establish standards for the maximum development density and intensity of land use,*
- b) to control building density and bulk in relation to site area in order to achieve the desired future character for different locations,*
- c) to minimise adverse environmental effects on the use or enjoyment of adjoining properties and the public domain,*

-
- d) *to maintain an appropriate visual relationship between new development and the existing character of areas or locations that are not undergoing, and are not likely to undergo, a substantial transformation,*
 - e) *to provide an appropriate correlation between the size of a site and the extent of any development on that site,*
 - f) *to facilitate design excellence by ensuring the extent of floor space in building envelopes leaves generous space for the articulation and modulation of design,*
 - g) *to ensure that the floor space ratio of buildings on land in Zone R1 General Residential reflects Council's desired building envelope,*
 - h) *to encourage lot amalgamation and new development forms in Zone R1 General Residential with car parking below ground level.*

The objective of Clause 7.7 Affordable Housing at 85-93 Karalta Road, Erina, is to increase the supply of affordable rental housing for very low, low and moderate income earning households by providing incentives for the development of new affordable rental housing.

Applicant's submission

The applicant's written request states:

In relation to the question as to whether the proposed development would be in the public interest, it is considered that the proposal is consistent with both the objectives of the standard and for development within the zone.

The proposed development and the minor variations to the FSR and building height meet the objectives of the zone in that the proposal:-

- (i) *provides for good quality housing that meets the needs of the community;*
- (ii) *provides a variety of unit sizes and types;*
- (iii) *will be compatible with the desired future character of the precinct; and*
- (iv) *has been designed to promote best practice in design for residential flat buildings*

Therefore, it is considered that the proposal satisfies the public interest test as it is consistent with both the objectives of the standard and for development within the zone. In relation to this clause, it is considered that the objection to the Floor Space Ratio standard is well founded.

The applicant states that the proposal meets the objectives of the FSR standard by:

- (i) *being mindful of the existing maximum density and intensity of landuse whilst acknowledging the intent of the Somersby to Erina Corridor Strategy;*

-
- (ii) *ensuring that the proposed residential flat building is compatible with the height, bulk and scale of the desired future character of the locality as articulated in Clause 5.2.11 – Buildings/Character of the Gosford Development Control Plan 2013;*
 - (iii) *ensuring that building does not adversely affect the streetscape, skyline or landscape when viewed from adjoining roads and other public places such as parks, and community facilities. The residential flat building is largely screened from view from Karalta Road by the required ten (10) metre landscape buffer along the street frontage;*
 - (iv) *minimising adverse environmental effects on the use or enjoyment of adjoining properties and the public domain. The proposed residential flat building has its primary frontage to Karalta Road with the required ten (10) wide landscape buffer to reduce visual impacts from the public road. Similar buffers are provided on the northern side of Karalta Road adjacent to Erina Fair;*
 - (v) *providing an appropriate correlation between the size of a site and the extent of any development on that site. The proposed bulk and scale (and FSR) is generally compliant with both the LEP and DCP provisions and also meets the objectives of the Somersby to Erina Corridor Strategy; and*
 - (vi) *facilitating development that contributes to the economic growth of Erina through the provision of additional high quality residential floor space*

It also meets the underlying objectives of Clause 7.7 – Affordable Housing at 85-93 Karalta Road, Erina in that the proposal increases the supply of affordable rental housing for very low, low and moderate income earning households.

Comment

In relation to floor space ratio objectives, the proposal does not achieve a density or bulk that is appropriate for the site and it does not sufficiently integrate with the streetscape and character of the area. The impacts resulting from the additional FSR are evident by the bulk and scale of the proposal, in particular the unbroken excessive building lengths, which are 48-58m, which is not consistent with the desired character of the area. The proposal is over 40% 'larger' than the surrounding development, which have a maximum FSR of 0.85:1 and the proposal fails to provide appropriately address or respond to adjoining lower scale developments.

The proposal does not achieve design excellence as it provides limited articulation and modulation, does not respond to the streetscape, fails to retain established vegetation along Karalta Road, does not demonstrate sustainability measures and the internal layout is considered inadequate.

In relation to the zone objectives the proposal is not compatible with the desired future character of the area and does not represent best practice design.

Council is not satisfied that the variation to the FSR development standard is in the public interest because it is not consistent with the objectives of the FSR development standard or the objectives for the zone. The written request is unfounded and is not recommended for support.

As discussed previously, the judgement set out by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, requires the consent authority to be satisfied of all matters under clause 4.6(3) and 4.6(4). In this regard, it is considered the Hunter Central Coast Regional Planning Panel cannot be satisfied of all matters under clause 4.6(3) and 4.6(4) for the reasons above and should not support the contravention to the floor space ratio standard specified under clause 7.7 of GLEP 2014.

Concurrence of the Planning Secretary

In accordance with Clause 4.6(4)(b)(ii), development consent must not be granted for a development that contravenes a development standard unless the concurrence of the Planning Secretary has been obtained.

In accordance with Clause 4.5(5) In deciding whether to grant concurrence, the Planning Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

Planning Circular PS 20-002 issued 5 May 2020 states that Council may assume the concurrence of the Secretary of the NSW Department of Planning Industry & Environment when considering exceptions to development standards under clause 4.6.

The Secretary's concurrence may not be assumed by a delegate of council if the development contravenes a numerical standard by greater than 10%, however This restriction does not apply to decisions made by independent hearing and assessment panels.

The Secretary's concurrence may not be assumed by a delegate of council if the development contravenes a numerical standard by greater than 10%, however, this restriction does not apply to decisions made by independent hearing and assessment panels. The Regional Planning Panel is therefore empowered to determine the application if they are of a mind to grant consent to the application.

Clause 7.1 Acid sulfate soils

The site is mapped as containing Class 5 acid sulfate soils (ASS) and is located approximately 400m from Class 4 acid sulfate soils. The development is unlikely to lower the water table below 1 metre AHD with no works being undertake below 25 metres AHD, therefore an acid sulfate soil management plan is not required.

Clause 7.2 – Flood Planning

The site is not identified as being flood affected.

s. 4.15(1)(a)(ii) of the EP& A Act: Draft Environmental Planning Instruments:

Draft Central Coast Local Environmental Plan 2018

Draft Central Coast Local Environmental Plan 2018 (Draft CCLEP) was adopted on 14 December 2020 but has not yet been gazetted. The CCLEP will replace the planning instruments relating to the former Gosford and Wyong Local Government Areas. Under the provisions of Draft CCLEP, the site retains its R1 General Residential zoning and residential flat buildings remain a permissible use.

The objectives of the R1 zone remain similar to the current zone objectives:

- To provide for the housing needs of the community.
- To provide for a variety of housing types and densities.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To promote best practice in the design of multi dwelling housing and other similar types of development.
- To ensure that non-residential uses do not adversely affect residential amenity or place demands on services beyond the level reasonably required for multi dwelling housing or other similar types of development.

The FSR control, while drafted differently, results in the same 'base' FSR of 0.85:1 and base building height remains the same at 11m.

Clause 7.7 *Affordable housing at 85–93 Karalta Road, Erina* is replicated in the Draft CCLEP as Clause 7.15 *Affordable housing at 85–93 Karalta Road*, which allows for the 'bonus' FSR and Height up to 1:1 and 13.75m respectively.

As discussed in this assessment report the proposal has not adequately demonstrated that that development is compatible with the zone objectives, or the FSR and building height objectives of GLEP 2014. As such, the proposal also fails to meet the objectives of the Draft CCLEP.

The proposal is therefore not consistent with the provision of the Draft CCLEP.

Draft Housing Diversity State Environmental Planning Policy (Housing Diversity SEPP)

The Department of Planning, Industry and Environment (the Department) is preparing a new SEPP to consolidate and update the Government's housing related policies. This SEPP will consolidate three existing, housing-related SEPPs:

-
- *State Environmental Planning Policy (Affordable Rental Housing) 2009 (ARHSEPP);*
 - *State Environmental Planning Policy (Housing for Seniors and People with a Disability) 2004 (Seniors SEPP); and*
 - *State Environmental Planning Policy No 70 – Affordable Housing (Revised Schemes) (SEPP 70).*

There are a large number of amendments proposed as part of the consolidated Housing Diversity SEPP, however these changes have no immediate implications to this development proposal.

Draft Design and Place State Environmental Planning Policy (Design and Place SEPP)

The Department of Planning, Industry and Environment (the Department) is preparing a new SEPP to replace and consolidate two existing SEPPs:

- *SEPP No 65 – Design Quality of Residential Apartment Development; and*
- *SEPP (Building Sustainability Index: BASIX) 2004.*

The Design and Place SEPP will establish principles for the design and assessment of places in urban and regional NSW.

The Explanation of Intended Effect of the draft Design and Place SEPP was on public exhibition until 31 March 2021. Following this public exhibition, the proposed Design and Place SEPP will be drafted and exhibited in late 2021 for further comment. The draft Design and Place SEPP will include specific considerations and targets that are more broadly proposed than the current Explanation of Intended Effect.

The Explanation of Intended Effect states that the proposed Design and Place SEPP is framed around five guiding principles. These principles aim to deliver healthy and prosperous places that support the wellbeing of people, communities and Country, being:

- Design places with beauty and character that people feel proud to belong to
- Design inviting public spaces to support engaged communities
- Design productive and connected places to enable thriving communities
- Design sustainable and green places for the wellbeing of people and the environment
- Design resilient and diverse places for enduring communities

The five guiding principles as reproduced above will replace the nine Design Quality Principles as included in Schedule 1 of SEPP 65, and there are similarities between the two sets of principles. As outlined in this report, the proposal has not demonstrated compliance with a number of the SEPP 65 design quality principles, and equally would not meet the new guiding principles.

It is noted that while the draft Design and Place SEPP is relevant to the proposed development, it is in its early stages. Nevertheless, having regard for the five proposed guiding principles, it

is considered compliance with the stated guiding principles could not be achieved with the proposed development.

Review of Clause 4.6 of the Standard Instrument LEP

A review of Clause 4.6 of the Standard Instrument LEP is currently being undertaken by the NSW Department of Planning, Industry and Environment:

The department has received feedback from council and industry stakeholders that there are several issues with how clause 4.6 has been interpreted over time. This has resulted in a convoluted and unclear application of clause 4.6, contributing to delays and cost burdens for applicants and councils in the development application process and resourcing implications for local councils and the courts. As indicated in the recent NSW Independent Commission Against Corruption (ICAC)'s Inquiry into allegations of impropriety at Canterbury Council (Operation Dasha), there are also concerns that varying development standards can dilute transparency in the planning system and subsequently open up opportunities for corruption.

In response to the issues above, the proposed changes to clause 4.6 of the Standard Instrument LEP aims to clarify the requirements for varying development standards and improve transparency and accountability in the planning system.

The department is exhibiting an Explanation of Intended Effect (EIE) that seeks feedback on proposed amendments to clause 4.6 of the Standard Instrument LEP. The EIE also seeks feedback on proposed measures to increase transparency, accountability and probity by strengthening council reporting requirements on variation decisions, in line with ICAC recommendations.

Under the proposed revised clause 4.6, the consent authority would need to be satisfied that the applicant's written request demonstrates consistency with the objectives of the relevant development standard and land use zone.

Applicants would also have to demonstrate that the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened. In deciding whether a contravention of a development standard will result in an improved planning outcome, the consent authority is to consider the public interest, environmental outcomes, social outcomes or economic outcomes. The criterion also requires applicants to provide sufficient information so that assessments can be undertaken in a transparent and timely manner.

Demonstrating that a proposed development will achieve improved planning outcomes will require applicants to demonstrate such factors as:

- whether the proposal is of a size, scale and design that reflects the context of the site and strategic vision of the area; or*
- how the proposal responds to the unique opportunities and constraints of the site.*

If appropriate, an alternative test may be developed to enable flexibility to be applied in situations where the variation is so minor that it is difficult to demonstrate an improved planning outcome, but the proposed variation is appropriate due to the particular circumstances of the site and the proposal. Feedback is being sought to inform the development of this alternative test.

The proposed changes aim to clarify that a clause 4.6 application should only be granted in exceptional circumstances when an improved planning outcome can be demonstrated with evidence.

The Explanation of Intended Effect was placed on public exhibition from 31 March until 12 May 2021.

As demonstrated in the Clause 4.6 discussions above, the applicant has failed to adequately demonstrate compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. Additionally, they have been unable to demonstrate the proposed development is consistent with the objectives of the relevant development standard and land use zone.

As such, if the consent authority was to consider the current 4.6 written requests against the proposed changes to Clause 4.6, it is considered the variations to both the FSR and building height bonus provisions specified under clause 7.7 would not be able to be supported.

s. 4.15(1)(a)(iii) of the EP&A Act: Provisions of any development control plan

Gosford Development Control Plan 2013 (GDCP 2013)

Gosford Development Control Plan 2013 (GDCP 2013) provides objectives, design criteria and design guidance on how development proposals can achieve good design and planning practice.

Part 2 Scenic Quality and Character

The subject site is in the Erina Character Area 5, being Medium Density Hillsides.

The desired character of the Medium Density Hillsides area includes:

These areas should remain medium-density residential hillsides where improved standards of amenity and urban design quality are achieved by new multi-unit developments that are surrounded by leafy hillside gardens, providing distinctive backdrops to Gosford City's town centres, main roads or the railway.

Minimise the scale of new buildings and retain a proportion of the panoramic views that are available from any neighbouring property by using strongly-articulated forms, including floor-levels that are stepped to follow natural slopes plus facades that vary in shape and height. For example, divide floorspace into individual dwelling pavilions with a varied form or orientation, separated by verandahs and landscaped courtyards. Any

facades that are taller or longer than buildings on neighbouring properties should be screened by a combination of extra setbacks and balconies or verandah

As detailed throughout this report, the proposal is not consistent with the desired character of the area as it does not achieve and a high-quality form. Homogenous buildings with excessive lengths, coupled with a significant non-compliance with FSR and height results in excessive bulk and scale, which does not respond to the lower scale surrounding development.

3.3 Multi Dwelling Housing & Residential Flat Buildings

Chapter 3.3 of GDCP 2013 applies to the development. Many of the requirements that are relevant to the proposal are overridden by similar controls contained in the ADG. Non-compliance with relevant controls includes:

- 3.3.3.1.2 Maximum Height Controls

Where the maximum building height is 13.75m the maximum number of storeys is 4 storeys – Building D is 5 storeys in height and does not comply with this requirement. As discussed elsewhere in this report, the bulk and scale of the proposal and height and FSR exceedances are not supported.

- 3.3.3.4 Articulation

- Elevations longer than 25m must be indented to incorporate one deep soil courtyard that measures at least 6m by 6m, and
- Each courtyard must be planted with at least one large canopy tree, and
- Surrounding each courtyard, height of the building's exterior walls must be reduced, and
- Roof forms must be varied to accentuate this additional articulation, for example by presenting each building as two visually-separated "pavilion-elements"

The proposed development does not meet the numerical requirements nor the objectives of this control, which are;

- To prevent monotonous exterior walls that accentuate the scale and bulk of buildings,
- To limit the apparent height and length of new facades,
- To ensure that the size and bulk of new developments would not compromise existing scenic qualities that might be displayed by the surrounding locality,
- To achieve compatibility with the predominant patterns of buildings and gardens that define the existing and desired characters of each neighbourhood.

The four proposed buildings are between 48m and 58m long with only minimal articulation - small indents, with a width or depth less than 2m and no significant tree planting or landscaping. Furthermore, opportunity exists on the site to retain existing established vegetation along Karalta Road, and the proposed works within proximity to the 10m strip of landscaping across the frontage of the site, and associated construction works, will result in removal of the majority, if not all, of this vegetation.

- 3.3.3.4.5 Appearance of Adjoining Buildings - The appearance of adjoining buildings should be varied within any development that proposes more than one building - the four buildings are homogenous in terms of setbacks, layout and building form, bulk and scale, materials, colours and aesthetics.
- 3.3.4.1.3 Accessible Dwellings - In developments with more than ten dwellings: at least 10% should be "accessible" - 10% (14) of the apartments have been designed to reflect the requirements for adaptable housing, including provision of an adaptable car parking space.

5.2 Erina, 85-93 Karalta Road

This chapter of the GDCP 2013 applies to the subdivision of the site (which has been approved under DA D/48585/2015), and the development of these lots. The objectives of this chapter are:

- *To guide development of the land to support its rezoning for residential development, primarily residential flat buildings.*
- *To ensure coordinated infrastructure provision.*
- *To provide owners with guidance as to the matters that need to be considered in the development of their properties.*

While the controls relate largely to the subdivision layout, section 5.2.11 relates to Buildings/Character with the objective to "*encourage development generally in accordance with the desired future character of the area*" and includes the following controls:

- *Conserve natural and scenic characters of wooded hillside properties by surrounding each residential development with leafy gardens that retain natural slopes along all boundaries and conserve existing visually prominent trees, particularly along rear boundaries and street frontages or verges, as well as providing space for new shady trees and shrubs planted as backdrops to new buildings.*
- *Minimise the scale of new buildings using strongly articulated forms including floor levels that are stepped to follow natural slopes plus facades that vary in shape and height. Avoid the appearance of long and continuous buildings facing any front or side boundary. Step the shape and height of all visible facades, provide at least one wide*

landscaped setback that varies in width and line driveways with avenues of trees and shrubs.

- *Roofs should be gently pitched to minimise the height of ridges and flanked by wide eaves that disguise the scale and bulk of exterior walls.*
- *Avoid tall retaining walls, elevated structures including terraces or pools or steep driveways that would interrupt the character of existing bushland hillsides.*
- *The lower storey should not be dominated by garages and should display elements of a traditional "street address" such as balconies, verandahs and living rooms and front doors or private terraces that are directly accessible from the street. Conceal parking in part or full basements and provide unobtrusive vehicle entrances to minimise disruption of the desirable street address*

These objectives and controls have not been achieved. The proposal is not consistent with the desired future character of the area, largely due to the excessive bulk and scale and unbroken length of the buildings, resulting in long and continuous buildings to all frontages.

Section 5.2.13 Landscape Buffer fronting Karalta Road requires a 10m wide strip of land along Karalta Road to be retained to *"provide a visual /scenic buffer and wildlife corridor along the Karalta Road frontage of the land"*. Whilst this has been nominated on the architectural plans, the difference in levels indicated on the architectural plans and civil plans shows that retention of the existing vegetation within the 10m wide landscape buffer may not be possible. Additionally, there is other infrastructure nominated within this area such as footpaths, stairs, retaining walls/front fences, potential regrading etc. It is also unclear whether construction for the wall of the basement carpark, which sits on the 10m boundary, will extend into the 10m buffer area and impact on the root zone of existing trees.

The civil plans identify a large sediment basin, construction vehicle access and movements, level changes, stormwater infrastructure and stockpiling of spoil and other materials in this area as shown in the extract from the concept construction management plan stage 2 below.

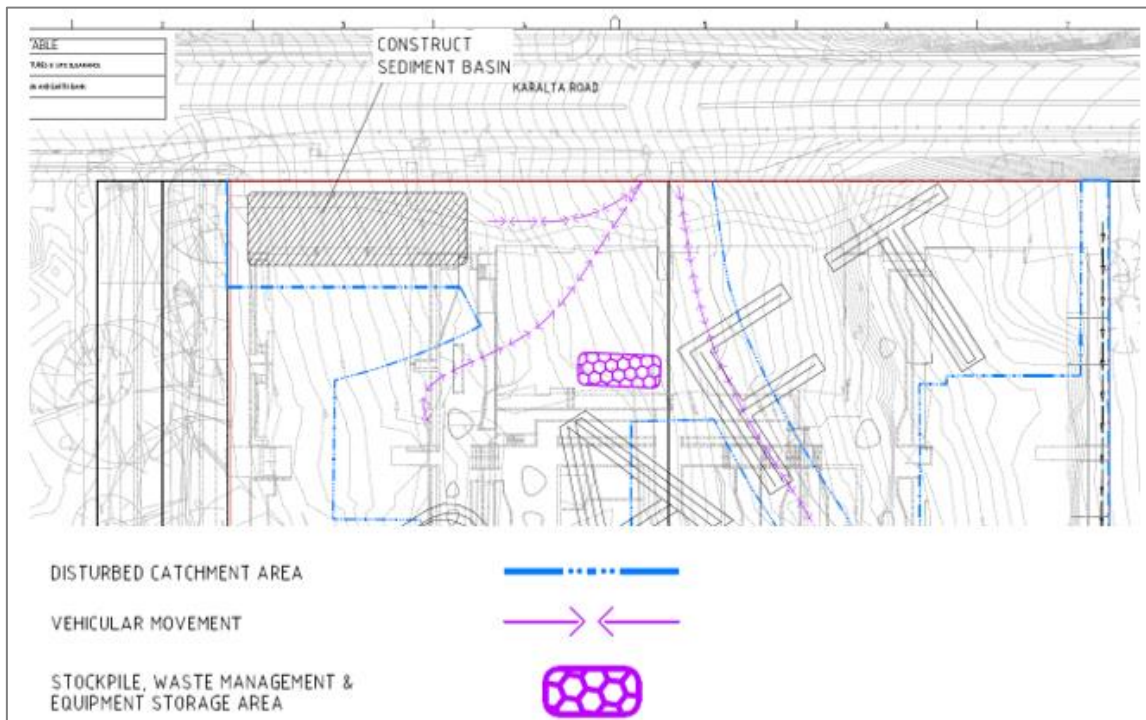


Figure 17 - Extract from concept CMP Stage 2

Moreover, the Arborist report (at section 8.14) states *"Many of the trees located along the northern periphery of the site between Karalta Road and the proposed northern edge of proposed works may be retained depending on the specifics of the final design in this area."*(refer to extract from Appendix 4 of Arborist report below). It further discusses that retention of vegetation in this area will relate to the extent of soil disturbance within these Tree Protection Zones (TPZ's) and whether there is to be footpath with kerb and gutter or a nature strip.

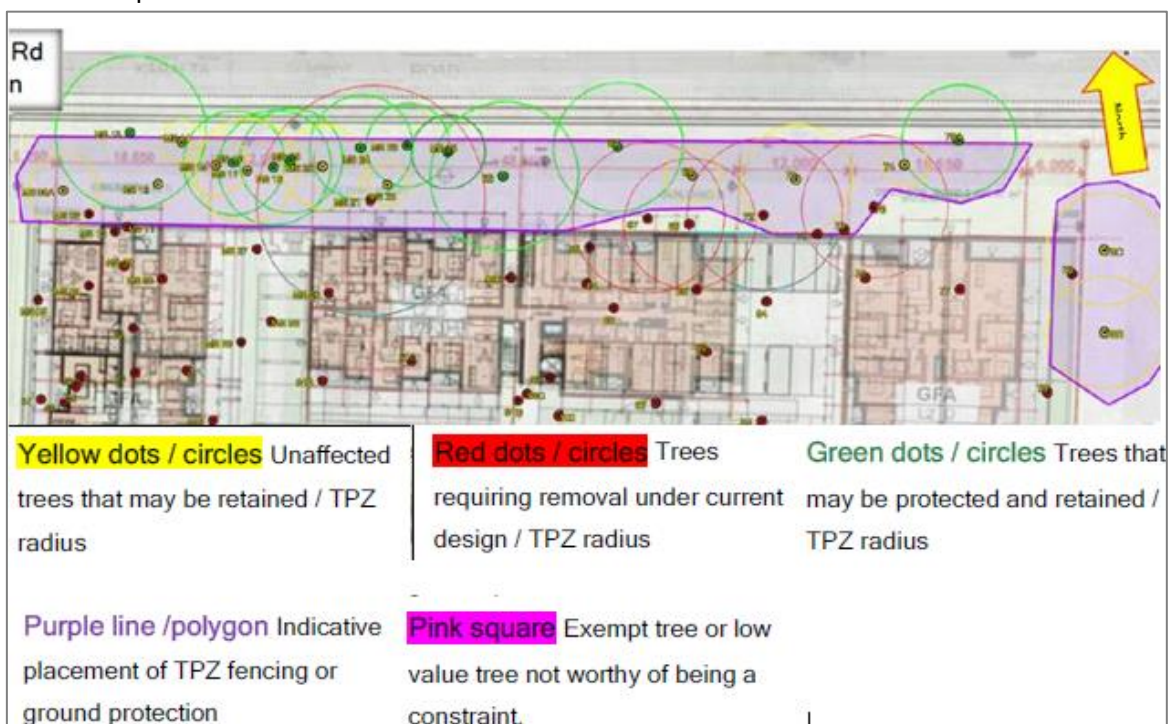


Figure 18 - Extract from Appendix 4 of Arborist Report

6.3 Erosion and Sediment Control

Councils Environmental Health officer has reviewed the submitted Erosion and Sediment Control Plans. The Erosion and Sediment Control Plans does not meet the minimum requirements of Clause 6.3 of the GDCP 2013. The following issues were identified:

- *The plan provided to council is a 'Draft',*
- *Depict dirty water diversion drains into sediment basin and provide construction detail and notes for dirty water drains i.e. high or low flow,*
- *Reduce slope lengths and depict on plans or provide rock check dams in dirty water diversion drains (provide construction detail and notes in accordance with 'Blue Book'),*
- *Amend title of 'site data sheet' to the relevant site. Note: It currently states '1 Bowtells Road Avoca',*
- *Sediment and erosion controls are to be installed prior to demolishing existing structures and site clearance (Stage 1). Depict all proposed sediment and erosion controls on plans,*
- *Soil type is Erina not Yarramalong,*
- *Type C basin is not supported, provide construction drawings and notes and calculations for sizing of Type D wet basin,*
- *Design rainfall depth of 7 days is not supported unless a larger than required sediment basin is proposed. Note: 5 days is considered default,*
- *Provide maintenance and dewatering procedure for wet type D sediment basin. Refer to appendix E of 'Blue book'. Include water quality targets prior to release into stormwater system of <50 NTU turbidity, no visible oil and grease.*

6.4 Geotechnical Requirements

A preliminary geotechnical investigation prepared by Martens Consulting Engineers accompanied the application and is considered to satisfy this section of the GDCP 2013. If consent were to be granted to the proposed development, conditions of consent would be required to ensure compliance with this report.

6.7 Water Cycle Management

The original Water Cycle Management Plan consisting of a written report and plans by Martens Consulting based its calculation on an incorrect site area and lot size and shape. An updated plan was provided but was not accompanied by an updated written report. The proposal has not adequately demonstrated compliance with this section of GDCP 2013.

7.1 Car Parking

This section of the GDCP 2013 requires 1.5 resident car parking spaces per dwelling, and 0.2 visitor spaces per dwelling, (rounded up to the nearest whole number). This results in a minimum requirement of 224 spaces. A total of 226 car parking spaces are provided.

The GDCP also requires parking for persons with a disability at the rate of one space per 100 (or part thereof) car spaces. 14 adaptable spaces have been provided in the basement carparking areas and have a nominated width of 3.8m. Any accessible car parking space would need to comply with the relevant Australian Standards.

7.2 Waste Management

The objectives of this chapter of GDCP 2013 are:

- *To assist applicants in planning for suitable waste management, through the preparation of a waste management plan.*
- *To minimise resource requirements and construction waste through reuse and recycling and the efficient selection and use of resources.*
- *To minimise demolition waste by promoting adaptability in building design and focusing upon end of life deconstruction.*
- *To encourage building designs, construction and demolition techniques in general which minimise waste generation.*
- *To maximise reuse and recycling of household waste and industrial/commercial waste.*
- *To assist applicants in planning for sustainable waste management, through the preparation of a waste management plan.*
- *To assist applicants to develop systems for waste management that ensure waste is transported and disposed of in a lawful manner.*
- *To provide guidance in regards to space, storage, steep narrow allotments, amenity and management of waste management facilities.*

-
- *To ensure waste management systems are compatible with collection services.*
 - *To minimise risks associated with waste management at all stages of development.*

As discussed elsewhere in this report, insufficient information has been provided in regard to waste management including issues associated with waste collection arrangements, conflicts with other vehicle movements and lack of information in the waste management plan. The proposal has not demonstrated compliance with this chapter of GDCP 2013.

s. 4.15(1)(b) of the EP&A Act: Likely Impacts of the Development including the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

Context and Setting and the Built Environment

It is acknowledged that the site allows is capable of utilising bonus height and floor space ratio provisions under clause 7.7 of the GLEP 2014, which is not provided for on surrounding properties. However, the non-compliance with both the FSR and building height control and the excessive building lengths, result in an undesirable character of long unarticulated buildings, which will not respond to the surrounding lower scale residential properties or create a desirable future character for the area.

Amenity and Design

The proposal has not demonstrated the design represents best practice in the design of multi dwelling housing. Insufficient information has been provided to demonstrate that a good design has been achieved to provide a high level of amenity for residents and each apartment, particularly in relation to circulation spaces and natural cross ventilation.

The non-compliance with both the floor space ratio and building height controls, the absence of information relating to how the proposed development meets sustainability principles and the excessive building lengths and homogenous design, result in an undesirable built form outcome that does not respond to the site constraints or surrounding development.

Boundary Conditions

The site benefits from a 'buffer' to surrounding sites via the 10m landscape setback to Karalta Road to the north and the new road to its western and southern boundaries, which has a road reserve of 17.4m wide. Councils Senior Development Engineer has reviewed the proposed levels between the site and the road, and the transitions have been appropriately managed.

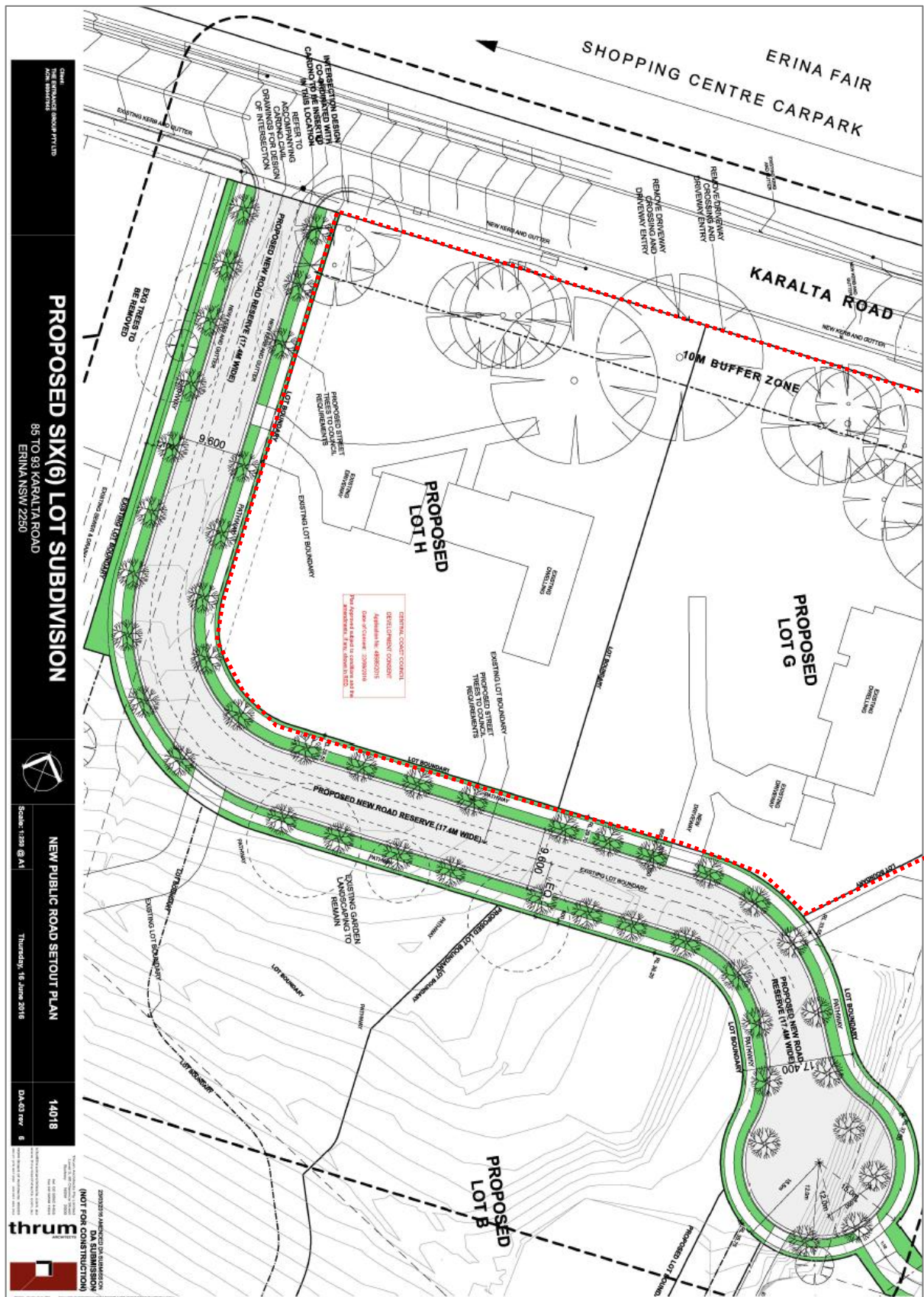
Street trees proposed along the new road are expected to contribute to the interface between the development site and adjoining properties (as shown in Figure 19), however, the establishment of these trees will take a number of years and the design of the building should also provide an appropriate interface/presentation to adjoining properties and the public domain.

It is noted that the subdivision consent included a condition requiring the preparation of a street tree planting plan for approval of Council (Condition 2.16). The plan is required to provide for street tree planting adjoining 11 Jennie Cox Close (which is to the west of the subject site) of a maximum mature height of 4 to 5 metres. This western interface is shown in more detail in Figure 20. The proposed setback, combined with the road, results in a 26m+ separation between the proposed Building A and the existing 2 storey buildings on Jennie Cox Close. A similar level of separation will be afforded to any future proposal to the south, which is also part of the wider subdivision site.

The site's eastern interface is with 93 Karalta Road, which is one of the lots within the wider subdivision, and currently accommodates a single dwelling. This interface does not benefit from the additional separation afforded by a new road, or street trees. While the main face of building D is setback 6m from this boundary, balconies encroach upon this separation by 1m. No significant tree planting is proposed within this setback area. The proposal has failed to respond to the different nature of this side boundary.

Consideration should have been given to a greater setback and to allow for the provision of deep soil planting for larger trees. The detailed section, see Figure 21, notes an 'existing tree to remain', however if 93 Karalta Road were to be developed in the same way as the subject site, this tree would be lost and there would be a 10m separation between balconies, instead of the 12m required by the Apartment Design Guide. This interface is negatively exacerbated by building D's excessive, unbroken length of 58m, which would provide no visual relief to any future development to the east.

The interface of the proposed development with Karalta Road and the public domain has been discussed previously. It is considered that the proposed 10m landscape strip will not be capable of retaining existing established vegetation as required under GDCP 2013. Furthermore, the presentation of the development to Karalta Road does not result in a well-articulated building that responds positively to the streetscape and public domain.



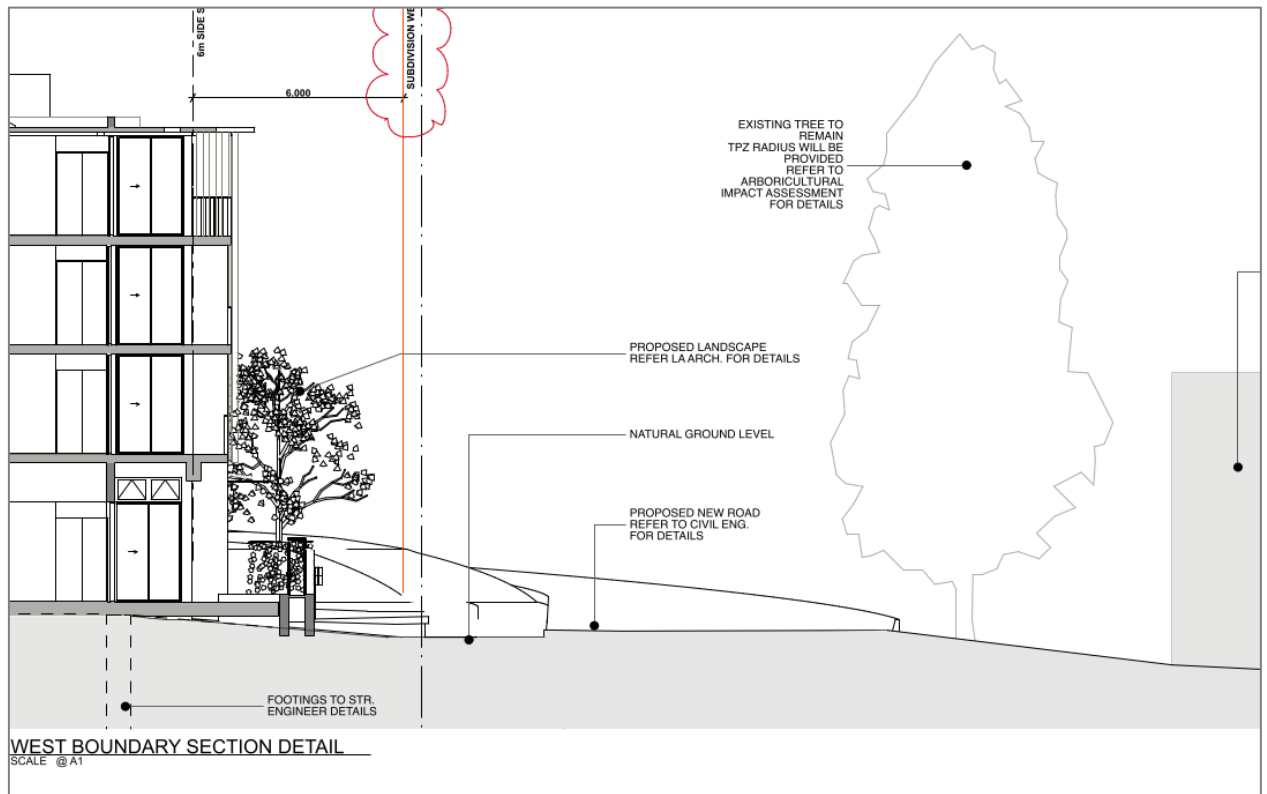


Figure 20 – Western boundary detail – Building A interface with 11 Jennie Cox Close

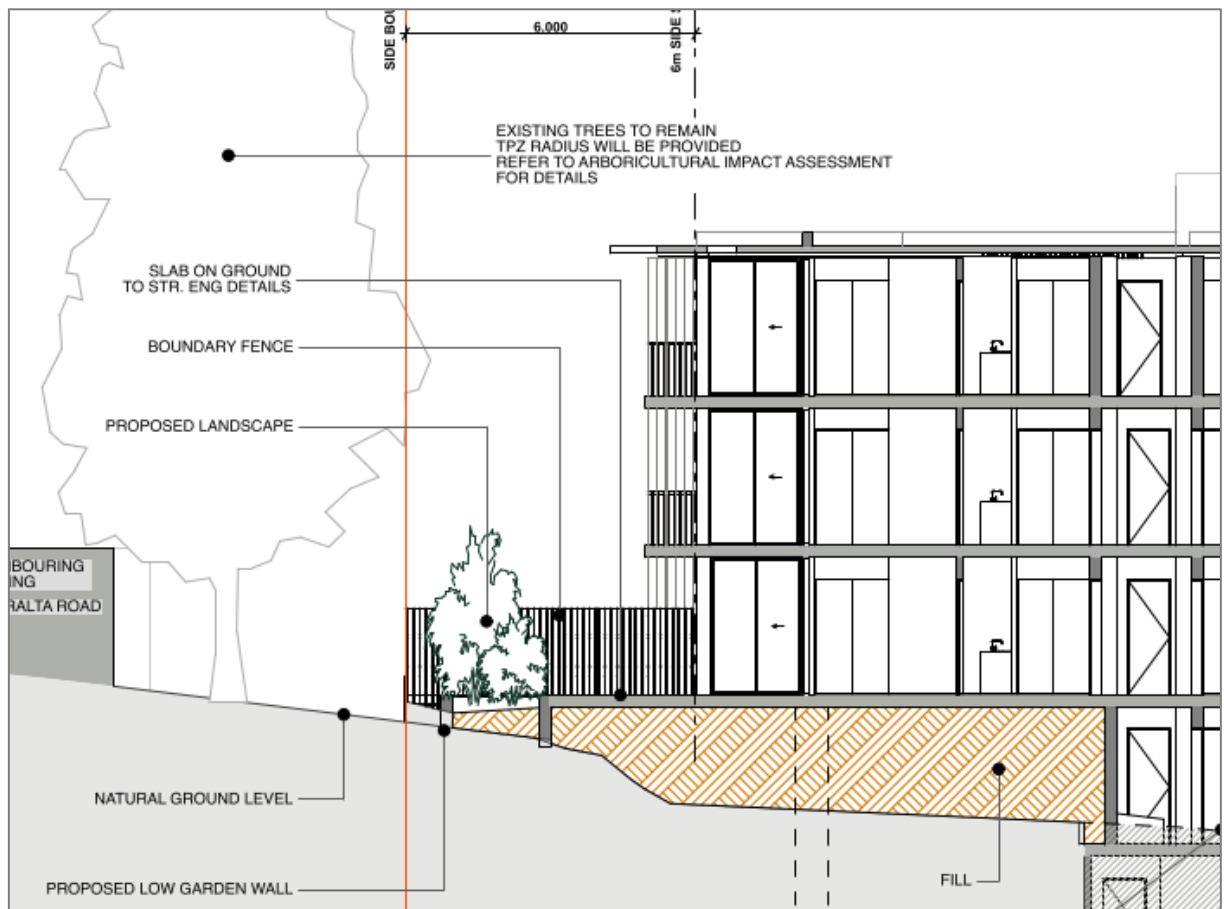


Figure 21 – Eastern boundary detail – Building D interface with 93 Karalta Road

Access, transport and traffic

The application relies on the construction of the new roads and intersection as approved under the subdivision approval 48585/2015. The Traffic Impact Assessment associated with this subdivision DA (prepared by Cardno and dated 18 September 2015) assumed that 200 dwellings would potentially be accommodated within the subdivision in the future.

The Traffic Impact Assessment (prepared by BJ Bradley & Associates and dated 15 April 2020) submitted as part of this development application for 131 units, does not include updated SIDRA modelling (2020 & 2030) or revised dwelling numbers for the approved intersection.

Both TfNSW and Council have requested the applicant demonstrate that "the approved CHR will be able to accommodate 95% queue length generated by this development, and any future development on other approved lots within the subdivision". The applicant has not demonstrated this.

On 12 January 2021 the applicant was sent a request for information from Council officer's which included the following:

*BJ Bradleys [Traffic Assessment] report does not include SIDRA modelling (2020 & 2030) for the approved channelised intersection. Council requests for the Applicant to provide updated SIDRA analysis to ensure that the approved Channelised Right Turn (CHR) will be able to accommodate 95% queue length generated by this development, **and any future development on other approved lots within the subdivision**. Any spill-over of queue outside of the approved CHR is anticipated to interrupt eastbound through traffic flow, with potential of queue extending to and impacting the operation of existing Traffic Control Signals.*

On 28 January 2021 the applicant's Traffic Consultant provided the following response:

SIDRA modelling was not previously requested for the subject development. B J Bradley & Associates was not provided with any information that a previous SIDRA assessment had been made by Cardno or that an approved CHR design existed.

SIDRA assessments were considered unnecessary because B J Bradley & Associates prepared a Traffic Assessment Report dated 3 August 2016 for extensions to the Woodglen Retirement Village, subsequently approved with no SIDRA assessments and similar traffic generation (18 trips in AM Peak and 30 trips in PM Peak) compared with the subject development (38 trips in both peak periods)."

TfNSW indicated that SIDRA modelling was undertaken by Cardno for 200 dwellings on the subject site, with traffic volumes for 2016 and 2026 utilised.

Traffic volumes between 2016 and 2020, and between 2020 and 2030 would only have increased by approximately 4%, based on typical traffic growth rates utilised by TfNSW of 2% per annum.

The TfNSW letter also indicated that the Cardno SIDRA assessment (for 200 dwellings) was such that the 95% queue length could be accommodated by the approved CHR. It is

important to note that it is legal for drivers to stop on chevron markings such as those provided for a CHR intersection, for up to 50 metres. The distance between the existing signalised intersection and the development access road east is approximately 85 metres and should remain adequate for the reduced size (131 dwellings) of the latest residential development.

It is of concern that the applicant's traffic consultant was not aware of the history of the site including the proposed subdivision under D/48585/2015, the proposed intersection, Channelised Right-Turn and associated traffic studies.

The applicant's traffic consultant has misunderstood the history of the site, stating that the *"SIDRA modelling was undertaken by Cardno for 200 dwellings on the subject site, with traffic volumes for 2016 and 2026 utilised"* and *"that should remain adequate for the reduced size (131 dwellings) of the latest residential development."* The SIDRA modelling was for the wider subdivision, not the current development site.

The subdivision DA (D/48585/2015) and associated traffic report and assessment assumed 200 dwelling across *the whole subdivision site*, being six lots with a total site area of 34,217m², comprised of:

- Proposed Lot A - 11,635sqm
- Proposed lot B - 5,156sqm
- Proposed lot D - 1,580sqm
- Proposed lot F - 6,345sqm
- Proposed lot G - 4,772sqm
- Proposed lot H - 4,729sqm

The current application applies to proposed Lots G and H only, with a total site area of 9,501m². This represents 28% of the total site area of the subdivision, however the proposed 131 units account for 65.5% of the projected 200 dwellings on the wider subdivision.

The proposed dwelling density under the current application is 1 dwelling per 72.5m² of site area. Should this be applied to the remainder of the subdivision site, being 24,716m², there would be a projected further 341 dwellings, or 472 total dwellings. This is well over double the 200 that was originally envisaged as part of the subdivision DA (D/48585/2015).

As such, relying on the 2016 and 2026 SIDRA modelling for 200 dwellings is not appropriate and the applicant needs to demonstrate that the intersection and Channelised Right Turn (CHR) will be able to accommodate 95% queue length generated by this development and any future development on other approved lots within the subdivision, as requested by Council and TfNSW.

Councils Traffic and Transport Engineer has reviewed the TfNSW response and has formed the view that the development traffic, in isolation, is not likely to have any significant impact on the queues and delays currently experienced within the road network. However, it does not account for the wider subdivision, which is of relevance. In addition, the application relies upon 2015 data and has not taken into account recent changes to the Karalta Road Traffic Environment, including a recent approval (D/56520/2019) for revised access for Central Coast Adventist School, Penrose Crescent, Erina, which will result in increased movements on

Karalta Road in the order of 140 vehicle movements. The revised access to the School addressed major morning and afternoon congestion levels that were occurring in Penrose Crescent.

It is noted that TfNSW made a recommendation to permit left-out movements only from the development, onto Karalta Road, to reduce conflicting movements and maintain road safety. TfNSW noted that the Traffic report submitted as part of this development application appeared to indicate that vehicles exiting the development will be able to turn right into Karalta Road.

The applicant's traffic consultant states, in their letter dated 28 January 2021:

As mentioned above, there are several driveways along this section of Karalta Road with traffic volumes similar and sight distances also similar, where right-turns are permitted from development access roads, including the extensions to the Woodglen Retirement Village and more importantly the eastern entry / access driveway to the Erina Fair Shopping Centre.

I do not agree that right-turns out of the subject development represent a safety concern any greater than experienced at intersections / access driveways along Karalta Road such as Bronzewing Drive.

The site will be accessed by the new road and intersection on Karalta Road approved by the subdivision approval D/48585/2015, which envisaged left-out movements only.

The final detailed design, line-marking and signposting plan for this intersection is currently being progressed within Council. Council will undertake a Road Safety Audit with representatives of TfNSW and the plans will be referred to the Local Traffic Committee for endorsement.

As discussed elsewhere in this report any consent would be reliant upon this subdivision, road and intersection being completed.

In summary, insufficient information has been provided to adequately demonstrate that traffic impacts and safety of the site and surrounding road networks are satisfactory.

Stormwater and Drainage

The original Water Cycle Management Plan consisting of a written report and plans by Martens Consulting based its calculation on an incorrect site area, lot size and shape. An updated plan was provided but was not accompanied by an updated written report. It is considered insufficient information has been received to adequately assess stormwater and drainage.

Erosion and Sediment Control

As discussed elsewhere in this report, insufficient information has been provided with regard to erosion and sediment control. The proposal has not adequately addressed the potential

impacts of erosion and sediment on the surrounding environment, particularly having regard for the extent of earthworks that would be anticipated for this type of development.

Contamination, Acids Sulphate Soils and Geotechnical Conditions

The land is considered suitable for the proposed use and is not considered to be contaminated having regard for the provisions of SEPP 55. In addition, it is considered the proposed works will not impact on Acid Sulfate Soils. An acceptable Geotechnical Report has been provided.

Utilities - Water and Sewer

The application was referred to Council's Water Assessment Team who advised that water and sewer services are available for connection to the site. Council's Water Assessment Team noted the following:

- Water and Sewer servicing for this development will be based on the works completed under D/48585/2015 (subdivision of the site).
- Water and Sewer are available to the proposed development site.
- A section 305 application will be required under the *Water Management Act 2000*. The applicant is required to obtain the s307 Compliance Certificate prior to issue of any Occupation Certificate. Water and Sewer Developer Charges are applicable for the proposed development.

Further details would be provided at the detailed design stage, as part of any Section 306 requirements, should consent be granted. Overall water and sewer are considered to have been sufficiently addressed.

Heritage

The site is not located in the vicinity of any heritage items. There are no known aboriginal heritage items present on the site.

Waste

A Waste Management Plan was submitted with the application. Council's Waste Management Officer has reviewed the Plan and identified a number of issues as follows:

- The Waste Management Plan refers to the waste truck servicing location not impeding general access to, from and within the site however, the waste truck servicing location indicated on the Ground Floor plan restricts other vehicle entry from the street that will impede other vehicles, and poses a potential risk to the waste contractor servicing bulk waste bins at the rear of the waste truck. The waste truck must allow for vehicles entering and/or exiting to maintain lane discipline, and the waste area must provide a safe location for servicing of bulk waste bins entirely clear of the entry/ exit driveway from the western end of the development.

-
- The proposal requires transfer of recyclables mobile garbage bins from upper level floors via the resident lift, which is not desirable.
 - All waste rooms on each level are to be clearly identified. The principal waste storage enclosure adjacent to the waste truck servicing location is to be fully dimensioned and sized to accommodate 5 x 1100 litre/ 1 x 660 litre mixed waste bulk bins for 3 x weekly servicing , 5 x 1100 litre recyclables waste bulk bins for 3 x weekly servicing and a nominal number of 240 litre Green waste bins for kerbside servicing on the designated day for Erina.
 - A kerbside presentation location for Green waste MGB's at 1.0 m per bin to be identified on the northern side of the western driveway.
 - Location for a Bin Lifter and Bin Tug in a readily accessible location not impacting on bulk waste bin access is required.
 - A Residual waste estimate is required under Demolition of the Waste Management Plan.
 - The Waste Management Plan and Traffic Assessment Report needs to include 12.5HRV details.

Having regard for the above, insufficient information has been provided to satisfy staff that waste can be adequately managed.

Noise and Vibration

Karalta Road is not classed as a 'busy road' by TfNSW therefore an acoustic assessment is not required.

If consent were to be granted, standard conditions in relation to construction noise and vibration would be applied.

Ecology

Council's Ecologist has assessed the ecological impact of the proposed development in accordance with section 4.15 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). Impacts to biodiversity values have been assessed in accordance with the *Biodiversity Conservation Act 2016* (BC Act).

Council's Ecologist has advised that the BDAR (at section 4.12) states that *"While Southern Myotis was detected on site, the species is not considered to be breeding within any of the hollows on site, or nearby. As such, no Southern Myotis species credits are required."* Breeding is not required to be demonstrated for species credits to be required to be retired for Southern Myotis (*Myotis macropus*). If the species is identified within the proposed development site, indeed within 200m of a suitable waterbody and tree hollows, all relevant PCTS on site within a 200m buffer of the waterbody are to be included in a species polygon in order to calculate

the number of offset credits required to be retired/ offset. An updated BDAR is required to include the required number of species credits to adequately offset the impacts of the proposed development on *Myotis Macropus*.

Alternatively, in order to support the proposition that the species is not reliant on the habitat on site within the 200m buffer of the identified waterbody and to 'over-rule' the precautionary principal, it is recommended that each suitable hollow bearing tree be stag watched with the aid of a hand held ultrasonic recorder in order to definitively determine the presence of the species within the site and the importance of the available habitat. Any hand-held surveys undertaken should be done within the recommended survey timeframe of October – March.

Insufficient information has been provided to assess the ecology impacts, in particular the impact on the Southern Myotis, which is listed as a Vulnerable species under the *Biodiversity Conservation Act 2016* or justify that the impacts have been adequately offset.

The consulting ecologist has assumed the 10m landscape buffer will be managed as an 'Inner Protection Area' (IPA) Asset Protection Zone (APZ) for bushfire protection purposes. As such, they have calculated the number of offset credits required to maintain the area at 15% canopy cover, being the maximum allowed under the IPA requirements. However, as previously discussed throughout the report, it is likely that the vegetation nominated to be retained in the 10m buffer cannot be retained due to works required for the construction of the development.

The inconsistencies between the Landscape Plan, architectural plans, and Arborist report which identify/discuss retention of all vegetation in this area, and the Bushfire Report and biodiversity assessment which assume a maximum 15 % canopy cover for the purposed of an IPA, make it difficult for the likely impacts of the development to be properly considered. Additionally, the Bushfire Safety Authority has been granted on the basis that the entire subject site will be managed as an IPA.

Bushfire

The NSW Rural Fire Service granted a Bushfire Safety Authority on 20 January 2021 and included the following requirements:

- The entire property must be managed as an inner protection area (IPA).
- New construction must comply with BAL 12.5 construction methods and materials
- A Bush Fire Emergency Management and Evacuation Plan is required
- The provision of water, electricity and gas must with certain bushfire standards

It is noted that the ecological studies, including the Biodiversity Development Assessment Report (as amended - Revision 1) did account for the inner protection area (IPA) requirements.

Tree Retention

As per previous discussion in the report, conflicting documentation has been provided in relation to tree removal, particularly within the 10m northern setback area. The demolition plan identifies the retention of 5-6 trees in the northern setback area (refer Figure 22) whilst the landscape plans identify 21 trees to be retained and protected (refer figures 23 and 24).

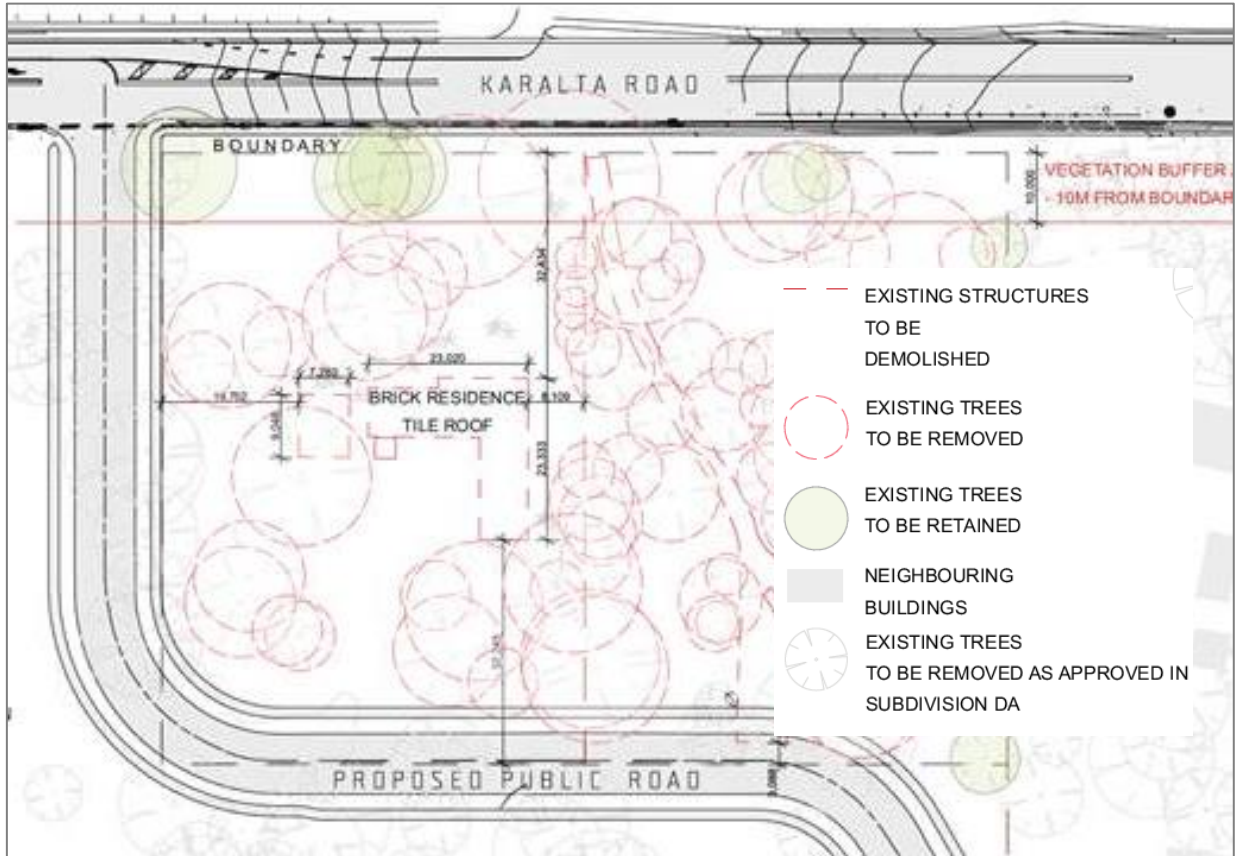


Figure 22 – Demolition Plan extract - DA-0006 issue H

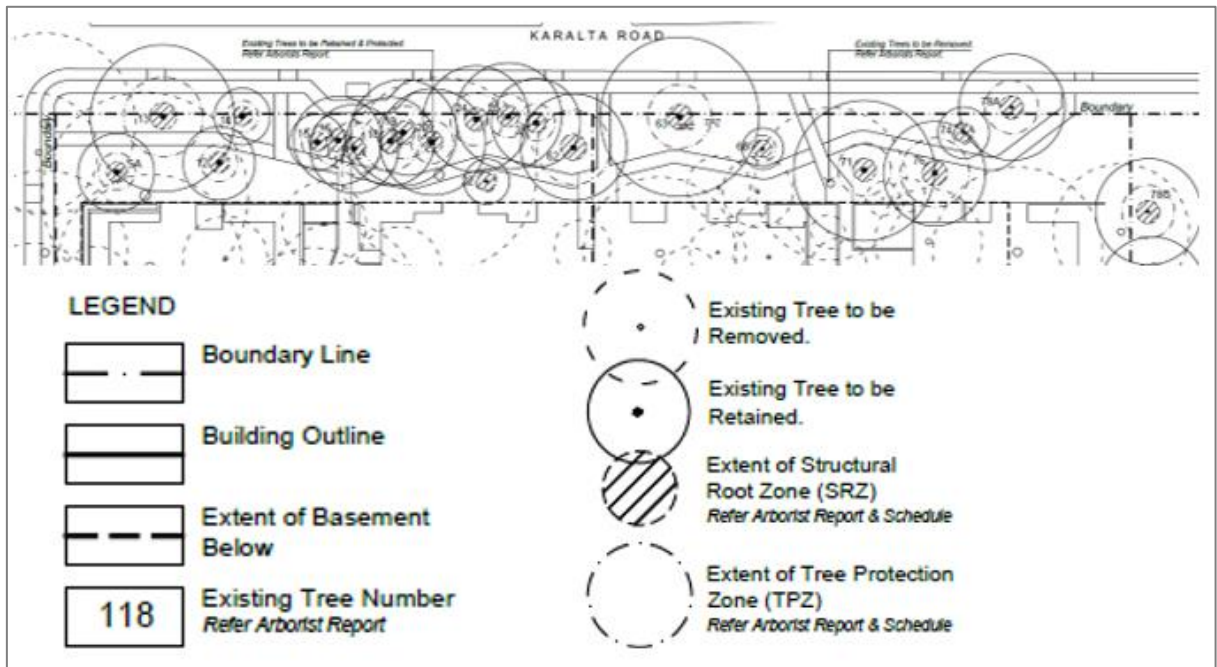


Figure 23 – Tree Management Plan – Landscape Drawings



The arborist report identified trees that 'may' be protected or retained, and makes the following comments in relation to the 10m northern setback area:

8.14. Many of the trees located along the northern periphery of the site between Karalta Road and the proposed northern edge of proposed works may be retained depending on the specifics of the final design in this area.

8.15. These trees are indicated with yellow and lime green dots within the purple TPZ area as shown at Appendix 4 Images.

8.16. If soil levels remain unchanged between Karalta Road and the northern edge of proposed building works, the trees indicated (at Appendix 4 Images) with yellow dots and circles, and also, many of the trees marked with lime green dots and circles may be protected and retained.

8.17. The quantity of trees that it's possible to protect and retain in this section will depend on specific aspects of the final design, especially in relation to soil disturbance within TPZs and also the design specifics for the section of the development which lines Karalta Road itself, whether it is to be a footpath with kerb and gutter or a nature strip.

8.18. If the section of the property which extends northwards from the proposed northern edge of building works to Karalta Road itself, remains largely undisturbed, the majority of trees marked with yellow and lime green dots in this area should be able to be protected and retained.

8.19. If kerb and guttering and associated soil levelling and disturbance is proposed, many of these trees and in particular, the trees indicated with a lime green dot and TPZ circle, will require removal to facilitate the installation of infrastructure.

8.20. It is not possible to determine the likely fate of trees in this section until specifics of the design for this area have been developed and finalised.

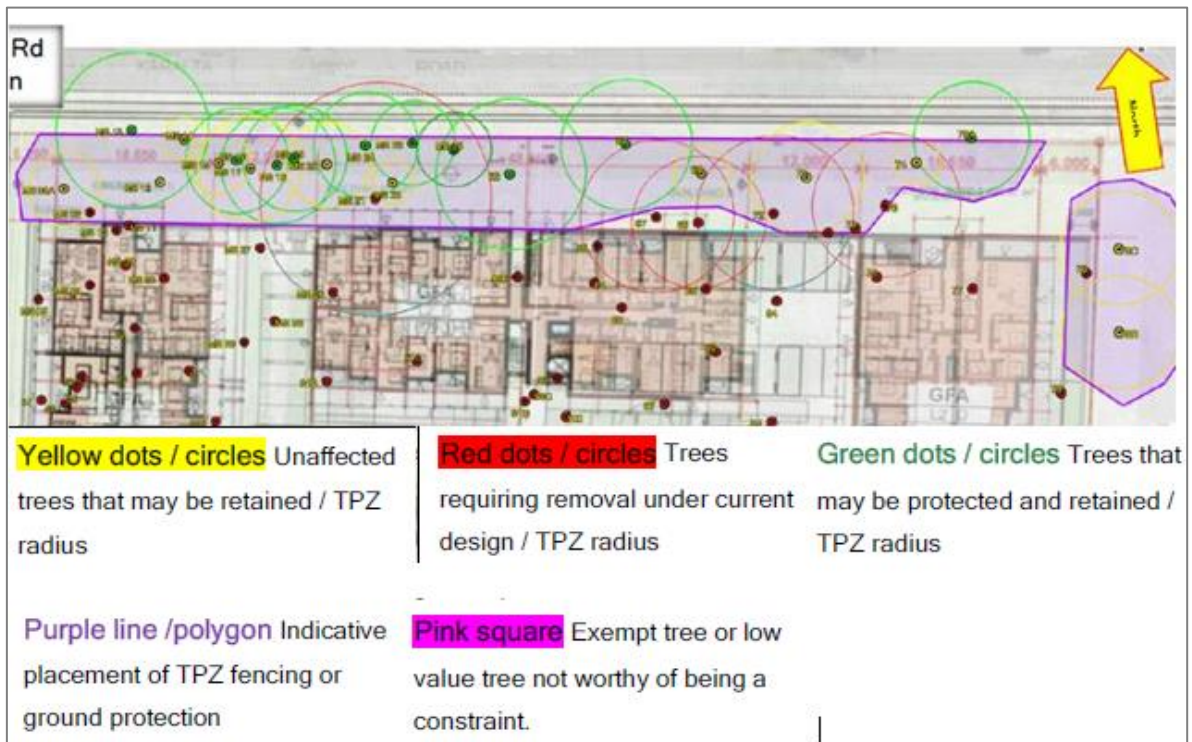


Figure 25 – Arborist Report Appendix 4 images /maps

The Civil plans show construction vehicle access and movements, the construction of a large sediment basin, construction stockpile areas, cut and fill / level changes and stormwater infrastructure within the 10m northern setback area as shown in figures 26-29 below.

It is also important to note that the consulting ecologist and bushfire consultant are of the assumption the 10m landscape area will be managed as an IPA.

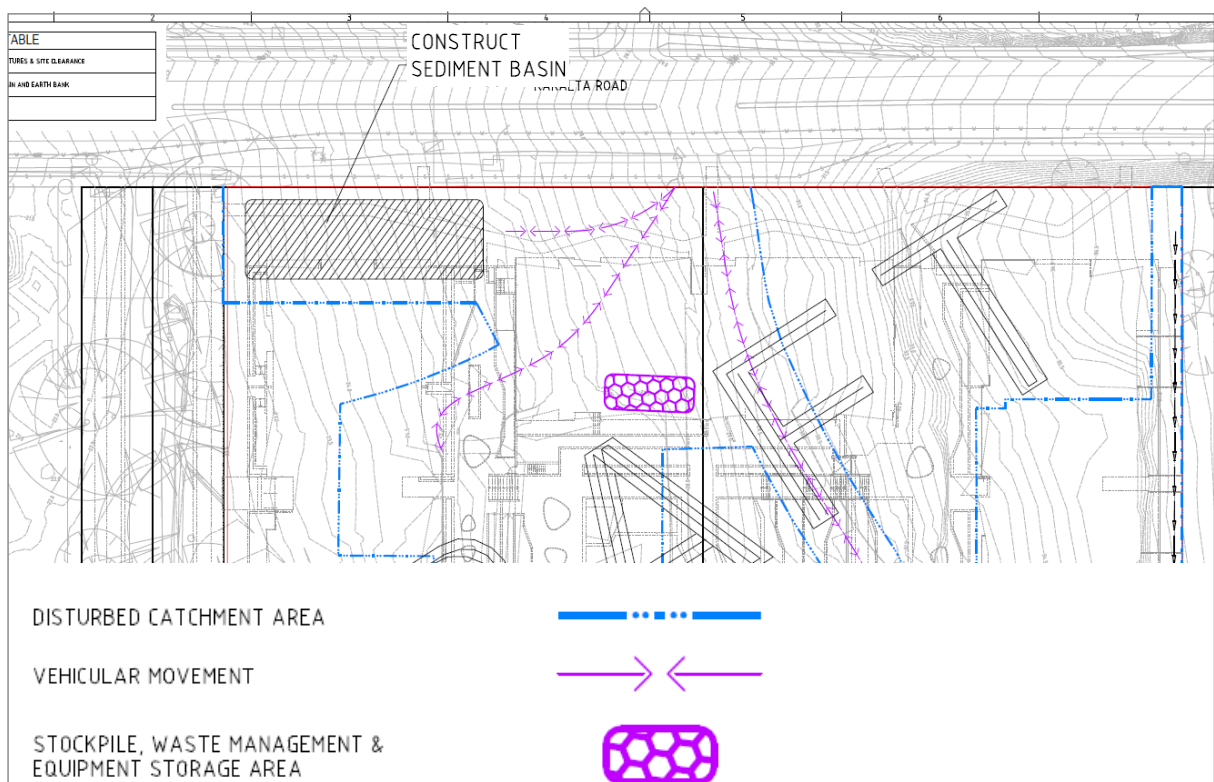


Figure 26 - Concept Construction Management Plan Stage 2 - PS01-B101 Rev A

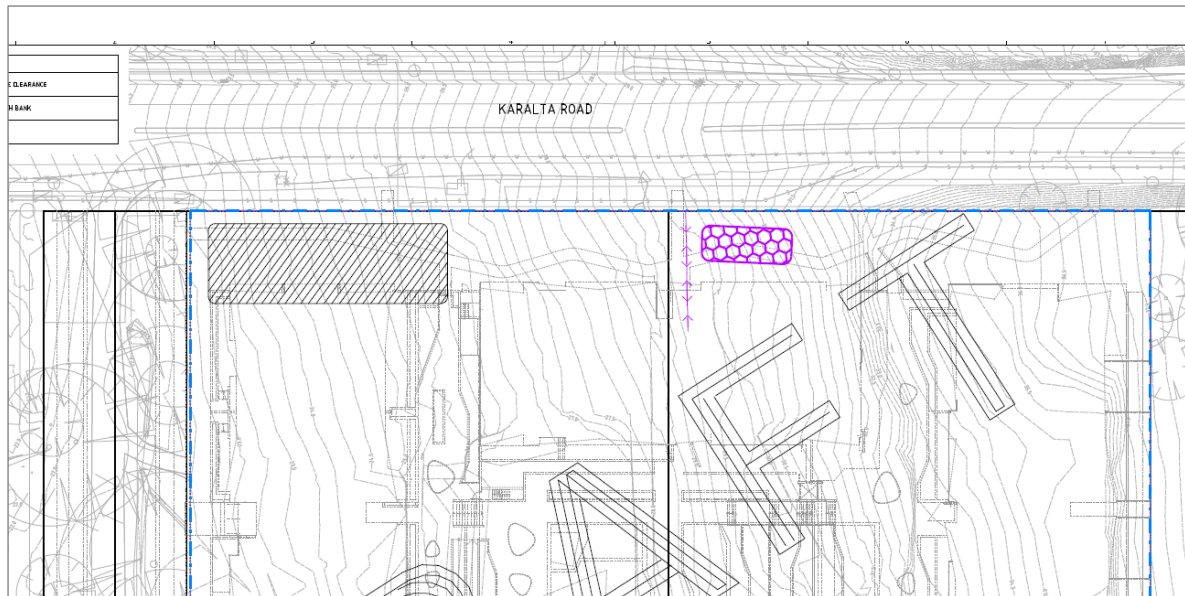


Figure 27 - Concept Construction Management Plan Stage 3 - PS01-B102 Rev A

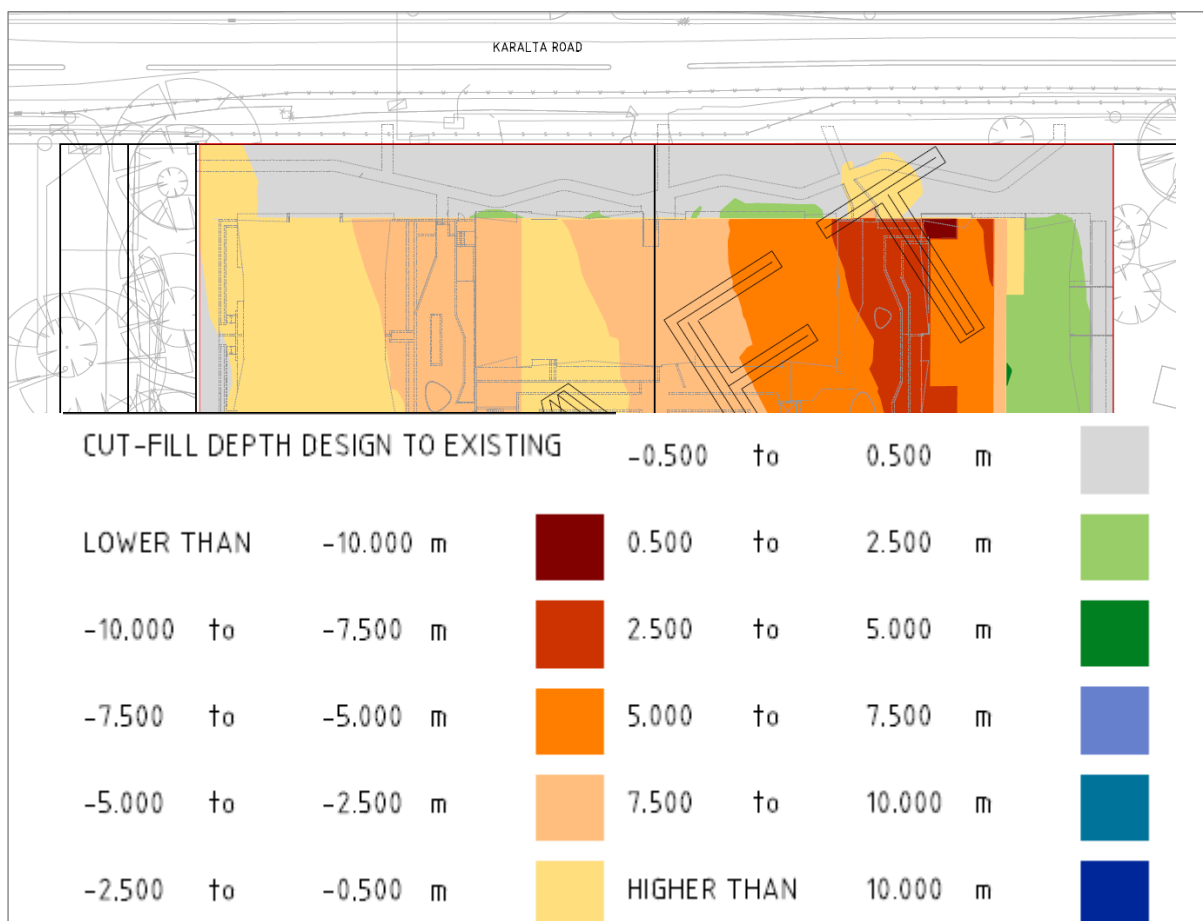


Figure 28 - Earthworks Cut & Fill Plan - PS01-C500 Rev D

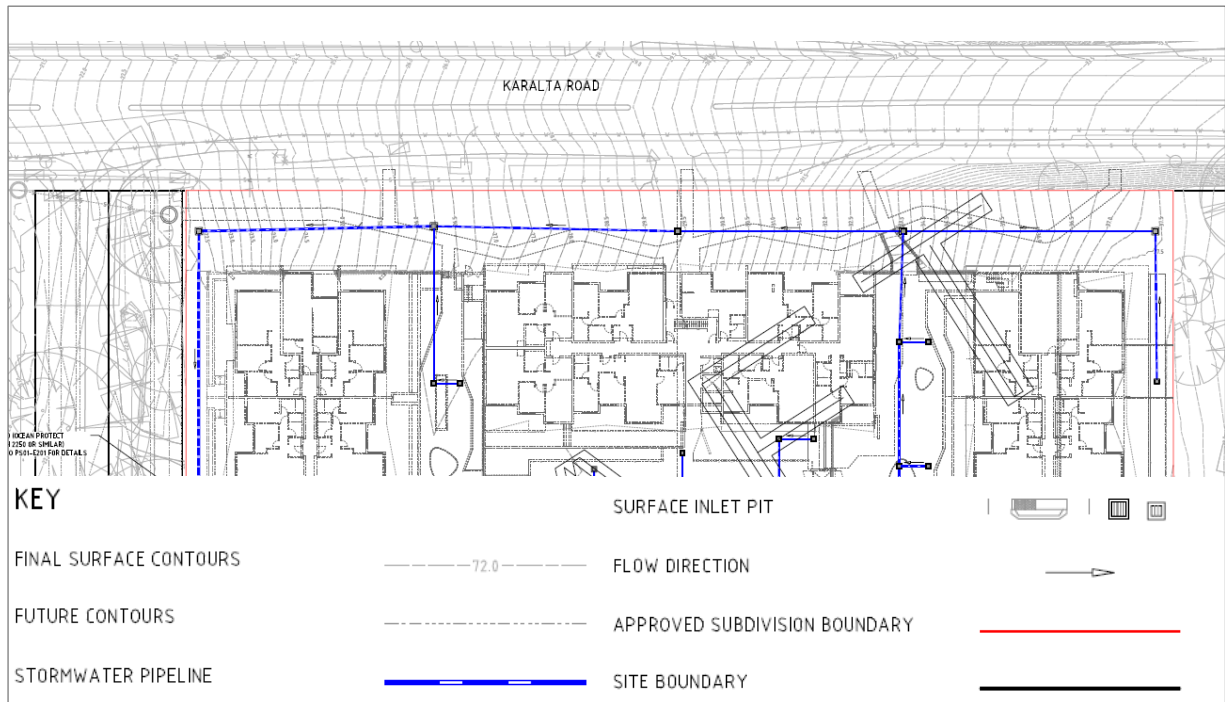


Figure 29 - Drainage Plan Ground Floor - PS01-E100 Rev D

Given the inconsistent information between the architectural and landscape plans and uncertainty of the advice contained within the Arborist report, it is not clear what trees are proposed to be removed or can be retained. Concern is raised that there will be no existing vegetation retained within the 10m landscape buffer proposed adjacent to Karalta Road. Removal of all of this vegetation is likely to have an unacceptable impact on the amenity of the site and streetscape, particularly given the type of development proposed.

Social and economic impacts

The proposed development would generate short term economic stimulus through the construction of the development and would provide additional residential accommodation, as well as affordable housing in an appropriate location.

However, the significant non-compliance's with the height and FSR controls and the design of the development, result in an undesirable urban form that is not consistent with the existing or desired future character of the area.

Whilst additional dwellings and affordable housing are necessary on the Central Coast, the application has not provided sufficient information to demonstrate that the site has appropriately responded to the site constraints or how the development provides a high level of amenity for its occupants. The proposal has therefore not demonstrated the immediate and long-term social benefits of the proposal.

s. 4.15 (1)(c) of the EP&A Act: Suitability of the Site for the Development

The site is zoned R1 General Residential which permits residential flat buildings. The site is suitable for the proposal in principle. However, the proposal has not adequately addressed or demonstrated how the development will appropriately relate to its site context and achieve a

good level of design and amenity. Insufficient information has been provided to demonstrate that the site is suitable for this type of development.

s. 4.15 (1)(d) of the EP&A Act: Any Submission Made in Accordance with This Act or Regulations

Section 4.15 (1)(d) of the EP&A Act requires consideration of any submissions received during notification of the proposal.

The proposal was formally advertised and notified in accordance with GDCP 2013 Chapter 7.3.2 Notification of Development Proposals for the following periods:

- 20 November to 18 December 2020
- 22 January 2021 to 22 February 2021

A total of 2 submissions were received. The issues raised are summarised as follows:

Summary of Submissions	Response
Tree removal, loss of habitat / ecology impacts	As detailed in this report, insufficient information has been provided in regard to the ecology impacts and the true extent of vegetation removal on the site.
Green spaces and outlook should be preserved in Erina	The site is Zone R1 General Residential, and some form of redevelopment is reasonably expected. However, it is expected that the design of the development would have regard for, and respond to, its site context, the objectives of the DCP and character statement for the Erina area. Insufficient information has been provided for a view to be formed as to whether adequate green spaces have been provided within and surrounding the development.
The site could provide public access to Kincumber reserve	The sites are privately owned and are not expected to provide public access to Kincumber Mountain.
Traffic and safety impacts on Karalta Road	As detailed in this report insufficient information has been provided to adequately demonstrate that road congestion and efficiency will be satisfactory upon development of the land.
Suitability of the development to the character of the area	As detailed in this report the proposal is not considered to be consistent with the existing and desired future character of the area having regard to the design of the development and how it responds to its site context.
Non-compliance with Floor Space Ratio (FSR) and Maximum Height	As detailed in this report the proposed variations to the FSR and building height controls are not supported as it is considered the applicant has not adequately demonstrated why a contravention to the development standards are unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental grounds to justify a departure to the development standard.

External Consultation

The application, was referred to the following public authorities:

Transport for NSW – who made the following comments (via letter dated 27 November 2020):

- *The Entrance Road (H30) is a classified State road and Karalta Road is a local road. Council is the roads authority for both roads and all other public roads in the area, in accordance with Section 7 of the Roads Act 1993.*
- *The SEE indicates that proposed intersection arrangement on Karalta Road at the site access (new public road) has been approved under condition 2.2(a) of D/48585/2015 for the site. The approved development application involved residential subdivision of five (5) lots into six (6) lots and a new public road. It is noted that the approved development application (D/48585/2015) was not referred to TfNSW for comments at the DA assessment stage.*
- *TfNSW has reviewed the Concept Intersection details prepared by Cardno and dated 10 July 2015, submitted as part of D/48585/2015, which is available on Council's website. The concept intersection detail indicates that proposed eastbound Channelised Right-Turn (CHR) on Karalta Road would be accommodated by reducing the length of existing eastbound leftturn deceleration lane provided for the Erina Fair shopping centre's left-only entrance. It is also understood that the proposed CHR treatment will not impact existing westbound rightturn lane at the Traffic Control Signals (TCS) providing access into the shopping centre.*
- *The TIA prepared by Cardno and dated 18 September 2015, submitted as part of DA48585/2015, assumed that 200 dwellings would potentially be accommodated within the subdivision in the future. The SIDRA modelling (2016 & 2026) undertaken for the proposed site access intersection at that time indicated that the CHR will be able to accommodate 95% queue length of right-turning traffic into the development without interfering with eastbound through-traffic on Karalta Road.*
- *The TIA prepared by BJ Bradley & Associates and dated 15 April 2020, submitted as part of this development application (D/59571/2020) for 131 units, does not include SIDRA modelling (2020 & 2030) for the approved intersection. Council should ensure that the approved CHR will be able to accommodate 95% queue length generated by this development, and any future development on other approved lots within the subdivision. Any spillover of queue outside of the approved CHR is anticipated to interrupt eastbound through traffic flow, with potential of queue extending to and impacting the operation of existing TCS.*
- *Subject to Council's further review of our above comments, and if Council is supportive of this development application, TfNSW requires that the previously approved CHR intersection arrangement on Karalta Road is completed prior to issuing any Occupation Certificate for this development to avoid potential impact on the TCS operations. All road works associated shall be undertaken at full cost to the developer and at no cost to TfNSW or Council, and to Council's requirements.*

- *TfNSW has no proposal that requires any part of the property.*
- *Page 7 of the TIA, submitted as part of this development application (D/59571/2020), appears to indicate that vehicles exiting the development will be able to turn right into Karalta Road. TfNSW understands that this turning movement was not envisaged within the approved subdivision application. Council is recommended to permit left-out movements only from the development to reduce conflicting movements and maintain road safety.*

Rural Fire Service – who granted General terms of Approval via correspondence dated 20 January 2021.

NSW Police – no response received.

s. 4.15 (1)(e) of the EP&A Act: The Public Interest

Central Coast Regional Plan 2036

The Central Coast Regional Plan 2036 provides a 20-year framework and guiding strategic planning document aimed at facilitating effective growth and services for the people of the region. It outlines a vision for the Central Coast to 2036; the challenges faced, and the goals and directions to follow to address these challenges and achieve the vision.

It aims amongst other measures, to build a strong economy capable of generating jobs, providing greater housing choice, essential infrastructure and protecting the natural environment.

The proposal has been assessed having regard to the relevant goals and directions set out within the Central Coast Regional Plan 2036. Whilst the proposed development will provide additional housing for the Central Coast community, it has not demonstrated this can be done so via good design and the provision of appropriate amenity for future residents.

Given the above, and for the reasons identified in the assessment report, the proposed development is not considered to be in the public interest.

Somersby to Erina Corridor Strategy

The site is located within the Erina Centre of the “Somersby to Erina Corridor” under the Somersby to Erina Corridor Strategy, which was adopted by Council 9 December 2019.

The Somersby to Erina Corridor is the collection of six centres connected by the Central Coast Highway. The Somersby to Erina Corridor Strategy been prepared by Central Coast Council to:

- *Guide the growth and investment in the six centres of Somersby, Mount Penang and Kariong, West Gosford, Gosford City Centre, East Gosford and Erina which benefits the entire region and*
- *Implement the directions of the NSW Government’s Central Coast Regional Plan 2036*

The Somersby to Erina Corridor Strategy provides a strategy for the land use and transport vision for the Corridor and will help to prioritise additional works and studies and inform policies and new controls. The Erina Corridor Strategy was developed to be used for the following purposes:

- *To present a clear, focussed and shared vision for the Corridor at local and State level.*
- *As a policy that supports State Government and Central Coast Council's decisions about land use planning.*
- *A framework for guiding local planning strategies and assessing planning proposals (rezoning applications).*
- *To guide public and private investment within the corridor and guide prioritisation of public spending on public domain and infrastructure within the Corridor.*
- *As a basis for collaboration with Transport for NSW regarding transport improvements, including the proposed Rapid Transit bus service.*
- *To support economic development within the corridor including marketing and celebrating existing businesses and attracting new business.*

The centre strategy for the Erina area, recognises Erina Fair is a valuable shopping and entertainment magnet, and that there is opportunity to create a new civic and community focus around Erina, with improved public domain and links to Erina Fair.

The centres strategy states:

There are a number of issues in this area that need to be considered at a precinct level including traffic, transport, circulation and carparking, pedestrian circulation and linkages to Erina Fair and throughout the precinct, resolution of flooding and servicing issues to inform the capacity of this area to accommodate any consideration of residential uses, density increases or changes in building height. It is important that these issues are considered at a precinct level and not incrementally on a site by site basis to ensure that any increase in capacity is distributed.

The Strategy requires a holistic approach to the consideration of future planning proposals and development in the Erina area. If designed appropriately to respond to its site context and the public domain, the proposed development has the capability to compliment the matters outlined in the strategy.

Other Matters for Consideration

Development Contribution Plan

The site is located within an area subject to the Section 7.11 Development Contributions Plan No.42 for Erina, Green Point, Terrigal, where contributions are required for residential flat buildings. Development contributions would be applicable if the proposal was supported.

Planning Agreements

The proposed development is not subject to any planning agreement / draft planning agreement.

Internal Consultation

- Engineering – Insufficient information has been received to allow for a comprehensive assessment of the application. An updated Water Cycle Management Plan consisting of a written report has not been provided and the swept paths for a Heavy Rigid Vehicle garbage truck, as per Australian Standards 2890, have not provided with the 300mm clearances as required.
- Traffic and Transport – Insufficient information has been provided to demonstrate that the intersection approved as part of the subdivision of the land under DA 48585/2015, can adequately accommodate the traffic generated by this development, and any future development likely to occur on other approved lots within the subdivision.
- Ecology – Issues with the Biodiversity Development Assessment Report, particularly with regard to the retiring of species credits for Southern Myotis (*Myotis macropus*). This has been discussed previously in the report. An updated BDAR is required prior to any development consent being granted.
- Social Planner – generally supportive of the proposal having regard for the provision of 10 affordable housing units, subject to the imposition of conditions requiring affordable housing to be maintained for a minimum of 10 years and managed by a registered community housing provider.
- Environmental Health – no concern regarding air quality, acid sulphate soils, asbestos contamination or noise (subject to conditions), however concern is raised with the submitted erosion and sediment control plans as they do not meet the minimum requirements of Clause 6.3 of the Gosford Development Control Plan 2013.
- Waste Officer – Insufficient information has been provided to assess the application or demonstrate that waste can be adequately managed.

Conclusion

This application has been assessed having regard for the matters for consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979* and all relevant instruments, plans and policies.

Insufficient information has been provided to adequately demonstrate that the accessibility, road congestion, efficiency and movement of people and safety of the site and surrounding road networks are satisfactory in accordance with Clause 104 of *State Environmental Planning Policy (Infrastructure) 2007*.

The proposal has not demonstrated that it is consistent with the requirements of *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

The proposed development has not demonstrated that adequate regard has been given to the design quality principles contained within *State Environmental Planning Policy No. 65* or with the objectives and design criteria of the Apartment Design Guide.

Insufficient information has been provided to assess the ecology impacts, in particular the impact on the Southern Myotis, which is listed as a vulnerable species under the *Biodiversity Conservation Act 2016*. Furthermore, there is inconsistent information in relation to the true extent of tree retention on site once the development is complete.

The proposal is not considered to be consistent with the objectives of the R1 General Residential Zone and it has not demonstrated that it is compatible with the desired future character of the area, with particular regard to its bulk and scale, building length and landscaping, or that the design represents 'best practice' given the proposal has not demonstrated that a high level of amenity can be achieved.

The non-compliance with clause 7.7 regarding the bonus FSR and building height have not been adequately justified and result in an undesirable built form outcome, in relation to bulk and scale, excessively long, homogenous and unarticulated buildings, which will not respond to the surrounding lower scale residential development or create a desirable future character for the area.

The application has not provided the information and detail to enable a thorough assessment of the likely impacts of the proposed development in accordance with s.4.15 of the Act., particularly having regard for engineering, traffic, ecology, tree removal/retention, erosion and sediment control and waste management matters.

The proposal is not in the public interest and accordingly, is recommended for refusal pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

COUNCIL ASSESSMENT REPORT

Attachments

1. Reasons for Refusal
2. Amended Architectural Plans, dated 25/01/2021 prepared by CKDS Architecture (D14471193)
3. Landscape Plans, dated 04/05/2020, prepared by Xeriscapes (D14206173)
4. Independent Design Review, dated 28/01/2021 prepared by Ken Dyer (D14464789)
5. Statement of Environmental Effects including Clause 4.6 (Exceptions to Development Standards) of GLEP 2014 Variation Request for Building Height and FSR, dated 29/01/2021, prepared by Matthew Wales (D14471002)
6. Assessment Report and Consent for Subdivision DA - D/48585/2015 (D14656644)

ATTACHMENT 1

Reasons for Refusal

ATTACHMENT 2

Amended Architectural Plans, dated 25/01/2021 prepared by CKDS Architecture

ATTACHMENT 3

Landscape Plans, dated 04/05/2020, prepared by Xeriscapes

ATTACHMENT 4

Independent Design Review, dated 28/01/2021 prepared by Ken Dyer

ATTACHMENT 5

Statement of Environmental Effects including Clause 4.6 (Exceptions to Development Standards) of GLEP 2014 Variation Request for Building Height and FSR, dated 29/01/2021, prepared by Matthew Wales

ATTACHMENT 6

Assessment Report and Consent for Subdivision DA - D/48585/2015