

COUNCIL ASSESSMENT REPORT

NORTHERN REGIONAL PLANNING PANEL

PANEL REFERENCE & DA NUMBER	PPSNTH-142 – DA21/0949
PROPOSAL	Senior's housing including demolition of existing dwellings and construction of 95 units, a swimming pool, signage, lot consolidation and tree removal
ADDRESS	Lot 113 DP 237806; 6 Powell Street, Tweed Heads; Lot 114 DP 237806; 8 Powell Street, Tweed Heads; Lot 115 DP 237806; 10 Powell Street, Tweed Heads; Lot 116 DP 237806; 12 Powell Street, Tweed Heads; Lot 117 DP 237806; 33 Florence Street, Tweed Heads; Lot 118 DP 237806; 35 Florence Street, Tweed Heads; and Lot 119 DP 237806; 37 Florence Street, Tweed Heads
APPLICANT	Zone Planning
OWNER	THRV Pty Ltd
DA LODGEMENT DATE	2 December 2021
APPLICATION TYPE	Development Application (Integrated)
REGIONALLY SIGNIFICANT CRITERIA	Section 2.19, Schedule 6 of the Planning Systems SEPP: development that has a capital investment value of more than \$30 million.
CIV	\$53,153,800.00 (excluding GST)
CLAUSE 4.6 REQUESTS	Tweed City Centre Local Environmental Plan 2012 – Section 4.3 Height of Buildings; Tweed City Centre Local Environmental Plan 2012 – Section 4.4 Floor Space Ratio.
KEY SEPP/LEP	State Environmental Planning Policy (Resilience and Hazards) 2021 State Environmental Planning Policy (Planning Systems) 2021 State Environmental Planning Policy (Transport and Infrastructure) 2021 State Environmental Planning Policy (Housing) 2021 State Environmental Planning Policy (Resilience and Hazards) 2021

	<p>State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004;</p> <p>State Environmental Planning Policy (Biodiversity and Conservation) 2021;</p> <p>Tweed City Centre Local Environmental Plan 2012</p>
TOTAL & UNIQUE SUBMISSIONS KEY ISSUES IN SUBMISSIONS	<p>Notification period 1: Four (4) total unique submissions.</p> <p>Notification period 2: Four (4) total unique submissions.</p> <p>Key issues:</p> <p>Notification period 1:</p> <ul style="list-style-type: none"> • Building height • Floor space ratio • Vegetation • Privacy • Parking/traffic • View impact <p>Notification period 2:</p> <ul style="list-style-type: none"> • Unit size • Insufficient size of communal areas • Bush stone curlews • Construction impacts (noise, dust, vibration)
DOCUMENTS SUBMITTED FOR CONSIDERATION	<p>Architectural Plans (as amended) prepared by Raunik Design Architects and dated 15 February 2023;</p> <p>Draft Consolidation Plan prepared by Landsurv Pty Ltd and dated 06-08-2021;</p> <p>Detail Survey prepared by Landsurv Pty Ltd and dated 10.11.2020;</p> <p>Statement of Environmental Effects (amended) prepared by Zone Planning Group and dated 24/01/2022;</p> <p>Housing SEPP Assessment (amended) prepared by Zone Planning Group, not dated, received 24 January 2022;</p> <p>DCP Section A1, A2 & B2 Assessment prepared by Zone Planning Group, not dated, received 8 December 2021;</p> <p>Section 4.6 Variation Request to Sections 4.3 and 4.4 of TCCLEP 2012 (amended) prepared by Zone Planning Group, not dated;</p> <p>Traffic Impact Assessment Report (revised) prepared by SLR Consulting and dated 11 August 2022;</p> <p>Arborist Impact Assessment Report prepared by Zone Landscape Architects and dated 11 August 2022;</p> <p>Bush Stone-curlew Impact Assessment Report prepared by Biome Water and Environmental Consulting and dated 13 July 2022;</p> <p>Statement of Landscape Intent (revised) prepared by Zone Landscape Architecture and dated 11 August 2022;</p> <p>Acoustic Impact Assessment Report (revised) prepared by CRG Acoustics and dated 26 July 2022;</p>

	<p>Construction Noise Impact Assessment Report (revised) prepared by CRG Acoustics and dated 25 July 2022;</p> <p>Remedial Action Plan prepared by HMC Environmental Consulting Pty Ltd and dated 12 August 2022;</p> <p>Design Verification Statement (revised) prepared by Raunik Design Architects and dated 17 August 2022;</p> <p>Acid Sulfates Management Report prepared by HMC environmental Consulting Pty Ltd and dated 15.09.2021;</p> <p>Engineering Services Report prepared by Friends Civil Engineering and dated 23/08/2021;</p> <p>Stormwater Management Plan prepared by Friends Civil Engineering, Issue 01 and dated August 2021;</p> <p>Flood Response Plan prepared by Zone Planning Group and dated 10/09/2021;</p> <p>Dewatering Plan prepared by HMC Environmental Consulting Pty Ltd and dated 14.09.2021;</p> <p>Visual Impact Assessment prepared by Zone Landscape Architecture and dated 13.09.2021;</p> <p>Demolition Plan prepared by HMC Environmental Consulting Pty Ltd and dated 15.09.2021;</p> <p>Preliminary Site Investigation prepared by HMC Environmental Consulting Pty Ltd and dated 15.09.2021;</p> <p>Underslab Investigation prepared by HMC Environmental Consulting Pty Ltd and dated 15.09.2021;</p> <p>High Level NCC Assessment prepared by Axis Building Certification and dated 10 September 2021;</p> <p>Sewer and Water Service Plan (revised) prepared by Friends Civil Engineering and dated October 2021; and</p> <p>Waste Management Plan prepared by HMC Environmental Consulting Pty Ltd and dated 15.09.2021.</p>
SPECIAL INFRASTRUCTURE CONTRIBUTIONS (S7.24)	Nil
RECOMMENDATION	Deferred Commencement
DRAFT CONDITIONS TO APPLICANT	Yes – issued 6 April 2023
SCHEDULED MEETING DATE	18 April 2023
PLAN VERSION	Plans received 22 August 2022 and 15 February 2023
PREPARED BY	Alyssa Norton – Town Planner, Development Assessment Unit
DATE OF REPORT	11 April 2023

EXECUTIVE SUMMARY

The proposed development, as amended, seeks the consolidation of seven allotments, demolition of existing structures, tree removal and construction of a six storey seniors housing development comprising 94 residential units, one manager's unit, one level of basement parking and associated landscaping. The subject site is located on land zoned R3 – Medium Density Residential and is permitted with consent.

The subject site comprises 7 allotments, being No's 6, 8, 10 and 12 Powell Street and No's 33, 35 and 37 Florence Street, Tweed Heads. The site has a frontage to Powell Street of 79.71m and 98.91m to Florence Street. The site provides an overall area of 4,862.3m².

The site is located in the Tweed City Centre, opposite Tweed hospital and approximately 200m south of Tweed Mall Shopping Centre.

The proposal, as originally submitted, presented the following key issues which have either been resolved through amendments, have been accepted on merit or can be resolved through implementation of recommended conditions of consent:

- Building height
- Floor space ratio (FSR)
- Solar access
- Removal of Lemon-scented gum tree
- Car parking

The proposal was referred to Essential Energy in accordance with Section 2.48 of SEPP (Transport and Infrastructure) 2021 and WaterNSW in accordance with Section 90(2) of the Water Management Act 2000 as dewatering is proposed. Neither agency raised any objections to the proposal, with WaterNSW providing General Terms of Approval on 6 October 2022 and Essential Energy providing comments on 22 March 2023.

The original proposal was notified and advertised for a period of 28 days in accordance with Council's Community Engagement and Participation Plan 2019-2024. Four (4) unique submissions were received, raising concerns in respect of building height, Floor Space Ratio (FSR), tree removal, privacy, parking and traffic and view impacts.

The proposal, as amended in response to the Request for Further Information (RFI) issued by Council, was renotified and readvertised for a second period of 28 days. Four (4) additional unique submissions were received during this second round of notification/advertising. The same issues were raised as those from the first round of notification, with the addition of undersized units, insufficient communal areas, impact on bush stone curlews and impacts from construction.

The proposal was referred to the following units within Council:

- Environmental Health Section (EHU)
- Building Surveying Unit (BSU)
- Sustainability and Environment Unit (S&E)
- Roads and Stormwater Unit (R&S)
- Water and Wastewater Unit (W&WW)
- Development Engineering Unit (DEU)
- Resource Management

A number of concerns were raised by the internal units including car parking – number of spaces and compliance with relevant Australian Standards and SEPP (Housing) 2021; land

contamination; removal of the Lemon-scented Gum tree; impact of the proposal on bush-stone curlews and low percentage of native plant species in landscaping plans.

The proposal has undergone a number of design changes in response to the concerns raised.

No objections to the amended proposal have been raised by any of the units subject to the implementation of recommended conditions of consent.

The proposal, as amended, is considered to be in the public interest as it will provide increased housing opportunity for seniors within a residential development that is complimentary to the area which is currently undergoing a transformation from low density to medium density and is consistent with the strategic future of the locality.

The proposal, as amended, has been assessed against s4.15(1) of the *Environmental Planning and Assessment Act 1979* in respect of the following:

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Tweed City Centre Local Environmental Plan 2012.*

The amended proposal generally complies with the relevant provisions of the above. Where variations are sought, these are either considered minor in nature and have been considered on merit; are acceptable via 4.6 variation requests or will achieve compliance by way of recommended conditions of consent.

The proposal, as amended, is recommended for approval, subjected to a deferred commencement consent.

1. THE SITE AND LOCALITY

1.1 The Site

The subject site comprises Lots 113-119 DP 237806, also known as No. 6, 8, 10, and 12 Powell Street, and No. 33, 35, and 37 Florence Street, Tweed Heads. It is considered a visually prominent position as it is a corner site directly adjacent to the roundabout at the intersection of Powell and Florence Streets.

The site has a frontage to Powell Street of approximately 79.71m, and a frontage to Florence Street of approximately 98.91m. The site has a total area of 4862.3m².

All lots are currently occupied by single storey dwellings, except for Lot 116 (12 Powell Street), which is vacant barring a mature 20-25m tall Australian Lemon-scent Gum tree. In total, there are nine (9) local native trees identified as prescribed vegetation for preservation on the subject site. The subject site is also identified as a Koala Management Area in the Tweed Coast Comprehensive Koala Plan of Management (TCCKPoM).

The subject site shares the northern boundary with a single storey dwelling and a six (6) storey residential flat building (RFB) comprising of 17 units. Adjoining the eastern boundary of the subject site is a detached two (2) storey dwelling (8 Ivory Crescent) and a five (5) storey RFB comprising of 20 units (10 Ivory Crescent).

The subject site is relatively level with each lot having an average fall of 1%. The average floor level of the existing dwellings is currently RL2.8m AHD while the minimum habitable level required for flood planning is RL3.1m AHD. The probable maximum flooding (PMF) level is RL5.4m AHD.

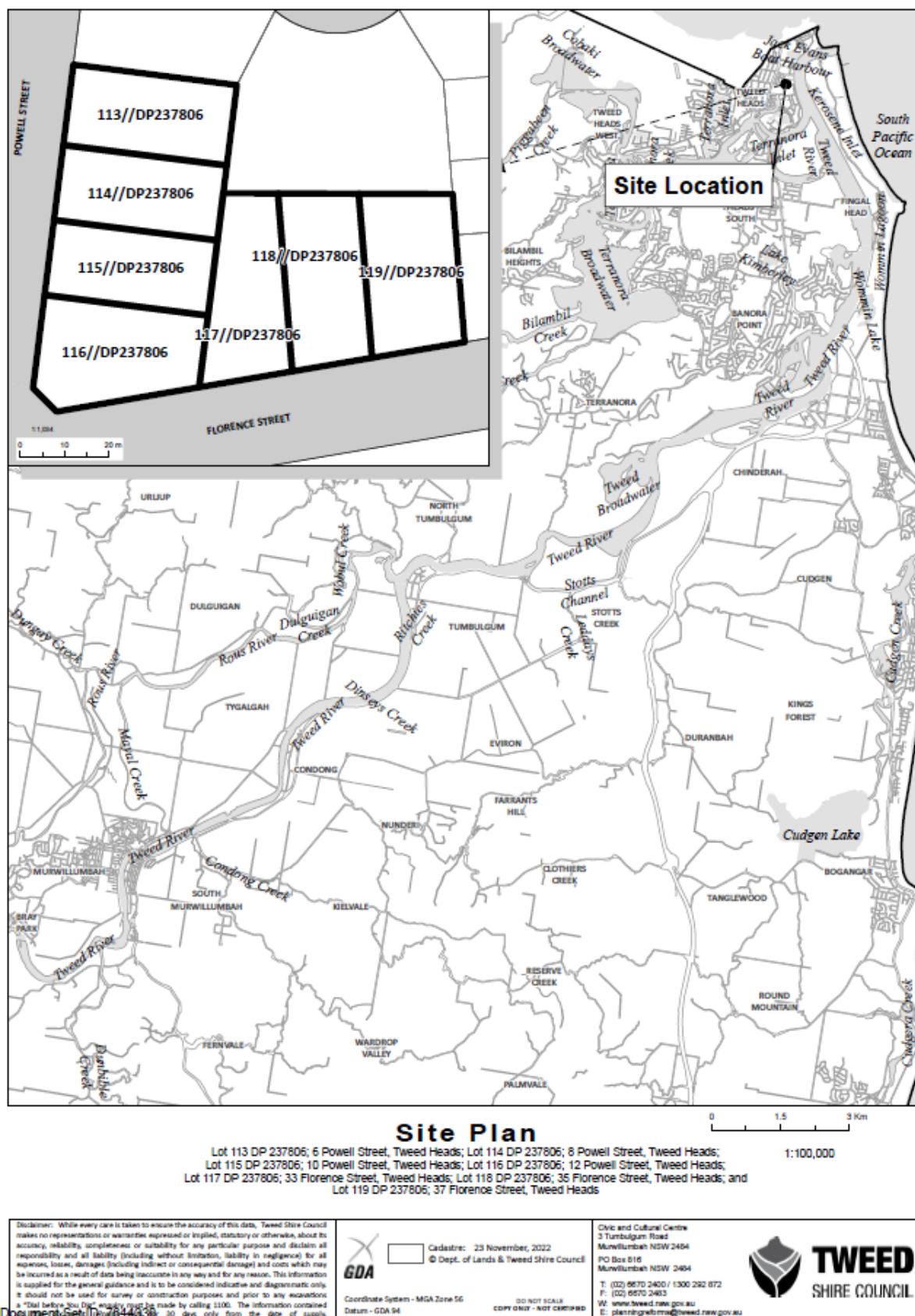


Figure 1: Site location map



Figure 2: Aerial imagery of the subject site



Figure 3: View of the subject site looking north-east from Florence Street. Retained Lemon-scented Gum tree shown.



Figure 4: Subject site on the right-hand side and existing seniors housing development on the left. Viewed from Powell Street, south of the site.



Figure 5: Existing dwellings located at 35 & 37 Florence Street



Figure 6: Existing dwellings located on the subject site, along Powell Street

1.2 The Locality

Situated within the Tweed City Centre, the subject site is predominantly surrounded by residential flat buildings of 2-6 storeys, consistent with the objectives of Zone R3 – Medium Density Residential.

Tweed Hospital and Club Tweed are located to the south and south-west of the site, on Florence Street. Both are within walking distance of the site, with the Hospital immediately adjacent to the site and Club Tweed approximately 80m away.

Tweed Mall Shopping Centre and Twin Towns Service Club are located to the north of the site, with Tweed Mall approximately 170m away and Twin Towns approximately 700m.

The Tweed River is located to the east, approximately 140m from the site.

Located adjacent to the subject site, on the western side of Powell Street, is a senior housing development owned and developed by the proponent and forms a part of the Serene Retirement Living brand. The completed senior housing development comprises of a five (5) storey building comprising of 77 units and a six (6) storey building comprising of 14 units.

Public transport is located within walking distance of the site, with bus stops provided along Powell Street, approximately 147m to the south, and Florence Street, approximately 167m to the west.

2. THE PROPOSAL AND BACKGROUND

2.1 The Proposal

The proposal seeks consent for seniors housing entailing:

- Demolition of 6 dwelling houses;
- Construction of a 7 storey multi-dwelling development containing 94 seniors housing independent living units, 1 manager's unit, staff office, 3 residents lounge, 1 recreation room;
- Construction of an in-ground swimming pool;
- Construction of a building identification sign;
- Tree removal; and
- Consolidation of 7 lots

The following staging is proposed:

Stage 1 – Demolition of dwelling houses, tree removal and consolidation of relevant allotments;

Stage 2 – Construction of basement, ground floor and Blocks A and B; and

Stage 3 – Construction of Block C.

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



Figure 7: Eastern elevation of proposed development, as amended. Prepared by Raunik Design Group Architects and dated 15/02/2023



Figure 8: Northern elevations of proposed development, as amended. Prepared by Raunik Design Group Architects and dated 15/02/2023

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

Table 1: Development Data

Control	Proposal															
Site area	4862.3m ² by DP															
GFA	11,626.8m ² by calculation – as amended (applicant notes amended GFA of 11,498.8m ²)															
FSR (retail/residential)	2.3:1 as amended 2.07:1 permitted including 15% bonus under SEPP(Housing) 2021.															
Clause 4.6 Requests	Yes - TCCLEP 2012 Section 4.3 Height of Buildings; TCCLEP 2012 Section 4.4 Floor Space Ratio.															
No of apartments	95 (94 + 1 manager's unit)															
Max Height	22.6m 22m maximum permitted under TCCLEP 2012															
Landscaped area	2227.3m ² /45.8% incl. podium planting 1491.1m ² /30.6% excl. podium planting Minimum 30% as per SEPP (Housing) 2021															
Car Parking spaces	98 spaces															
Setbacks	<table><tr><td></td><td>North</td><td>South</td><td>East</td><td>West</td></tr><tr><td>Ground Floor</td><td>4.5m</td><td>4m</td><td>4.5m</td><td>4m</td></tr><tr><td>Levels 1-6</td><td>4.5 + 4.29</td><td>4m</td><td>4.29m</td><td>3.93m</td></tr></table> West – Powell Street South – Florence Street		North	South	East	West	Ground Floor	4.5m	4m	4.5m	4m	Levels 1-6	4.5 + 4.29	4m	4.29m	3.93m
	North	South	East	West												
Ground Floor	4.5m	4m	4.5m	4m												
Levels 1-6	4.5 + 4.29	4m	4.29m	3.93m												

2.2 Background

A Development Assessment Panel (DAP) meeting was held prior to the lodgement of the application on 7 May 2021 where various issues were discussed. A summary of the key issues and how they have been addressed by the proposal is outlined below:

- Building Height

The plans submitted to the DAP meeting proposed a maximum building height of 26.4m. Under TCCLEP 2012, the subject site is afforded a maximum building height of 22m.

The applicant was advised the proposed building height, combined with the proposed non-complying FSR (as discussed below) would result in an overdevelopment of the site.

The applicant was advised that, as the proposed building would breach the maximum permissible building height, a Clause 4.6 Variation Request would be required to be submitted to justify any deviation from the development standard.

The proposal, as amended proposes to reduce the height of the building by removing the seventh storey of the building thereby reducing the maximum building height to 22.6m to the lift overrun. A Clause 4.6 Variation Request was submitted with the amended plans seeking to vary the development standard.

- FSR

The plans submitted to the DAP meeting proposed a floor space ratio of 2.9:1. Under TCCLEP 2012, the subject site is afforded a FSR of 1.8:1. An FSR bonus of 15% (0.27:1) is afforded to vertical villages under SEPP (Housing) 2021 providing the provisions of Section 87 are met. The site is therefore afforded a maximum FSR of 2.07:1.

The applicant was advised the proposed FSR, combined with the proposed non-complying building height (as discussed above) would result in an overdevelopment of the site.

The applicant was advised that, as the proposed FSR would breach the maximum permissible FSR, inclusive of bonus, a Clause 4.6 Variation Request would be required to be submitted to justify any deviation from the development standard.

The proposal, as amended has reduced the height of the building by removing the seventh storey of the building thereby reducing the amount of gross floor area and reducing the total FSR. The applicant notes the amended proposal seeks a reduced FSR of 2.3:1. The applicant submitted an amended 4.6 Variation Request.

- Flood Planning – Probable Maximum Flood (PMF) Refuge

The applicant sought confirmation during the DAP meeting as to whether a PMF refuge would need to be provided. The applicant was advised that, due to the site being affected by the PMF and surrounding roads being lower than the design flood level, a PMF Refuge would need to be required to comply with A3.2.6 Emergency Response Provisions (note 4 – PMF Refuge for Residential Development). The applicant was advised any future DA should include a Flood Response Assessment Plan (note 5 –

Flood Response Assessment Plan) demonstrating the adequacy of the proposed refuge.

The applicant submitted a Flood Response Plan with the original application and the amended plans (dated 15/02/2023) provide a PMF Refuge on Level 4 of the development. The PMF Refuge has been accepted by Council's Roads and Stormwater (Flooding) Engineers who note the refuge achieves compliance with Council's DCP Section A3.2.6 Emergency Response Provisions (note 4 – PMF Refuge for Residential Development).

- Landscape Area

The plans submitted to the DAP meeting provided landscaped areas that did not meet the minimum 30% required by s50 of SEPP (Housing for Seniors or People with a Disability) 2004 (superseded by s108(e) of SEPP (Housing) 2021).

The applicant was advised that if the submitted DA did not achieve the minimum required amount, a justification for variation to the requirement would need to be provided.

Amended plans dated 15/02/2023 show the proposal as providing 30% of the site area as landscaping (excluding podium planting) and 45.9% of the site as landscaping, including podium planting.

- Deep Soil Zones

The plans submitted to the DAP meeting provided deep soil zones (DSZ) that did not meet the minimum 15% required by s50 of SEPP (Housing for Seniors or People with a Disability) 2004 (superseded by s108(f) of SEPP (Housing) 2021).

The applicant was advised that if the submitted DA did not achieve the minimum, a justification for variation to the requirement would need to be provided.

Amended plans dated 15/02/2023 show the proposal as providing 15% of the site area as deep soil zone with minimum dimensions of 3m. 63% of the total deep soil zones provided are located within the 'rear' of the site.

- Lemon-scented Gum Tree

The proposal put forward at the DAP meeting sought the removal of a number of existing mature and semi-mature native trees across the site, including a mature Lemon-scented Gum in the south-western corner of the site, at the Powell St and Florence St intersection.

The applicant was advised at the meeting that the Lemon-scented Gum is a focal point in the streetscape being located on the corner of a roundabout. The applicant was further advised that the tree is considered by Council to be of aesthetic and habitat value and that retention of the tree was required.

Plans originally submitted with the DA package had not taken Council's advice into consideration and the proposal sought the removal of the Lemon-scented Gum. This was not accepted by Council and the applicant was advised removal of the tree would not be supported. Amended plans dated 22/8/22 were submitted to Council and showed a re-design of the building's south-western corner to accommodate the tree

and relevant protection of the Tree Protection Zone (TPZ). These design changes were carried through to the plans attached to this report, dated 15/2/2023.

- **Car Parking**

The proposal put forward at the DAP meeting sought to provide 108 car spaces in total including 100 residential spaces and 8 visitor spaces to accommodate the 110 proposed bedrooms. The applicant was advised that any multi-purpose rooms (or similar) that were capable of being used as a bedroom were to be counted as such. The applicant was therefore advised that the total number of parking spaces required was 125.5, being 114.5 for residents and 11 for visitors.

The applicant was also advised that any tandem parking spaces would need to be allocated to a single unit and that this should be clearly marked.

The submitted DA proposed 94 parking spaces including 6 staff tandem spaces and 88 resident spaces.

The applicant was advised the provision of parking still did not meet the minimum requirements and that tandem parking would not be supported unless it could be demonstrated these spaces were an excess to the minimum number of spaces required.

Amended plans dated 22/8/2022 were submitted, showing a total of 97 car spaces provided across the basement (84) and ground floor level (GFL) (13). The tandem spaces were removed, and all car spaces had direct access from the driveway.

Further amended plans dated 15/02/2023 were received showing 98 total car spaces, with 85 in the basement and 13 at GFL to ensure compliance with s5, Part 1, Schedule 4 of SEPP(Housing) 2021.

In summary, the applicant was advised that the plans submitted to DAP, having regard to height, FSR, landscaping, DSZ and car parking represented an over development of the site, and that all such variations would not be supported. As outlined above, though the application as initially submitted could not be supported due to the extent of the variations sought, the applicant has since reduced the scale of the proposal and the extent of the variations such that the proposal can be supported.

Assessment History

The development application was lodged on 2 December 2021. A chronology of the development application since lodgement is outlined below including the Panel's involvement (briefings, deferrals etc) with the application:

Table 2: Chronology of the DA

Date	Event
2 December 2021	DA lodged
15 December 2021	DA referred to external agencies (Essential Energy and WaterNSW)

19 January 2022	Exhibition of the application (19 January 2022 – 16 February 2022)
20 April 2022	Panel briefing
2 May 2022	Request for Information from Council to applicant
22 August 2022	Amended plans lodged reducing building height from 8 storeys to 6; reduced number of units from 110 to 95; reduction in FSR from 2.9:1 to 2.3:1; increased landscaping from 26.7% to 34.8%; increased deep soil zones from 14.8% to 15.2%; increase in car parking spaces from 94 to 97; change to unit mix in response to reduced height; and retention of the Lemon-scented Gum tree in the south western corner of the site dated 17 August 2022 accepted by Council under Section 38 of the Environmental Planning and Assessment Regulation 2021 ('EP&A Regulation') on 22 August 2022.
14 September 2022	Re-notification of the application (14 September 2022 – 12 October 2022)
5 October 2022	Informal Request for Information from Council to applicant via email
16 November 2022	Amended plans lodged showing location of proposed water meter, sewer connection openings, proposed sewer junctions, protection of existing sewer main during construction and amended Engineering Report detailing proposed water and sewer capacities, dated 16 November 2022 accepted by Council under Section 38 of the Environmental Planning and Assessment Regulation 2021 ('EP&A Regulation') on 16 November 2022.
7 December 2022	Second informal Request for Information from Council to applicant via email
15 February 2023	Amended plans lodged providing car parking spaces in accordance with Schedule 4 of SEPP (Housing) 2021 dated 15 February 2023 and revised Waste Management Plan dated 13 February 2023 accepted by Council under Section 38 of the Environmental Planning and Assessment Regulation 2021 ('EP&A Regulation') on 15 February 2023.

2.3 Site History

A number of approvals have been issued over the allotments that make-up the subject site. Historically, these have been for single detached dwellings. More notable, and recent, development applications are outlined below:

DA08/0360 (12 Powell St)	Demolition and construction of a 6-storey multi-dwelling housing comprising 6 residential units and basement carparking	19 December 2008 - Approved
DA08/0573 (6-10 Powell Street)	Demolition and erection of a 6-storey multi dwelling housing comprising 27 residential units and basement parking	11 February 2009 - Approved
DA11/0304 (6-10 Powell Street)	Seniors living – seventy-seven (77) units (JRPP)	30 April 2012 - Approved
DA11/0304.01 (6-10 Powell Street)	Amendment to Development Consent DA11/0304 for seniors living – seventy-seven (77) units (JRPP)	10 March 2017 - Approved

Recommended Conditions of Consent

A copy of the draft recommended conditions of consent were provided to the applicant on Thursday 6 April 2023.

Comments were received from the Applicant on Tuesday 11 April 2023 in respect of sixteen (16) of the draft recommended conditions, being:

- Deferred Commencement
- 7 (regulated system installation)
- 14 (peep holes)
- 16 (Sewer junction installation)
- 19 (Essential Energy)
- 21 (car parking)
- 22 (s7.11 contributions)
- 36 (acoustic report)
- 37 (food and drink areas)
- 38 (structural adequacy – flood)
- 39 (landscaping)
- 52 (work within road reserve)
- 55 (vegetation)
- 56 (bush stone curlews)
- 57 (vegetation)
- 58 (vegetation)
- 76 (construction impacts)
- 103 (environmental impacts)
- 125 (amenity)

In respect of the recommended Deferred Commencement, the applicant noted their disagreement with this path as the required plans had already been provided. The applicant also requested twenty-four (24) months to provide the documentation specified under Schedule A.

Council considers Deferred Commencement is correct as the applicant had been made aware when indicative plans were submitted on 16 March 2023 that they would be incorporated into the report to show compliance only and were not going to be accepted as

amended plans. Twelve (12) months is proposed to be provided to the applicant to satisfy Schedule A as the plans have already been drafted. Deferred Commencement and the timeframe to satisfy the Deferred Commencement is recommended for retention.

The applicant queried the need for condition 7 given the land use. The condition was recommended by Council's Environmental Health Section and is recommended for retention.

The applicant queried the need for condition 14 which requires the installation of peep holes into the front door of each unit. This condition has been included to optimise safety to residents and is recommended to be retained.

The applicant suggested an amendment to condition 16 to include the word 'site' in the second paragraph. This amendment has been accepted and the condition has been amended to read as follows:

The Applicant shall submit an 'Sewer Junction Installation, Alteration, Disconnection' form to Council's Water & Wastewater Unit to facilitate a sewer junction for the proposed development, from the existing sewer pipeline in Florence Street. The sewer junction works approved by Council's Water & Wastewater Unit must be completed before a S68 approval to Connect to Sewer (SEW) can be issued by Council's Building and Environmental Health Unit.

Amended Engineering Plans are to be submitted to Council's Water & Wastewater Unit demonstrating the location of the proposed sewer junction inspection opening (I.O.) to be located within the subject site as well as having a minimum 1.0 metre horizontal clearance from the proposed basement wall to be compliant with TSC Development Design Specification D15, including being free of landscaping greater than 1.0 metre in height at maturity.

The applicant requested the first sentence of condition 19 be reworded for clarity. As this sentence is derived from correspondence received from Essential Energy, it is recommended to be retained.

The applicant has recommended condition 21 be updated to require a minimum of 93 car spaces as SEPP (Housing) 2021 prevents the consent authority from providing a more onerous standard to the minimum required by the SEPP. The condition has been amended to read as follows:

The developer shall provide no less than 93 parking spaces including parking for the disabled (as required) in accordance with Section 108(k) and Section 5, Part 1, Schedule 4 of SEPP (Housing) 2021.

No more than five (5) car parking spaces are to be allocated to Staff.

Full design detail of the proposed parking and manoeuvring areas including integrated landscaping shall be submitted to the Certifier (Council or a Registered Certifier) with the Construction Certificate application for Building Works or the Subdivision Works Certificate application for Subdivision Works.

In respect of condition 22, the applicant queried that all site credits had been applied to the Section 7.11 Contribution calculations. The credits have been applied to Stage 2 only. The condition is to be retained.

The applicant noted a portion of condition 36 which references *plant selection* should be clarified as *mechanical plan selection*. The condition was recommended by Council's Environmental Health Section and is recommended to be retained.

In respect of condition 37, the applicant noted the kitchen provided on the ground floor is not a separate business or land use. The condition has been reviewed and retention of the condition is recommended to ensure the kitchen complies with Council requirements.

The applicant required clarification in respect of condition 38. The condition was reviewed and amended to read as follows:

A certificate of structural adequacy, by a qualified structural/civil engineer, with regard to the stability of the development as a result of flooding, shall be submitted to Council prior to the issue of any Construction Certificate.

The applicant requested the inclusion of *or other design solution achieving the same outcome* at the end of subpoint four (4) of condition 39. Council does not accept this inclusion and recommends retention of the condition.

The applicant queried the need for the language of condition 52 which references *the issue of this development consent*, noting issues had been resolved. It is considered the applicant has misread the beginning of the condition which states *Notwithstanding the issue of this development consent*. The condition is not identifying issues but noting that, despite a development consent having been issued, a separate consent from Council under Section 138 of the Roads Act 1993 is required. The wording is standard for this condition and is recommended for retention.

The applicant argues conditions 55-55 repeat each other. The conditions have been reviewed and are considered appropriate. Conditions 55-58 are recommended for retention.

The applicant noted repetition of condition 76. This has been amended and only one version of this condition is now recommended.

The applicant argues condition 103 is a repetition. Council considered the condition to be appropriate and is recommended for retention.

The applicant suggests incorporation of the word *adverse* to condition 125. The wording of this condition is standard and is recommended for retention.

3. STATUTORY CONSIDERATIONS

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

- (a) *the provisions of any environmental planning instrument, proposed instrument, development control plan, planning agreement and the regulations*
 - (i) *any environmental planning instrument, and*
 - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) *any development control plan, and*
 - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph), that apply to the land to which the development application relates,*
- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

These matters are further considered below.

It is noted that the proposal is considered to be:

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

These matters are considered further in this report.

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

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

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

The following Environmental Planning Instruments are relevant to this application:

- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*
- *State Environmental Planning Policy (Housing) 2021*
- *State Environmental Planning Policy (Planning Systems) 2021*
- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Transport and Infrastructure) 2021*
- *Tweed City Centre Local Environmental Plan 2012.*

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

Table 3: Summary of Applicable Environmental Planning Instruments

EPI	Matters for Consideration	Comply (Y/N)
State Environmental Planning Policy (Biodiversity & Conservation) 2021	Chapter 4: Koala Habitat Protection 2021	Y
State Environmental Planning Policy (Building Sustainability Index: BASIX)	No compliance issues identified subject to imposition of conditions on any consent granted.	Y
State Environmental Planning Policy (Housing) 2021	Chapter 3: Diverse Housing Housing for Seniors and people with a disability <ul style="list-style-type: none"> • Section 84 Development standards – general • Section 85 Development standards for hostels and independent living units • Section 87 Additional floor space ratios • Section 93 Location and access to facilities and services – independent living units • Section 95 Water and sewer • Section 97 Design of in-fill self-care housing • Section 98 Design of seniors housing • Section 108 Non-discretionary development standards for independent living units – the Act, s4.15 	N
State Environmental Planning Policy (Planning Systems) 2021	Chapter 2: State and Regional Development <ul style="list-style-type: none"> • Section 2.19(1) declares the proposal regionally significant development pursuant to Section 2 of Schedule 6 as it is a development that has a capital investment value of more than \$30 million. 	Y
SEPP (Resilience & Hazards) 2021	Chapter 2: Coastal Management <ul style="list-style-type: none"> • Section 2.10 (1) & (2) - Development on land within the coastal environment area • Section 2.11(1) - Development on land within the coastal use area Chapter 4: Remediation of Land <ul style="list-style-type: none"> • Section 4.6 - Contamination and remediation has been considered in the Contamination Report and the proposal is satisfactory subject to conditions. 	Y
State Environmental Planning Policy (Transport and Infrastructure) 2021	Chapter 2: Infrastructure <ul style="list-style-type: none"> • Section 2.48(2) (Determination of development applications—other development) – electricity transmission - the proposal is satisfactory subject to conditions. 	Y
Proposed Instruments	No compliance issues identified.	Y

Tweed City Centre LEP (TCCLEP) 2012	<ul style="list-style-type: none"> • Section 2.3 Zone objectives and Land Use Table • Section 4.3 Height of buildings • Section 4.4 Floor space ratio • Section 4.6 Exceptions to development standards • Section 5.21 Flood planning • Section 6.1 Acid sulfate soils • Section 6.3 Floodplain risk management • Section 6.6 Minimum building street frontage • Section 6.9 Airspace operations • Section 6.10 Design excellence 	N
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Consideration of the relevant SEPPs is outlined below.

State Environmental Planning Policy (Biodiversity and Conservation) 2021

Chapter 4: Koala Habitat Protection 2021

The subject site is located within the Tweed Heads Koala Management Area and so is subject to assessment against this Chapter of the SEPP.

The proposal, as amended in the response to RFI received on 22 August 2022 was referred to Council's Sustainability and Environment Unit who noted the following:

It was verified during site inspection that the site does not support Preferred Koala Food Trees or Preferred Koala Habitat. No Koala activity was recorded. No further consideration of the TCCKPoM is warranted.

It is considered the proposal, as amended, is not in conflict with the SEPP and is therefore acceptable in this regard.

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

State Environmental Planning Policy – Building Sustainability Index BASIX– 2004 ('BASIX SEPP') applies to the proposal. The objectives of this Policy are to ensure that the performance of the development satisfies the requirements to achieve water and thermal comfort standards that will promote a more sustainable development.

The application is accompanied by BASIX Certificate No.1237777M prepared by Senica Consultancy Group Pty Ltd dated 15 September 2021 committing to environmentally sustainable measures, relevant water, thermal and energy commitments as required by the BASIX SEPP.

An amended BASIX Certificate (Certificate No. 1365070M and dated 21 December 2022) was submitted on 11 January 2023 in response to Council's request dated 28 November 2022 for amended BASIX and NatHERs to be submitted reflecting the amended plans submitted to Council on 22 August 2022.

The amended Certificate demonstrates the proposed development satisfies the relevant water, thermal and energy commitments as required by the BASIX SEPP. The proposal is consistent with the BASIX SEPP subject to the recommended conditions of consent.

State Environmental Planning Policy (Housing) 2021

Chapter 3 – Diverse Housing, Part 5 Housing for seniors and people with a disability

Division 3 Development Standards

Refer to Attachment D for relevant controls.

Section 84 Development standards – general

The subject site has an area of approximately 4,862.3m² and street frontages to Florence Street and Powell Street measuring approximately 97.3m and 78.2m respectively.

Whilst the proposal seeks a building height of 22.6m, this does not result from servicing equipment as the proposal is for a 6-storey building.

The proposal is therefore generally consistent with the requirements of section 84 of the SEPP.

Section 85 Development standards for hostels and independent living units

S85(1) states that development consent must not be granted if the development has not demonstrated compliance with the relevant standards specified in Schedule 4 where the development is for the purposes of a hostel or independent living units.

Independent living units are defined by the TCCLEP 2012 as:

independent living unit means a dwelling or part of a building, whether or not attached to another dwelling—

- (a) used to house seniors or people with a disability, and*
 - (b) containing private facilities for cooking, sleeping and bathing, and*
 - (c) where clothes washing facilities or other facilities for use in connection with the dwelling or part of a building may be provided on a shared basis,*
- but does not include a hostel.*

Note—

*Independent living units are a type of **seniors housing**—see the definition of that term in this Dictionary.*

As discussed further below in this report, the proposed development, as amended, does not comply with section 8(b)(i) and (ii), or with section 19(c) of Schedule 4 of the SEPP which relate to minimum clearances beside a bed and minimum clearance in front of laundry appliances (e.g. washing machine). Whilst s85 is clear in noting development consent must not be granted unless the independent living unit complies with the relevant standards, including sections 8 and 19, the applicant has demonstrated in indicative plans dated 16/03/2023 that these standards can be met. Further detail is provided on these matters later in this report. Refer to **Figures 11 to 14** below.

As such, a Deferred Commencement consent is proposed, including a condition of consent requiring the provision of amended plans showing compliance with sections 8(b)(i) and (ii) and section 19 prior to the consent becoming operational. The proposal is therefore considered to be capable of meeting the requirements of the section, subject to fulfilling the proposed conditions of consent in Attachment B

Section 87 Additional floor space ratios

The subject site is permitted a maximum FSR of 1.8:1 under TCCLEP 2012, with an additional 0.27:1, being 15%, permitted under this section of the SEPP. A maximum FSR of 2.07:1 is therefore afforded to the site.

The proposal, as amended, seeks a total FSR of 2.3:1, a variation of 0.23:1. A clause 4.6 Variation Request accompanied the amended proposal and has been discussed later in this report.

The proposal is considered acceptable in respect of FSR.

Division 4 Site-related requirements

Refer to Attachment D for relevant controls.

Section 93 Location and access to facilities and services – independent living units

The subject site is located within close proximity to a number of services and facilities including, but not limited to, Tweed Hospital, Club Tweed, and Tweed Mall Shopping Centre.

Tweed Hospital and Club Tweed are both in walking distance from the subject site, located adjacent to the site on the southern side of Florence Street.

Tweed Mall offers a number of services including supermarkets, medical centre, post office, cafes, and clothing stores. Located approximately 200m to the north of the site, it is accessible via walking, driving or public transport, with bus routes 600 and 601 provided transport to and from the Mall from bus stops located either side of both Florence Street (approximately 190m west of the site) and Powell Street (approximately 150m south of the site).

Sealed footpaths are provided along both Florence and Powell Streets providing suitable access pathways to the bus stops, hospital, and club. Sealed footpaths are also provided along Wharf Street and Frances Street for those who may walk or use a mobility scooter to access the Mall.

The site satisfies the requirements of section 93 of the SEPP.

Section 95 Water and sewer

The proposed development will be connected to Council's reticulated water system. The development will also be connected to the existing sewer system.

The proposal satisfies the requirements of this section of the SEPP.

Division 5 Design requirements

Refer to Attachment D for relevant controls.

98 Design of seniors housing

Section 98 notes development consent must not be issued for developments for the purposes of seniors housing unless they have demonstrated adequate consideration of the design principles provided under Division 6 of the SEPP. These have been addressed below.

Division 6 Design principles

Refer to Attachment D for relevant controls.

99 Neighbourhood amenity and streetscape

The subject site is located within Tweed City Centre which is currently undergoing a transition from lower density residential dwellings with lower building heights to an area of medium density built forms including 5 storey residential flat buildings achieving the maximum building heights permitted. Whilst the proposed development seeks to exceed the maximum building height permitted for the site, it is considered the proposed development, as amended, is suitable for the emerging character of the locality. Retention of key elements such as the Lemon-scented Gum tree in the south-western corner and compliance with front setbacks ensures the development is sympathetic to the existing character and built form of the area.

100 Visual and acoustic privacy

Whilst the north-eastern corner of the proposed development does not meet the minimum setback required of 8m, visual and acoustic privacy to the adjoining development to the north, being No. 3 Ivory Place is retained due to the inclusion of a privacy screen to the balcony of north-facing units – see **Figure 9** below.

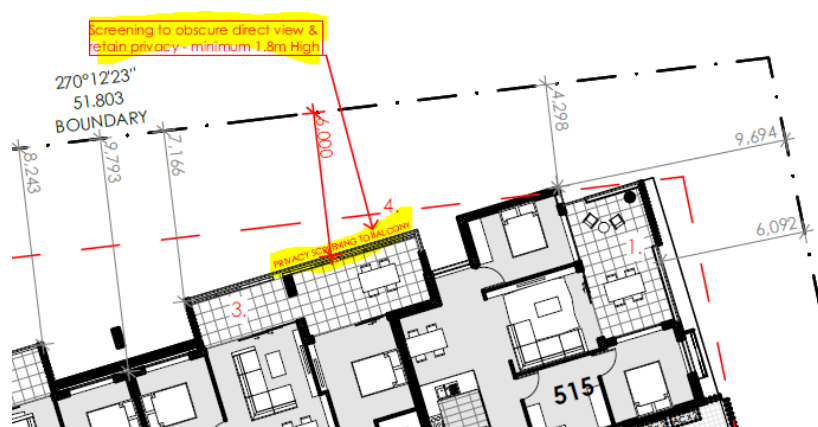


Figure 9: Privacy screen provided to unit 514 (Level 4) and to the same unit on all other levels

Furthermore, through site planning, the non-compliant component of the building is located beyond the easternmost extent No. 3 Ivory Crescent, further reducing privacy impacts to that development.

In respect of the location of proposed new independent living units, it is considered appropriate distances from parking areas, driveways and paths have been achieved, providing the new dwellings with appropriate acoustic and visual privacy.

101 Solar access and design for climate

Once the seven (7) lots that comprise the subject site are amalgamated, the proposed seniors housing, as amended, will be sited on a corner block. Whilst shadows cast by the amended proposal will reach the Tweed Hospital site to the south and the Anglican Church to the south-west, the majority of shadows cast by the amended proposal will fall onto Florence Street to the south and Powell Street to the west. Furthermore, the shadows cast onto the Tweed Hospital site will largely fall across on-site parking and landscaped areas,

and not on hospital rooms. Solar access to neighbouring residential dwellings is largely retained and will not be adversely impacted by the proposal.

Site planning, building design including the provision of indoor and outdoor communal open spaces at ground floor level, level 4 and level 5, dwelling design and landscaping generally responds to the climate by allowing for prevailing breezes to reach the development thereby reducing the need for energy use.

102 Stormwater

The proposal, as amended, incorporates the use of on-site detention system to help manage the effects of stormwater.

The proposal, as amended, was referred to Council's Roads and Stormwater Unit who raised no concerns with the amended proposal, subject to recommended conditions of consent.

103 Crime prevention

The proposal, as amended, achieves the environmental design principles relating to crime prevention and provides the development with appropriate security measures including entrance into the basement as well as the development itself.

Pedestrian access to the site is via a check-in lobby located off the Powell Street site entrance. Entrance to each unit within the development is via this lobby, either at ground floor level or via lift cores to upper levels.

A condition of consent has been recommended to incorporate 'peep holes' into each dwelling's front door to allow residents to see people approaching their dwelling.

104 Accessibility

The proposed development, as amended, provides adequate accessibility to and from the site. Stairs and a ramp are provided from Powell Street to the check-in lobby, with a ramp providing internal access to Florence Street adjacent to the sculpture garden. Access within the development is achieved by providing level hallways/walkways/paths that are wide enough to allow wheelchairs and the like to utilise the accessways.

Parking is via a basement level with additional parking provided at the northern end of the ground floor. Lift cores extend from the basement up to ensure access to and from the basement is achievable for all.

105 Waste management

Three (3) waste rooms are provided in the basement and house receptacles for general waste and recycling. A condition of consent is recommended to ensure appropriate waste facilities are provided within each dwelling, including separate areas for general waste and recycling.

Division 7 Non-discretionary development standards

Refer to Attachment D for relevant controls.

Section 108 - Non-discretionary development standards for independent living units – the Act, s4.15 - is the only relevant section within this Division.

As per this section, the objective is to:

Identify development standards for particular matters relating to development for the purposes of independent living units that, if complied with, prevent the consent authority from requiring more onerous standards for the matters.

Section 108(2)(a) denotes a maximum permissible building height of 9.5m, excluding servicing equipment on the roof of a building, and 108(2)(c) denotes the density and scale of the buildings when expressed as a floor space ratio is 0.5:1 or less. The proposal, as amended, seeks a building height of 22.6m and a FSR of 2.3:1, neither of which comply with the development standard.

However, section 4.15(3)(b) of the EP&A Act 1979 provides flexibility in this regard, stating:

(3) if an environmental planning instrument or a regulation contains non-discretionary development standards and development the subject of a development application does not comply with those standards –

(a) subsection (2) does not apply and the discretion of the consent authority under this section and section 4.16 is not limited as referred to in that subsection, and

(b) a provision of an environmental planning instrument that allows flexibility in the application of a development standard may be applied to the non-discretionary development standard.

In accordance with s4.15(3) of the EP&A Act, maximum building height and maximum FSR prescribed under the TCCLEP 2012 are applied where the proposal does not meet the non-discretionary development standard. As such, s108(2)(a) and (c) does not apply. Whilst development standards prescribed by TCCLEP 2012 override maximum height of building and FSR non-discretionary standards, the TCCLEP 2012 is silent in respect of deep soil zones (s108(2)(f)), solar access (s108(2)(g) and minimum area and dimensions of private open space (s108(2)(h)(i) and (ii)). The proposal, as amended, does not comply with these non-discretionary development standards.

Deep soil zones

S108(2)(f) requires at least 15% of the site area to be deep soil zones, with a minimum dimension of 3m. The standard also requires 65% of those deep soil zones to be provided at the rear of the development, where practical.

15% of the site area (4862.3m²) equates to 729.3m². The submitted proposal, as amended, notes compliance with the area standard, stating 735m² of the site is deep soil zone. However, this calculation has failed to address the 3m minimum dimension required. Calculations undertaken by Council using Objective Trapeze calculate the total deep soil zone, complying with minimum dimension requirements, as being 728m² or 14.9%. A variation of 1.3m² or 0.17% exists. 65% of 728m² equates to 473.2m². An area of 459m², or 58.6%, of the complying deep soil zone is proposed at the 'rear' of the development.

As the applicant has stated they comply with the development standard, no justification to the shortfall has been provided. The variation to the 15% requirement equates to approximately 1.3m² or 0.17% and likely results from margin for error. Irrespective, the variation is minimal and the areas of deep soil zone that have been provided are useable spaces that can be enjoyed by residents and their visitors and have been appropriately distributed across the site.

Solar access

Section 108(g) of SEPP (Housing) 2021 requires:

At least 70% of the dwellings receive at least 2 hours of direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces.

In respect of the proposal, as amended, 70% of the dwellings equates to 67 units. Amended plans received 15 February 2023 note 68 units, or 71.5% of units receive 2 hours of solar access, including three (3) south facing units located on Level 5 (being units 606, 607 and 608).

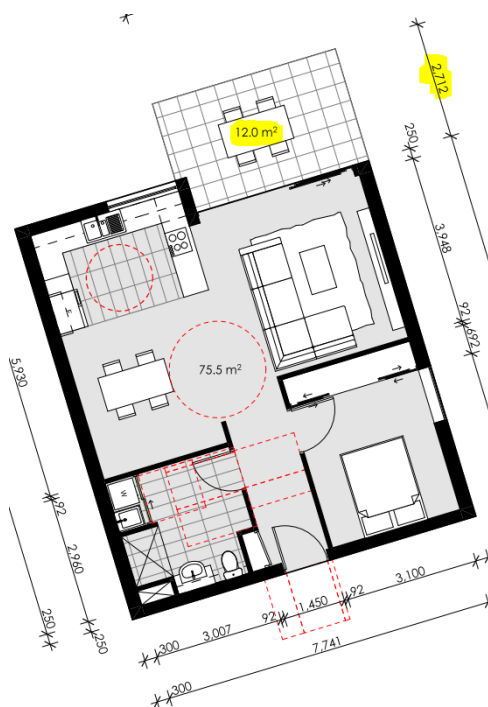
Council does not consider these three (3) units to achieve compliance with the standard, and that the proposal achieves compliance for 68.4% of units. Nevertheless, as discussed later in this report, the variation has been accepted.

This matter has been discussed, in detail, in the **Key Issues** section of this report.

Private open space

s108(2)(h)(i) requires a minimum area of 15m² private open space be provided to ground floor dwellings (whether wholly or in part) of multi-storey buildings, and s108(2)(h)(ii) requires a minimum dimension of 3m for that private open space.

The proposal, as amended, seeks to provide unit 107 (unit type K-3), in the north-eastern corner of the development, an area of private open space of 12m² with a minimum dimension of 2.7m (depth). This results in a variation to 108(h)(i) of 3m² or 20%, and to 108(h)(ii) 300mm or 10% for one (1) of the seven (7) ground floor units. Refer to **Figure 10** below.



1 BED - UNIT TYPE K-3

Figure 10: Snippet of Unit Type K-3 showing undersized private open space in m² and dimension (see yellow highlight)

The applicant did not provide a response to the development standard in the assessment against SEPP (Housing) 2021 originally submitted as part of the DA package. An amended

assessment was provided as part of the response to RFI package submitted to Council on 22 August 2022, therefore providing no justification to the proposed non-compliance.

A deferred commencement condition of consent is recommended requiring the provision of plans showing unit 107 as achieving a compliant area of private open space, without compromising compliance with any other standard.

Schedule 4 - Standards concerning accessibility and usability for hostels and independent living units

Part 1- Standards applying to hostels and independent living units

The proposal, as amended by the 15 February 2023 plan set, is generally compliant with the requirements of this section of the SEPP or is achievable via recommended conditions of consent as discussed below.

The amended proposal is non-compliant in respect of section 8(b) of the SEPP which reads as follows:

8. Bedroom

A least one bedroom within each dwelling must have –

(b) a clear area for the bed of at least –

(i) 1,200 millimetres wide at the foot of the bed, and

(ii) 1,000 millimetres wide beside the bed between it and the wall, wardrobe or any other obstruction

As part of the amended plan set received 15 February 2023, the applicant provided layout plans for unit types K-1, K-3, K-4 and K-5, as requested by Council.

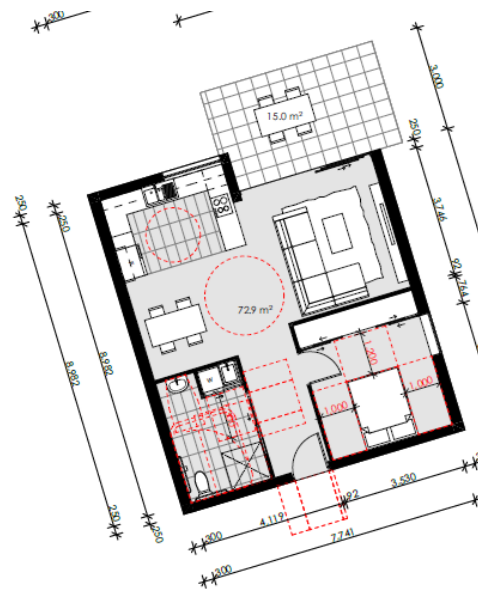
Unit types K-1, K-4 and K-5 did not comply with either 8(b)(i) or (ii) whilst unit type K-3 failed to comply with 8(b)(ii).

The non-compliance was raised with the applicant on 14 March 2023, noting no justification for the non-compliance had been provided and any such variation to the development standard would not be supported.

On 16 March 2023, the applicant submitted indicative plans which demonstrate that compliance with the development standard could be achieved for each of the noted unit types – see **Figures 11 and 12** below.



1 BED - UNIT TYPE K-1

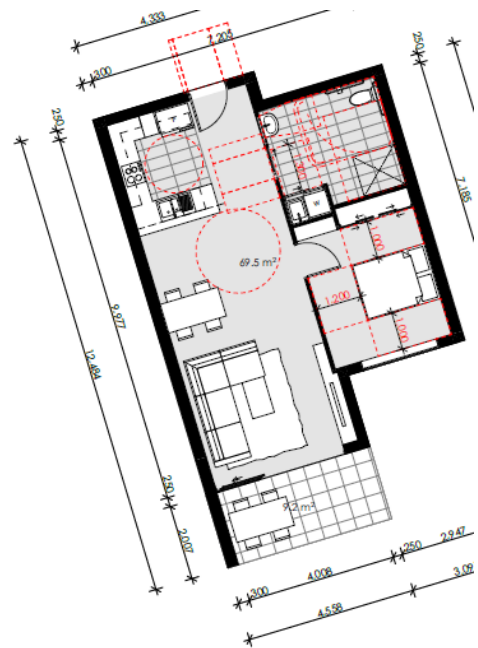


1 BED - UNIT TYPE K-3

Figure 11: Indicative plans showing compliance with s8(b)(i) and (ii) achievable for Unit Types K-1 and K-3



1 BED - UNIT TYPE K-4



1 BED - UNIT TYPE K-5

Figure 12: Indicative plans showing compliance with s8(b)(i) and (ii) achievable for Unit Types K-4 and K-5

As the applicant has shown compliance can be achieved without compromising any other requirement, the issue is considered to be resolvable via a Deferred Commencement condition of consent requiring amended plans showing compliance with the development standard to be submitted. This condition has been recommended.

Part 2 – Additional standards for independent living units

The proposal, as amended by the 15 February 2023 plan set, is generally compliant with the requirements of this section of the SEPP or is achievable via recommended conditions of consent.

The amended proposal is non-compliant in respect of section 19(c) of the SEPP which reads as follows:

19. Laundry

*An independent living unit must have a laundry that has –
(c) a clear space in front of appliances of at least 1,300 millimetres...*

Unit types C-1 and C-2 do not comply with the standard.

The non-compliance was raised with the applicant on 14 March 2023, noting no justification for the non-compliance had been provided and any such variation to the development standard would not be supported.

On 16 March 2023, the applicant submitted indicative plans to demonstrate that compliance with the development standard could be achieved for each of the noted unit types – see **Figures 13 and 14** below.

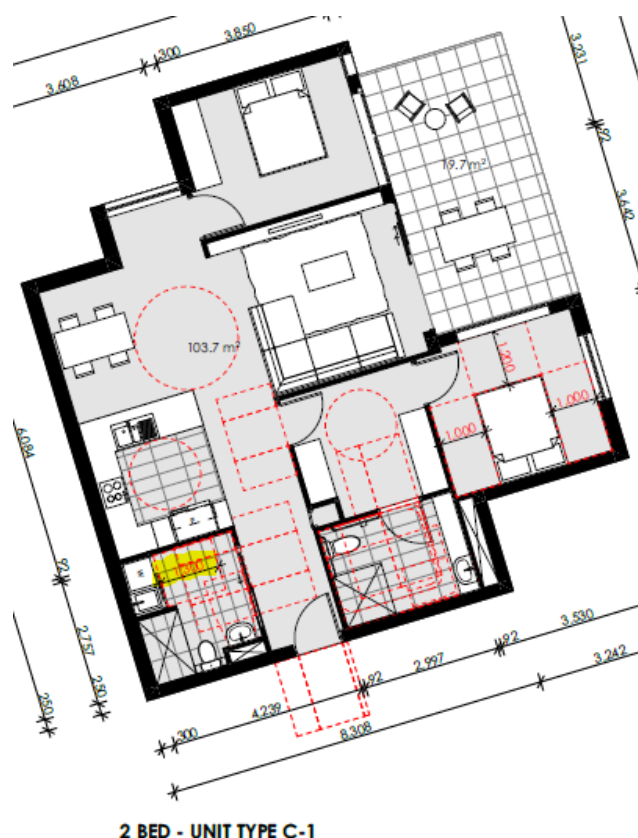


Figure 13: Indicative plans showing compliance with s19(c) achievable for Unit Type C-1 (shown highlighted yellow)

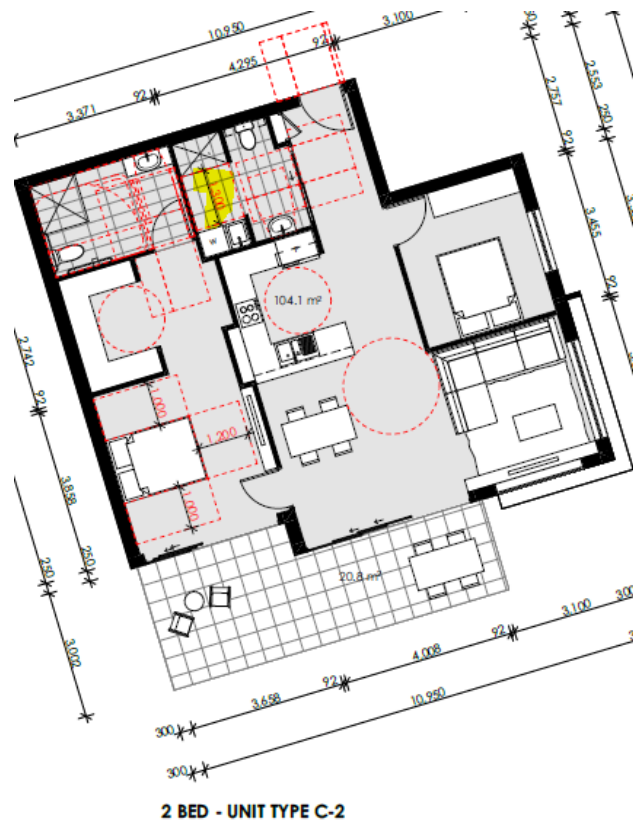


Figure 14: Indicative plans showing compliance with s19(c) achievable for Unit Type C-2 (shown highlighted yellow)

As the applicant has shown compliance can be achieved without compromising any other requirement, the issue is considered to be resolvable via a Deferred Commencement condition of consent requiring amended plans showing compliance with the development standard to be submitted. This condition has been recommended.

State Environmental Planning Policy (Planning Systems) 2021 ('Planning Systems SEPP')

Chapter 2: State and Regional Development

2 General development over \$30 million

Development that has a capital investment value of more than \$30 million.

The proposed seniors housing development, as originally proposed, has a proposed capital investment value of \$53,153,800.00 (excluding GST) which exceeds the \$30 million threshold for general development.

Therefore, in this case, the Northern Regional Planning Panel (NRPP) will have determining powers of the Consent Authority and will be responsible for determining the application.

State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 2: Coastal Management

The subject site is mapped as being within the coastal use area and the coastal environment area.

Division 3 Coastal Environment Area

2.10 Development on land within the coastal environment area

- (1) Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - (a) the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - (b) coastal environmental values and natural coastal processes,*
 - (c) the water quality of the marine estate (within the meaning of the Marine Estate Management Act 2014), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - (d) marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - (e) existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (f) Aboriginal cultural heritage, practices and places,*
 - (g) the use of the surf zone.*
- (2) Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—*
 - (a) the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
 - (b) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (c) if that impact cannot be minimised—the development will be managed to mitigate that impact.*
- (3) This section does not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6.*

Division 4 Coastal Use Area

2.11 Development on land within the coastal use area

- (1) Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*
 - (a) has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - (i) existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) Aboriginal cultural heritage, practices and places,*
 - (v) cultural and built environment heritage, and*
 - (b) is satisfied that—*

- (i) the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
 - (c) has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*
- (2) This section does not apply to land within the Foreshores and Waterways Area within the meaning of State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 6.*

It is not considered the proposed seniors housing development will result in any unacceptable impacts on the coastal environment or areas of coastal use. The proposal is not in conflict with the SEPP and is considered acceptable in this instance.

Division 5 General

2.13 Development in coastal zone generally – coastal management programs to be considered

Development consent must not be granted on land within the coastal zone unless the consent authority has taken into consideration the relevant provisions of any certified coastal management program that applies to the land.

Tweed Shire Coastline Management Plan 2005

This Plan applies to the Shire's 37 kilometre coastline and has a landward boundary that includes all lands likely to be impacted by coastline hazards plus relevant Crown lands. The primary objectives of the Coastal Management Plan are to protect development; to secure persons and property; and to provide, maintain and replace infrastructure.

The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline (Clause 2.4.1) including: recreation; water quality; heritage; land use and development potential; coastal ecology and, social and economic demand. Under this plan, the subject site is not identified as having any key management actions or specific management strategies. The proposal is considered to be consistent with the objectives of the Management Plan. The proposed development is not considered to impact upon that coastline with regard to demands and issues identified within the Plan for the whole of the Tweed coastline.

Tweed Coast Estuaries Management Plan 2013

This Plan applies to the Cudgen Creek, Cudgen Lake, Cudgera Creek and Mooball Creek systems. The subject site is located within the study area of Cudgen Lake however, it is not considered the proposed development will adversely impact on the management of Cudgen Lake.

Coastal Zone Management Plan for Cobaki and Terranora Broadwater

(adopted by Council at the 15 February 2011 meeting) This Plan applies to the Cobaki and Terranora Broadwater and does not apply to the subject site.

Chapter 4: Remediation of Land

4.6 Contamination and remediation to be considered in determining development application

- (1) *A consent authority must not consent to the carrying out of any development on land unless—*
- (a) it has considered whether the land is contaminated, and*
 - (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*
 - (c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.*
- (2) *Before determining an application for consent to carry out development that would involve a change of use on any of the land specified in subsection (4), the consent authority must consider a report specifying the findings of a preliminary investigation of the land concerned carried out in accordance with the contaminated land planning guidelines.*
- (3) *The applicant for development consent must carry out the investigation required by subsection (2) and must provide a report on it to the consent authority. The consent authority may require the applicant to carry out, and provide a report on, a detailed investigation (as referred to in the contaminated land planning guidelines) if it considers that the findings of the preliminary investigation warrant such an investigation.*
- (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).*

A Preliminary Site Investigation (PSI), prepared by HMC Environmental Consulting Pty Ltd and dated 15 September 2021, was submitted with the development application and consisted of a desktop search of current and former land use, a review of available historical records and a site walkover.

The PSI concluded “A review of available information, and a detailed site inspection did not record any potentially contaminating activities on or in the immediate vicinity of the investigation area. In relation to potential site contamination associated with the current and former land use, the investigation area, and immediate surrounds, located at Lots 113-119 DP 237806, 6-12 Powell Street & 33-37 Florence Street, Tweed Heads NSW, as shown in Appendix 2 of this report, are considered suitable for the proposed residential development.”

The proposal was referred to Council’s Environmental Health Section (EHU) who raised no objection to the proposal in respect of land contamination, but did note the separately submitted Pre-Demolition Under Slab Soil Contamination Investigation Report, prepared by

HMC Environmental Consulting Pty Ltd and dated 15 September 2021, identified “*potential soil contamination associated with the former use of termite chemicals in the underslab area to the existing structures...at Lots 113-119 DP 237809, 6-12 Powell Street & 33-37 Florence Street, Tweed Heads.*”

The Under Slab report noted the subject site was suitable for the proposed development “*subject to: the preparation and implementation of a Remedial Action Plan...*”.

This information was provided to the applicant as part of the formal RFI issued on 02 May 2022, requesting the submission of a Remedial Action Plan (RAP). A RAP, prepared by HMC Environmental Consulting Pty Ltd and dated August 2022 was submitted as part of the applicant’s response to RFI package. The provided information was referred back to the EHU for review and comment, who accepted the RAP, subject to relevant conditions of consent.

These conditions have been included within the recommended conditions. It is therefore considered Section 4.6 of the SEPP has been satisfied.

State Environmental Planning Policy (Transport and Infrastructure) 2021

Subdivision 2 Development likely to affect an electricity transmission or distribution network

2.48 Determination of development applications – other development (previously clause 45 of SEPP (Infrastructure) 2007).

2.48 Determination of development applications—other development

- (1) *This section applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—*
 - (a) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
 - (b) *development carried out—*
 - (i) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
 - (ii) *immediately adjacent to an electricity substation, or*
 - (iii) *within 5m of an exposed overhead electricity power line,*
 - (c) *installation of a swimming pool any part of which is—*
 - (i) *within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
 - (ii) *within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
 - (d) *development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*
- (2) *Before determining a development application (or an application for modification of a consent) for development to which this section applies, the consent authority must—*
 - (a) *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*

(b) take into consideration any response to the notice that is received within 21 days after the notice is given.

(3) Subsection (2) does not apply to development specified in subsection (1)(b) if the development involves only one or more of the following—

- (a) internal alternations to a building,*
- (b) a change of use of an existing building,*
- (c) a change to the hours of operation specified in the development consent,*
- (d) a subdivision that does not involve construction work.*

In accordance with section 2, the development application was referred to Essential Energy (EE) who noted it had no comments to make as to potential safety risks arising from the proposed development, providing a number of general comments instead.

On 16 November 2022 EE confirmed that the amended plans received on 22 August 2022 did not provide any new or additional information that resulted in a change to the original comments provided.

The amended plans received on 15/02/2023 were referred to EE for review and comment. Whilst no objections were raised, comments pertaining to potential safety risks were provided.

The following comments have been provided by Essential Energy throughout the course of the assessment process:

Strictly based on the documents submitted, Essential Energy the following comments to make as to potential safety risks arising from the proposed development:

- If a padmount substation is required for the development then a distance of 6 metres from the nearest part of the development to the padmount (measured horizontally) is required.*

Essential Energy makes the following general comments:

- If the proposed development changes, there may be potential safety risks and it is recommended that Essential Energy is consulted for further comment;*
- Any existing encumbrances in favour of Essential Energy (or its predecessors) noted on the title of the above property should be complied with;*
- Any activities in proximity to electrical infrastructure must be undertaken in accordance with the latest industry guideline currently known as ISSC 20 Guideline for the Management of Activities within Electricity Easements and Close to Infrastructure;*
- Prior to carrying out any works, a “Dial Before You Dig” enquiry should be undertaken in accordance with the requirements of Part 5E (Protection of Underground Electricity Power Lines) of the Electricity Supply Act 1995 (NSW); and*
- It is the responsibility of the person/s completing any works around powerlines to understand their safety responsibilities. SafeWork NSW (www.safework.nsw.gov.au) has publications that provide guidance when working close to electricity infrastructure.*

These include the Code of Practice – Work near Overhead Power Lines and Code of Practice – Work near Underground Assets.

- As part of the subdivision, an easement/s are/is created for any existing electrical infrastructure. The easement/s is/are to be created using Essential Energy's standard easement terms current at the time of registration of the plan of subdivision;*
- Council should ensure that a Notification of Arrangement (confirming satisfactory arrangements have been made for the provision of power) is issued by Essential Energy with respect to all proposed lots which will form part of the subdivision, prior to Council releasing the Subdivision Certificate. It is the Applicant's responsibility to make the appropriate application with Essential Energy for the supply of electricity to the subdivision, which may include the payment of fees and contributions.*

These comments have been conditioned. Section 2.48 is considered satisfied.

Tweed City Centre Local Environmental Plan 2012

The relevant local environmental plan applying to the site is the *Tweed City Centre Local Environmental Plan 2012* ('the LEP'). The aims of the LEP include:

- (aa) to protect and promote the use and development of land for arts and cultural activity, including music and other performance arts,*
- (a) to give effect to the desired outcomes, strategic principles, policies and actions contained in the Council's adopted strategic planning documents,*
- (b) to promote employment, residential, recreational, arts, social, cultural and tourism opportunities in Tweed City Centre,*
- (c) to encourage the responsible sustainable management and conservation of Tweed City Centre's natural and environmentally sensitive areas, the built environment and cultural heritage,*
- (d) to promote development that is consistent with the principles of ecologically sustainable development,*
- (e) to promote the economic revitalisation of Tweed City Centre,*
- (f) to strengthen Tweed City Centre as a multi-functional and innovative regional centre that encourages employment and economic growth,*
- (g) to protect and enhance the vitality, identity and diversity of Tweed City Centre,*
- (h) to facilitate building design excellence appropriate to a regional city in Tweed City Centre.*

The construction of a vertical village for the purpose of seniors housing on the subject site is consistent with the strategic direction for the locality. The proposal will result in increased residential opportunities for a dominant demographic of people who reside in the Tweed and promotes economic revitalization through the consolidation and development of seven (7) underdeveloped allotments.

Zoning and Permissibility (Part 2)

The site is located within the R3 – Medium Density Residential Zone pursuant to Section 2.2 of the LEP (see **Figure 15** below).

According to the definitions in Section 4 (contained in the Dictionary), the proposal satisfies the objectives of Zone R3 which is a permissible use with consent in the Land Use Table in Section 2.3. It is also noted that.

The zone objectives are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The proposed seniors housing development is permissible within the R3 zone and is consistent with the first two objectives in that it provides additional housing opportunities for the community, in a medium density format that is considered to be appropriate for the locality.

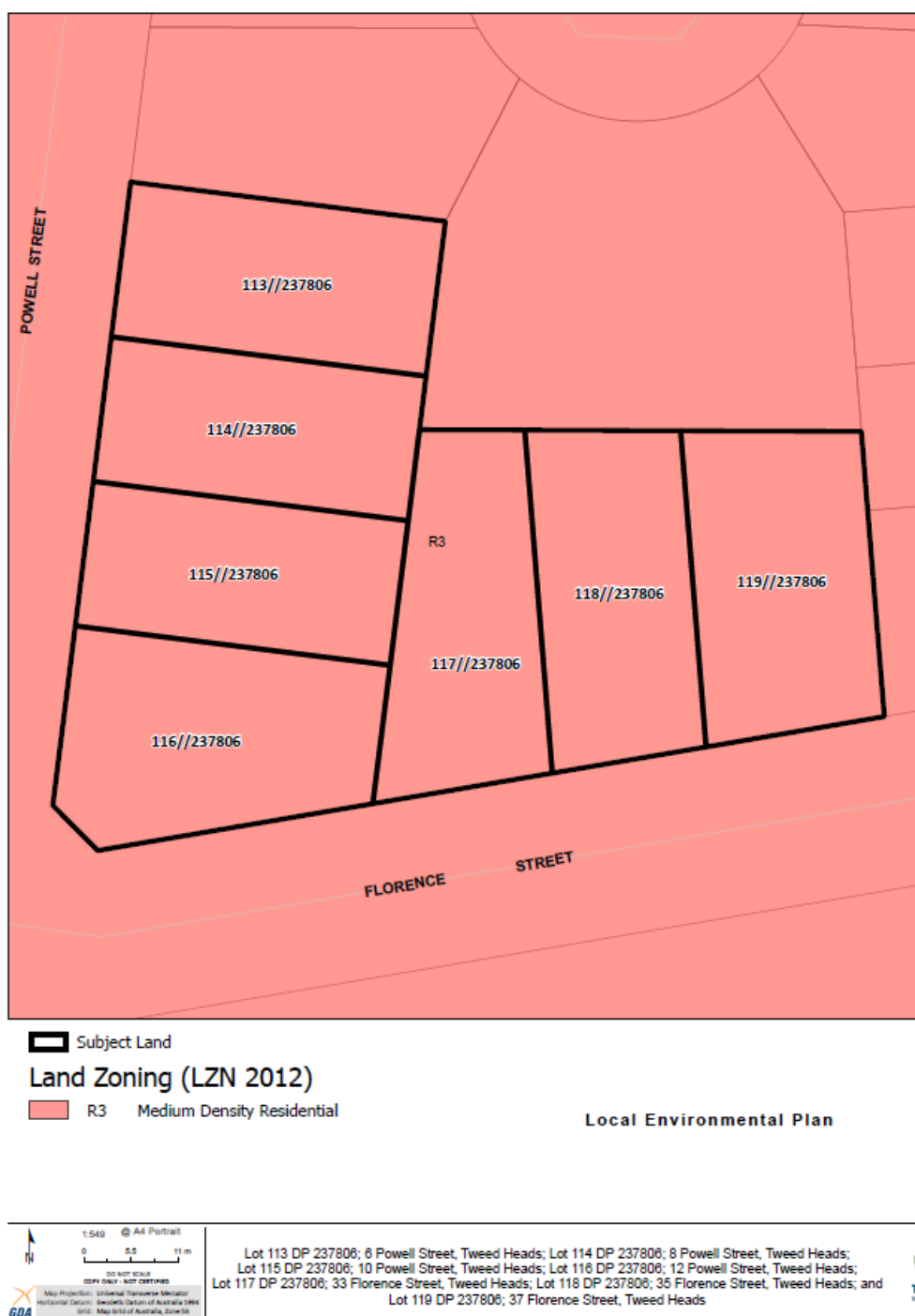


Figure 15: Site zoning map

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

The LEP also contains controls relating to development standards, miscellaneous provisions and local provisions. The controls relevant to the proposal are considered in **Table 4** below.

The proposal does not comply with the development standards in Part 4 of the LEP and accordingly, a Section 4.6 Variation request has been provided with the application for the exceedance of the maximum height of buildings and floor space ratio.

Table 4: Consideration of the LEP Controls

Control	Requirement	Proposal	Complies?
Height of buildings (s4.3(2))	22 metres	22.6 metres Refer to Key Issues.	No
FSR (s4.4(2))	1.8:1 (8,752.1m ²) (2.07:1/10,064.9m ² including 15%/0.27:1 bonus under SEPP(Housing) 2021	2.3:1 (11,498.8m ²) Refer to Key Issues.	No
Exceptions to development standards	Seek variation to section 4.3 height of Buildings and 4.4 FSR	Written 4.6 variation request, as amended, provided	Yes
Flood planning (s5.21)	Compliance with s5.21(2) and (3)	PMF Refuge provided	Yes
Acid sulphate soils (s6.1)	Class 2 - Works below the natural ground surface. - Works by which the watertable is likely to be lowered.	Excavation to facilitate construction of basement is proposed.	Yes
Minimum building street frontage (s6.6)	20m	Approx. 79.71m (Powell St) and 98.91m (Florence St)	Yes
Airspace Operations (s6.9)	RL49.5m AHD Limitation Surface	Max = lift overrun Building B RL24.70m AHD	Yes
Design Excellence (s6.10)	Compliance with s6.10(3)	The Applicant has provided a response to the Design Excellence criteria under section 6.1.10 of the amended Statement of Environmental Effects.	Generally complies

The proposal is considered to be generally consistent with the LEP with the exception of Height of Building and Floor Space Ratio. Refer to section below for assessment of the submitted section 4.6 variation request (as amended).

Section 4.6 Requests

The Development Standard to be varied and extent of the variation

The proposal, as amended, seeks to vary section 4.3 Height of Buildings and section 4.4 Floor Space Ratio of the TCCLEP 2012.

4.3 - Height of Buildings

Section 4.3 Height of Building permits a maximum building height of 22m for the subject site. The proposal, as amended, seeks approval for a maximum building height of 22.6m, a variation of 600mm or **2.72%**.



Figure 16: Southern elevation showing lift overrun of Building B (left)

4.4 – Floor Space Ratio

Section 4.4 Floor Space Ratio (FSR) permits a maximum FSR of 1.8:1. The subject site has an area of 4,862.3m², equating to a maximum permitted gross floor area of 8,752.1m². In accordance with Section 87(2)(b)(i) of SEPP (Housing) 2021, an additional 15% FSR is afforded to the development as it seeks an exceedance of the maximum permitted building of less than 3.8m.

The additional 15% equates to 0.27:1 bonus FSR. The subject site therefore has a maximum FSR of 2.07:1, or 10,064.9m².

The proposal, as amended, seeks approval for a total FSR of 2.3:1 and a GFA of 11,498.8m², a variation of 1433.9m² or 2.3:1 being **13.38%**.

Preconditions to be satisfied

Section 4.6(4) of the LEP establishes preconditions that must be satisfied before a consent authority can exercise the power to grant development consent for development that contravenes a development standard. Section 4.6(2) provides this permissive power to grant development consent for a development that contravenes the development standard is subject to conditions.

The two preconditions include:

1. Tests to be satisfied pursuant to CI 4.6(4)(a) – this includes matters under CI 4.6(3)(a) and (b) in relation to whether the proposal is unreasonable and unnecessary in the circumstances of the case and whether there are sufficient environmental planning grounds to justify contravening the development standard and whether the proposal is in the public interest (CI 4.6(a)(ii)); and
2. Tests to be satisfied pursuant to CI 4.6(b) – concurrence of the Planning Secretary.

These matters are considered below for the proposed development having regard to the applicant's Section 4.6 request.

Precondition 1: CI 4.6(3)

Section 4.3 Height of Buildings

The applicant submits compliance with the height of building development standard is unreasonable and that there are sufficient environmental planning grounds to warrant the variation:

- The design of the building, as amended, is such that the breach to the standard results from the lift overrun which will not be visible from the public domain as it is located in the centre of the roof of Building B;
- The variation does not impact the proposal in respect of building massing, scale, view sharing or street character;
- The site is a corner site and, as such, the lift overrun of Building B will not result in additional shadow impacts and the shadows cast will not be any greater than if the development complied with the standard;
- The lift overrun is a non-habitable space and will not result in adverse privacy impacts to adjacent developments;
- The development, as amended, continues to achieve the objectives of the standard; and
- There are developments in the vicinity of the site where deviations from the height of building standard have been approved.

Council accepts the applicant's argument that compliance with the maximum height of building development standard is unreasonable and that sufficient environmental planning ground have been established as the proposed variation is central to the roof of Building B, will not be visible from the public domain, will not result in additional adverse shadow impacts and will not result in adverse privacy impacts. While prior approvals do not set a precedent, Council notes that there are examples of other developments in the vicinity of the subject site that have had variations to the development standard approved.

In respect of s4.3 Height of Buildings, the submitted s4.6 variation request is considered to have appropriately met the precondition.

Section 4.4 – Floor Space Ratio

The applicant submits compliance with the FSR development standard is unreasonable and that there are sufficient environmental planning grounds to warrant the variation for the following reasons:

- There are developments in the vicinity of the site where deviations from the height of building standard have been approved;
- The development proposes appropriate scale, bulk and mass for the site achieved through modulation, complying front setbacks, complying areas of landscaping and deep soil zones;
- The proposed mass enables view sharing and provides a distinct view corridor along Powell Street; and
- The development, as amended, continues to achieve the objectives of the standard.

Council accepts the applicant's argument that compliance with the maximum FSR development standard is unreasonable and that sufficient environmental planning ground have been established as the proposal, as amended, continues to provide landscaping and deep soil zones that comply with the applicable development standards despite the proposed variation to FSR. While prior approvals do not set a precedent, Council notes that there are examples of other developments in the vicinity of the subject site that have had variations to the development standard approved.

In respect of s4.4 Floor Space Ratio, the submitted 4.6 variation request is considered to have appropriately met the precondition.

Precondition 1 – Cl4.6(4)(a)

In respect of cl 4.6(4)(a)(i), the submitted 4.6 Variation Requests, as amended, is considered to have satisfactorily addresses the requirements of 4.6(3), as discussed above.

In respect of cl 4.6(4)(a)(ii), it is considered the proposal is in the public interest as the applicant has satisfactorily demonstrated that the proposed development, as amended, continues to meet the objectives of the R3 Medium Density Zone, and the objectives of S4.3 and S4.4 despite the variations sought.

This is discussed below.

The objectives of the R3 Medium Density Residential zone are provided below:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*

The applicant argues the proposed development, as amended, will continue to meet these objectives despite the proposed variations to height of building and FSR for the following reasons:

- The proposal is for seniors housing and directly contributes to the housing supply for an age group that is expected to increase substantially by 2036;
- The proposal, as amended, provides appropriate dwelling mix including 1, 2 and 3 bedroom units;
- The proposal enables other land uses to continue providing facilities and services that meet the day to day needs of the community; and
- The development will result in increased residential accommodation which will increase the use of surrounding businesses and land uses.

Council considers the applicant has satisfactorily demonstrated that the objectives of the R3 zone can be met by the proposal, as amended, despite the variations sought.

Section 4.3 – Height of Building

The objectives for this development standard are as follows:

- (a) *to establish the maximum height for which a building can be designed,*
- (b) *to ensure that building height relates to the land's capability to provide and maintain an appropriate urban character and level of amenity,*
- (c) *to ensure that taller development is located in more structured urbanised areas that are serviced by urban support facilities,*
- (d) *to encourage greater population density in less car-dependant urban areas,*
- (e) *to enable a transition in building heights between urban areas comprised of different characteristics,*

- (f) to limit the impact of the height of a building on the existing natural and built environment,*
- (g) to prevent gross overshadowing impacts on the natural and built environment.*

The applicant argues the proposed development, as amended, will continue to meet these objectives despite the proposed variation for the following reasons:

- Appropriate urban character and amenity is still achieved through modulation, setbacks and landscaping;
- The site is located within proximity to urban support facilities where taller developments are encouraged;
- The sites proximity to services and facilities promotes reduced car dependency;
- The objectives encourage greater population density in the area;
- The proposal, as amended, results in a more sensitive urban design;
- Shadows cast by the proposed development, as amended, generally fall on local streets and not surrounding residential accommodation.

With the exception of the first objective which requires compliance with the standard, Council considers the applicant has adequately demonstrated that the objectives of the standard are able to be satisfied despite the variation being sought.

Section 4.4 – Floor Space Ratio

The objectives for this development standard are as follows:

- (a) to define the allowable development density of a site and for particular classes of development,*
- (b) to enable an alignment of building scale with the size of a site,*
- (c) to provide flexibility for high quality and innovative building design,*
- (d) to limit the impact of new development on the existing and planned natural and built environment,*
- (e) to encourage increased building height and site amalgamation at key locations in the area of Tweed City Centre.*

The applicant argues the proposed development, as amended, will continue to meet these objectives despite the proposed variation for the following reasons:

- The development, as amended, provides a suitable building scale in relation to the size of the consolidated lot;
- High quality space planning and architecture provides environmentally sensitive design that does not adversely impact surrounding residential accommodation;
- The natural and built environments are not adversely impacted by the proposal, as amended, which seeks retention of the Lemon-scented Gum and provides compensatory planting for removed vegetation; and
- The site can be considered a key site due to the proposed consolidation.

With the exception of the first objective which requires compliance with the standard, Council considers the applicant has adequately demonstrated that the objectives of the standard are able to be satisfied despite the variation being sought.

Precondition 1 – CI4.6(4)(b)

Concurrence of the Director – General/State or Regional Environmental Significance

In respect of cl 4.6(4)(b), the applicant has noted the NRPP is the nominated consent authority due to the proposal having a Capital Investment Value greater than \$30 million. The applicant noted, in accordance with Planning Circular 20-002, the NRPP can consider variations sought subject to a cl 4.6 Variation Request being submitted pursuant to TCCLEP 2012.

The applicant notes the proposed variations will not raise any matters of significance for State or Regional planning.

Council accepts the applicant's response in this regard.

Council considered that the written 4.6 Variation Request satisfies the preconditions as discussed above.

The submitted 4.6 Variation Request also considered the proposed variations against the Five (5) Part Test established by the Land & Environment Court in *Wehbe v Pittwater Council* (2007).

The applicant argues that the proposed variations to section 4.3 and 4.4 satisfy Tests 1 and 3 and that a departure from the standards is therefore justified.

The relevant test, the applicant's argument and Council's response are provided below.

Test 1: establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Applicant's argument: The applicant argues the objectives of the development standards are achieved despite the variations sought and notes the proposal is well founded on this test.

Council's response: As discussed under Precondition 1 above, Council considered the applicant has satisfactorily demonstrated that the objectives of section 4.3 Height of Buildings and section 4.4 Floor Space Ratio can be achieved despite variations being sought.

Test 3: the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable.

The applicant argues complying with the standard would defeat objectives (b), (c), (d) and (g) of s4.3 Height of Buildings and objectives (b), (c) and (e) of section 4.4 Floor Space Ratio for the following reasons:

Section 4.3 Height of Buildings

- The variation, resulting from the lift overrun, does not preclude the development from achieving an appropriate urban character;
- The variation will not result in gross overshadowing impacts;
- The site is located in proximity to services, amenities and public transport; and
- Limiting the building height to comply with the standard would limit density on the site.

Council does not consider the applicant has satisfactorily demonstrated that the underlying objectives of the standard would be thwarted by a complying development.

The applicant's argument in response to Test 3 is not accepted by Council in respect of section 4.3 Height of Buildings.

Section 4.4 Floor Space Ratio

- Strict compliance would not allow the site to accommodate the full extent of FSR and GFA that it is capable of achieving without resulting in any other adverse environmental impacts;
- Compliance would prevent flexibility in designing a high quality and innovative building design; and
- Compliance would limit the efficiency of the amalgamated site, restricting economic revitalisation, affordability and dwelling mix.

Council considered the applicant has satisfactorily demonstrated that strict compliance with the FSR development standard would limit the ability to provide an appropriately scaled development of high quality design. The applicant's argument in response to Test 3 is accepted in regards to Section 4.4 Floor Space Ratio.

Whilst Council has not accepted the applicant's arguments in respect of Test 3 against the Height of Building development standard, it is considered the applicant has satisfactorily addressed the requirements of Section 4.6 of the TCCLEP 2012 and the proposed variations to the Height of Buildings and Floor Space Ratio development standards are warranted in this instance.

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

There are no draft SEPPs that apply to the proposal.

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

The following Development Control Plan is relevant to this application:

(d) Tweed Shire Development Control Plan 2012 ('the DCP')

Tweed DCP Section B2 - Tweed City Centre is the prevailing DCP for the subject site (TDCP B2). Where TDCPB2 is silent on certain matters, or does not apply, TDCP A1, Part C – Residential flat buildings and shop top housing applies.

The applicant submitted an assessment of the proposal against the relevant sections of TDCP as part of the original development application however, amended versions of the assessment in response to amendments to the overall design were not provided.

TDCP B2 – Tweed City Centre

4.2 Active Street Frontages – control k

k) Provide direct 'front door' access from ground floor residential units.

Three (3) of the proposed dwellings front Florence Street to the south, with the remaining four (4) ground floor dwellings fronting the site's northern boundary which is shared with another allotment.

For the three (3) dwellings fronting Florence Street, direct street access has not been provided. Despite the non-compliance with the control, the proposal is considered acceptable due to the nature of the development, being for seniors housing. By providing access to each ground floor dwelling via internal hallways and entrances, relevant standards in respect of corridor widths, ramp grades and circulation spaces are achieved allowing people of all abilities to occupy the ground floor dwellings.

The non-compliance is considered acceptable in this instance.

4.4 Front fences and boundary treatments – control b

b) Front fences and boundary treatments are not to have a greater height to public domain than one metre in height (Figures 4.7 and 4.8).

The proposal seeks to provide a combination of 1.5m and 2m fences to the Powell and Florence Street boundaries.

The 2m fence is to comprise stone cladding for 1.5m measured from ground level, with a 500mm high screen on top. Along Florence Street, this fencing provided privacy to residents utilising areas of private and communal open space that are located adjacent to Florence Street. Along Powell Street, this provides a visual buffer from the footpath to the porte cochere.

At the south-western corner of the site a 1.5m high open fence is proposed which provides a clear delineation between public and private land but allows for lines of sight through the corner and for clear lines of site to the retained Lemon-scented Gum.

The variations to the requirement are acceptable and are not considered to detract from the streetscape, result in unacceptable shadow impacts or create opportunities for concealment.

4.6 Vehicle footpath crossings – controls i & j

i) Porte cochères disrupt pedestrian movement and do not contribute to active street frontage. They may only be permitted in exceptional circumstances for hotels and major tourist venues subject to urban design, streetscape, heritage and pedestrian amenity considerations.

j) If justified, porte cochères should preferably be internal to the building with one combined vehicle entry and exit point, or one entry and exit point on two different street frontages of the development.

TDGP B2 discourages the use of porte cocheres except in exceptional circumstances. Whilst port cocheres are not encouraged, control 'j' notes that, where the incorporation of a porte cochere is justified, they should be internal to the building with one combined vehicle entry and exit point, or one entry and exit point on two different street frontages of the development.

The porte cochere is considered justified in this instance as the proposal is for seniors housing and it is anticipated people with mobility issues will reside within the provided dwellings. As such, the provision of a porte cochere allows for safe, covered and level access to the main pedestrian entry of the development. The proposal seeks to provide separate vehicle entries and exits as shown in **Figure 17** below which are considered acceptable and is considered to minimise traffic disruption to and from both street frontages.

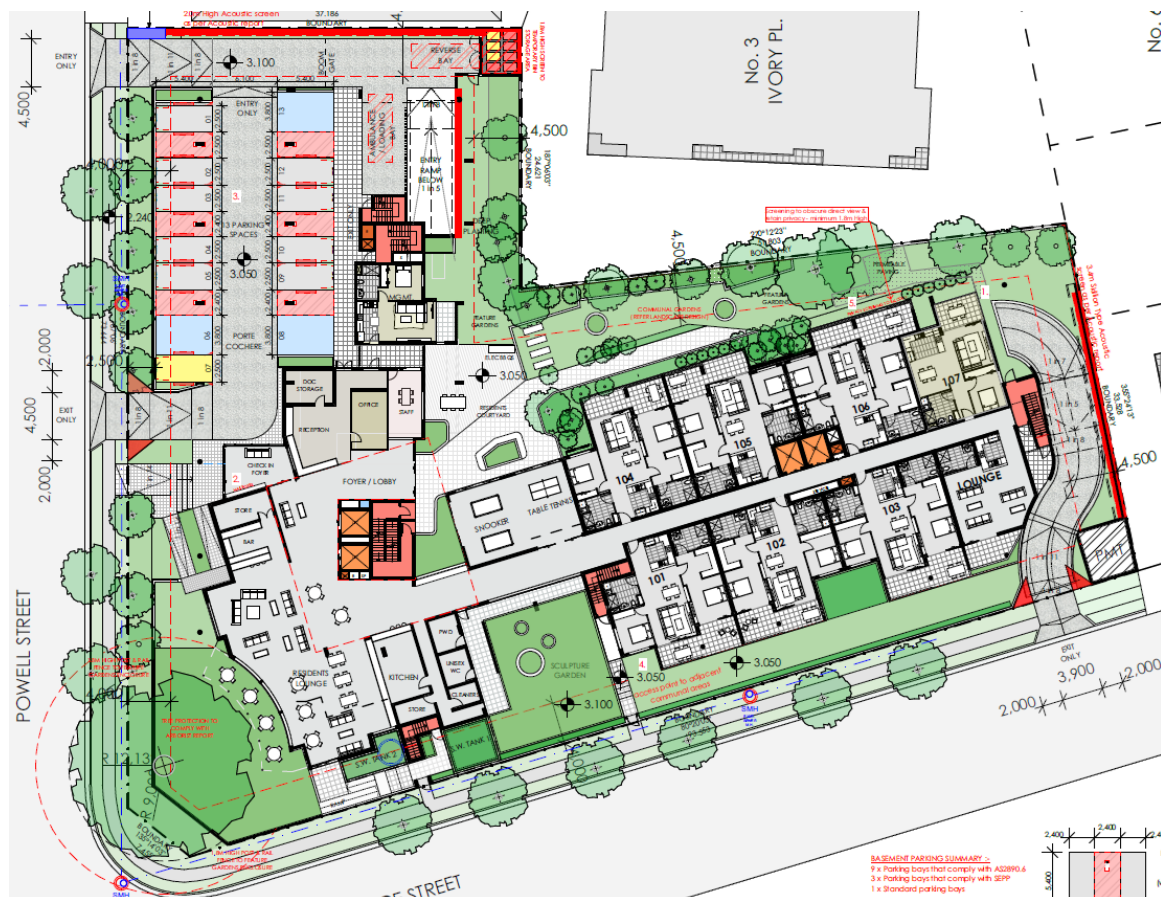


Figure 17: Ground floor level, as amended, showing vehicle entries and exit include to porte cochere in north western corner, adjacent to Powell Street.

Whilst porte cocheres are not encouraged, the proposal is considered acceptable in this regard, in this instance.

6.2 Water conservation – control c

c) Use an alternative to mains water source for the irrigation of public or private open space.

The amended BASIX submitted to Council, dated 21 December 2022 does not list any alternative water sources. Despite the non-compliance, the proposal, as amended, does achieve water requirements prescribed under BASIX certificates.

TDGP A1 – Part C Residential flat buildings and shop top housing

Block Edge Residential Flat Building – control a

a. Maximum building and elevation length along the street is 35m.

The proposal, as amended, seeks to provide a building and elevation length of approximately 19m (Building B) and 42m (Building C) to Florence Street (south) and 62m (Buildings A and B) to Powell Street (west). This results in a variation to the control of 7m in respect of Building C fronting Powell Street and 27m to Powell Street.

In the assessment against TDGP A1 Part C submitted with the original development application, the applicant argues the variation is acceptable as the built form becomes modulated at upper levels, thereby reducing the overall building length, bulk and scale.

The proposal, as amended, seeks a reduced building height and it is considered that the modulation of the building as stipulated by the applicant has a greater impact in reducing the mass and scale of the development.

Furthermore, areas of landscaping and deep soil zones within the street setbacks aid to further reduce the bulk of the proposal, as amended.

Despite the proposed variation, it is considered the objectives of the control are achieved as visual bulk has been adequately reduced through modulation, reduced building height, building materials and landscaping and delineation between private and public spaces along street frontages is achieved by the design of the built form thereby appropriately and effectively defining the streetscape.



Figure 18: Ground floor plan, amended, showing modulation of the building at this level and its interaction with landscaping



Figure 19: Level four (4), as amended, showing three distinct buildings being Block A (north, Block B (south-west) and Block C (east).

Site configuration – Impermeable site area – control g

- g. The maximum areas for impervious surfaces are:*
 - 60% of the allotment - On lot sizes greater than 750m²

The subject site has a total site area of 4862.3m². 60% of this area equates to 2,917.38m² maximum impervious area.

The proposal, as amended, seeks to provide a total impervious area of 3,464.1m² or 71.2% of the total site area. This results in a variation of approximately 546.72m² or 18.7%.

The applicant did not submit an amended assessment against TDCP A1 Part C in alignment with the amended proposal however, despite the non-compliance, it is considered the proposal, as amended, will not adversely impact the sites' ability to infiltrate stormwater due to complying landscaped areas and deep soil zones that are marginally short of the minimum requirement. Furthermore, on-site detention is proposed, and the amended proposal has been reviewed by Council's Roads and Stormwater Unit who have raised no objections subject to relevant conditions of consent.

Topography, cut and fill – control h

- h. Cut areas are to be set back from the boundaries at least 900mm; fill areas are to be setback from the boundary a minimum of 1.5m.*

Fill is proposed to ensure the development achieves the design flood level of RL3.1m AHD (inclusive of 500mm freeboard). Whilst fill along Powell Street is proposed 2.5m clear of the boundary, it is proposed to be incorporated up to the site's southern boundary, being the Florence Street boundary.

Given the proposed fill is to ensure flood immunity, the variation is considered acceptable in this instance and it is not considered fill less than 1.5m from the southern boundary will have any adverse impacts on the topography/landform of the site.

Front Setbacks (Building Lines) – control g

g. Basement garages cannot be located forward of the building footprint.

The control states that basement garages cannot be located forward of the building footprint.

The southern extent of the basement is proposed to be built to the southern boundary however, the built form above ground is proposed to have a 4m setback from the southern site boundary. As such, the proposal does not comply with the control.

The variation is considered acceptable as ample landscaping is proposed within the southern setback, inclusive of areas of communal open space allowing for a clear transition between public and private space. In addition, a basement of this size is required to ensure parking in accordance with the requirements set out in SEPP (Housing) 2021 is met. Furthermore, the variation to the control does not limit the ability for the development to provide deep soil zones that are generally consistent with the requirement of SEPP (Housing) 2021 and TDCP B2.

Side setbacks – control g

g. Basement garages are to be set back a minimum of 1.5m from the side boundaries but preferably in line with the building above.

The proposal, as amended, seeks to construct the basement to the eastern side boundary which conflicts with the requirement of the control.

However, as with control g for *Front Setbacks* discussed above, the variation does not adversely impact landscaping or deep soil zones. The proposed variation is not in conflict with the objectives of the control and is therefore considered acceptable.

Rear setbacks – control a

a. The minimum rear boundary setback is 8m or the deep soil zone whichever is the greater. The minimum building separation distances must be met.

As the deep soil zone requires a depth of 6m for Florence Street and 6.71m for Powell Street, 8m is the greater.

The proposal, as amended, seeks to provide a minimum rear setback of 4.298m to Florence Street and 4.17m to Powell Street.

The applicant's original assessment of this control noted further consideration of the control was not required due to the prevailing nature of the Apartment Design Guide which specified required building separation.

As the ADG does not apply, this statement is incorrect. Furthermore, no updated assessment was provided in conjunction with the amended proposal.

Despite the above, it is considered adequate building separation and privacy mitigation measures, including privacy screens and vegetation have been adequately incorporated and will contribute to reducing visual and acoustic privacy impacts. Furthermore, the reduced rear setbacks have not prevented the development from providing space for vegetation, mature trees and areas for private outdoor recreation. It is considered the variation satisfies the objectives of the control.

Rear setbacks – control c

c. For Residential Flat Buildings existing mature trees within 6m of the rear boundary are to be retained

This control requires residential flat building development to retain existing mature trees within 6m of the rear boundary.

The proposal, as amended, seeks the removal of 8 trees from the subject site, most of which are located within 6m of the rear boundary. The applicant argued in their original submission that most of these trees are considered to be non-native species.

The proposal, as amended, was referred to Council's Sustainability and Environment Unit who raised no objections subject to relevant conditions of consent.

Car parking and access – control d

d. Carparking cannot be located within the front setback.

In respect of Florence Street, this has been complied with however, a porte cochere containing 13 car spaces is proposed within a portion of the Powell Street front setback.

As discussed earlier, this configuration is considered acceptable when considering the type of residential accommodation that is proposed. The car parking is suitably screened from Powell Street by a 2m fence with vegetation proposed between the fence and the boundary. It is considered the variation is acceptable and is not in conflict with the objectives of the control.

Car parking and access – control h

h. On grade carparking cannot occur within 12m of the primary street boundary for flat buildings and 6m for Shop- top.

As discussed in respect of control 'd' above and porte cocheres elsewhere in this report, the proposed at-grade car parking, as amended, is considered acceptable.

Basement Carparking – control d

d. The walls of basement car parks are best located in line with the buildings footprint. Basement carparking is not to extend outside the external line of terraces, balconies and porches.

As with control 'g' of Front Setbacks discussed earlier, the basement is proposed to extend to the southern site boundary and therefore beyond the line of the building above which is setback 4m from the same boundary line. As with that control, the variation is considered acceptable as ample landscaping is proposed within the southern setback, inclusive of areas of communal open space allowing for a clear transition between public and private space.

Furthermore, the variation to the control does not limit the ability for the development to provide deep soil zones that are generally consistent with the requirement of SEPP (Housing) 2021 and TDCP B2.

TDCP A3 – Development on flood liable land

The subject site is mapped as being affected by the Probable Maximum Flood (PMF) event to a height of RL5.5m AHD.

As a result, and combined with the surrounding roads being lower than the design flood level, a PMF Refuge is required in order to comply with A3.2.6 Emergency Response Provisions. A Flood Response Assessment Plan is also required demonstrating the adequacy of the refuge.

The applicant submitted a Flood Response Plan with the original application and the amended plans (dated 15/02/2023) provide a PMF Refuge on Level 4 of the development. The amended plans were referred to Council's Roads and Stormwater (Flooding) Engineers who raised no objections to the proposed refuge.

TDCP A15 – Waste minimisation and management

Council's DCP Section A15 aims to minimise the generation of construction/demolition waste and facilitate effective ongoing waste management practices consistent with the principles of Ecologically Sustainable Development.

A revised Waste Management Plan (WMP) prepared by HMC Environmental Consulting Pty Ltd was submitted with the amended plan set on 15 February 2023 and has considered the waste streams likely to be generated as a result of the demolition, construction and operational phases of the development.

No concerns or objections were raised by Council's Resource Recovery Unit or Environmental Health Section, subject to the implementation of recommended conditions of consent.

TDCP A16 – Preservation of trees and vegetation

The proposed development seeks removal of the nineteen (19) local native trees that qualify as 'prescribed vegetation', being locally indigenous species equal to, or greater than, five (5) metres in height.

The proposal, as amended, seeks to retain the existing Lemon-scented Gum in the south-western corner, although it is noted that this species is not native to the local area.

The proposal, as amended, was referred to Council's Sustainability and Environment Unit who raised no concerns subject to the implementation of recommended conditions of consent which include the provision of adequate compensatory planting being provided across the site.

The following contributions plans are relevant pursuant to Section 7.11 of the EP&A Act and have been considered in the recommended conditions (notwithstanding Contributions plans are not DCPs they are required to be considered):

- CP04 – Tweed Road Contribution Plan 2016
- CP05 – Local Open Space 2022 – Casual Open Space only
- CP11 – Tweed Shire Library Facilities 2009
- CP12 – Bush Shelters 2009
- CP13 – Eviron Cemetery 2009

- *CP15 – Developer Contributions for Community Facilities 2022*
- *CP18 – Council Administration Offices and Technical Support Facilities 2016*
- *CP22 – Cycleways 2009*
- *CP26 – Shirewide Regional Open Space 2009 – Casual Open Space only*
- *CP27 – Tweed Heads Master Plan 2005*

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

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

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

The following relevant matters contained in the EP&A Regulation must be taken into consideration by a consent authority in determining a development application:

- Matters contained in Section 61 including:

The proposal seeks to demolish six existing dwellings across the seven (7) allotments and all associated structures.

The proposal was referred to Council's Building Surveying Unit who raised no concerns with the proposal subject to relevant conditions of consent.

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

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

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

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

Context and setting – The proposal is considered to be generally consistent with the context of the site, in that the proposed seniors housing is an appropriate form of residential accommodation within a built form that is consistent with the emerging character of the Tweed City Centre. The proposal is appropriately located with Tweed Mall approximately 200m to the north and public transport nodes located within 200m of the site to the west and south. The scale, mass and form of the proposal, as amended, is generally consistent with planning controls pertaining to the site. Proposed exceedances of note relate to the maximum permitted height of building and floor space ratio. These have been discussed in further detail in the Key Issues section of this report.

The seven (7) existing allotments proposed to be amalgamated as part of the proposed development are currently occupied by single storey detached residential dwellings with the exception of 12 Powell Street which is currently vacant. The proposed seniors housing development is consistent with the residential zoning of the site and will provide increased housing opportunities.

The proposal, as amended, is compatible with the context and setting of the site.

Access and traffic – The proposal seeks to provide car parking for residents, visitors and staff within a single basement level and via additional at-grade parking located at the north-western portion of the site, via Powell Street. Car parking has been discussed in detail under the Key Issues section of this report.

The proposal was referred to Council's Traffic Engineers who did not raise any concerns the proposal would result in unacceptable traffic load and impact on either Powell or Florence Streets.

As discussed elsewhere in this report, the subject site is within walking distance of a number of bus stops which provide services to Tweed Mall to the north. In respect of access and traffic, it is not considered the proposal will result in any adverse impacts.

Utilities – The site is capable of being serviced by all required utilities and services. The proposed development, as amended, was referred to Essential Energy who raised no objection to the amended proposal subject to comments pertaining to potential safety risks and general comments. These have been incorporated as recommended conditions of consent [GENNS05]

Soil impacts – As discussed previously in this report, a Pre-Demolition Under Slab Soil Contamination Investigation Report identified *"potential soil contamination associated with the former use of termite chemicals in the underslab area of the existing structures...at Lots 113-119 DP 237809, 6-12 Powell Street & 33-37 Florence Street, Tweed Heads."*

A RAP was submitted as part of the applicant's response to RFI package and was accepted by Council's EHU subject to relevant conditions of consent [GENNS01].

Flora and fauna impacts – While the proposal seeks the removal of a number of existing mature and semi-mature trees, one of the most significant of these, being the Lemon-scented Gum in the south-western corner, is to be retained as per the amended proposal. This has been discussed further in the **Key Issues** section of this report.

Natural environment – The subject site is relatively level with only a minor change in grade experienced across the site. The proposal, as amended, seeks approval for the excavation of a single basement level. On-site detention is proposed, and substantial deep soil zones will aid in ensuring effective stormwater runoff. It is not considered the proposal, as amended, will result in any adverse impacts on the natural environment.

Noise and vibration – As discussed below, an amended Construction Noise Management Plan and Environmental Noise Impact Assessment report were submitted as part of the applicant's response to the RFI. Appropriate conditions, including permitted hours of work, have been recommended to minimise impacts resulting from the construction of the proposal. The Environmental Noise Impact Assessment report also responds to the operation of the proposed seniors housing development. Council's Environmental Health Section reviewed this amended plan and advised that noise and vibration impacts from construction and use of the proposal can be satisfactorily mitigated through the recommended conditions of consent [DURNS01; PCCNS01; USE0305].

Natural hazards – The subject site is not affected by the 1% AEP Flood Event however it is affected by the Probably Maximum Flood (PMF) up to RL5.4m AHD. This has been discussed in the Background section of this report. The proposal, as amended, is considered to have

appropriately responded to the PMF subject to relevant conditions of consent [PCC0685; PCCNS03]

Safety, security and crime prevention – As discussed elsewhere in this report it is considered the proposal has appropriately responded to CPTED principles.

Social impact – The proposed development is considered to have a positive social impact. As amended, the proposal provides additional housing opportunities for people over 60 years of age, in a medium density built form. Ample areas of communal open space within the development provide opportunities for residents to meet and engage with one another. The sculpture garden, whilst inside the boundary of the site, is located in an area that will allow members of the public passing the site to also enjoy the sculptures, thereby creating opportunities for interaction between residents and members of the public.

Economic impact – The proposed seniors housing development creates opportunities for employment for those who work within the sector as well as providing opportunities for employment for local businesses such as cleaners. The proposed seniors housing will provide critical mass to support local businesses including, but not limited to bowling clubs and shops.

Site design and internal design – The proposed site and internal design, as amended, generally responds to the characteristics of the site and its surrounds. As discussed elsewhere in this report, internal design has resulted in non-compliances with minimum areas and dimensions for ground floor private open space, minimum clearances beside and at the foot of beds and in front of laundry appliances, as well as reduced solar access. As discussed, these can be satisfied through recommended Deferred Commencement conditions.

Construction – The proposal, as amended by the plans received 22 August 2022, included an amended Construction Noise Management Plan and Environmental Noise Impact Assessment report. These were referred to Council's Environmental Health Section for review. The amended Plan and report were accepted and originally provided conditions were amended.

A standard condition in respect of construction hours has been recommended, with works permitted to occur between 7am and 6pm Monday to Saturday and no works permitted to occur on Sundays and Public Holidays [DUR0205].

Cumulative impacts – Whilst the proposal seeks variations to a number of development standards including solar access, it is considered the impacts are minimal and isolationist and will not result in cumulative impacts for the development, the locality or future residents.

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

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

The subject site is considered a suitable location for the proposed development, as amended. The site is relatively level with only a minor change in grade reducing the need for excavation. The site is within walking distance to Tweed Hospital and Club Tweed and public transport is located within walking distance for residents who wish to utilise it to access all the facilities provided within Tweed Mall. The site is located close to Tweed River and the surrounding streets all provide sealed footpaths providing suitable access pathways.

The site is located within an area of the Tweed that is undergoing a transition from small scale residential development to medium density residential accommodation. It is considered the proposal is consistent with this emerging character and built form.

The proposal, as amended, provides housing opportunities for a dominant demographic within the Tweed and it is considered an appropriate use for the site.

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

These submissions are considered in Section 4 of this report.

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

The proposed development, as amended, seeks to provide increased housing opportunity for seniors within a medium-density seniors housing development which is consistent with the strategic future and current transition of the Tweed City Centre. Whilst the amended proposal seeks variations to a number of development standards/controls across SEPP (Housing) 2021, TCCLEP 2012, TDCP B2 and TDCP A1, these variations are generally considered acceptable and impacts resulting from these non-compliances have either been mitigated through design or else are able to be resolved through the imposition of recommended conditions of consent.

It is not considered the proposal will result in any adverse impacts on the safety and well-being of the public.

The proposal will provide additional 94 seniors housing units and will create opportunities for employment through lobby staff, cleaning and landscaping. The proposal is therefore considered to be in the public interest.

4. REFERRALS AND SUBMISSIONS

4.1 Agency Referrals and Concurrence

The development application has been referred to various agencies for referral as required by the EP&A Act and outlined below in Table 5.

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

Table5: Concurrence and Referrals to agencies

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

Essential Energy	Section 2.48 – State Environmental Planning Policy (Transport and Infrastructure) 2021 Development near electrical infrastructure	General comments/terms of approval provided in response to original plan set. Amended plans received 22/8/22 referred back to agency for review. No change to original comments required. Amended plans received 15/2/23 referred back to agency for review. Essential Energy responded providing comments regarding potential safety risks which have been included as a recommended condition of consent.	Y
WaterNSW	Section 90(2) – Water Management Act 2000 Water management work approval	General comments/terms of agreement provided. These have been included as a recommended condition of consent.	Y
Integrated Development (S 4.46 of the EP&A Act)			
Natural Resources Access Regulator	S89-91 – Water Management Act 2000 water use approval, water management work approval or activity approval under Part 3 of Chapter 3	Advised the proposed development was not a matter for NRAR – referred to WaterNSW instead	N/A

4.2 Council Officer Referrals

The development application has been referred to various Council officers for technical review as outlined **Table 6**.

Table 6: Consideration of Council Referrals

Officer	Comments	Resolved
Flooding & Stormwater	No objections to the application subject to recommended conditions	Yes (conditions)
Sustainability & Environment	Initially raised concerns with the removal of semi-mature and mature native trees, with particular emphasis on the Lemon-scented Gum in the south-western corner; potential impact of development on bush-stone curlews and low percentage of native plant species proposed. The issue of the Lemon-scented Gum tree has been addressed in further detail under the Key Issues section of this report. In respect of the remaining matters, the proposal as amended was referred to the Unit who confirmed no further objections to the application, subject to recommended conditions.	Yes (conditions)

Traffic	Council's Traffic Engineering Officer reviewed the proposal and initially raised concerns in relation to traffic generation and car parking. These issues have been resolved through amendments are considered in more detail in the Key Issues section of this report.	Yes (conditions)
Environmental Health	Council's Environmental Health Officer initially raised concerns in relation to land contamination and required confirmation as to whether any regulated systems (e.g. cooling water systems) as defined in the Public Health Act 2010 are proposed. These matters were raised in the RFI dated 2/5/22. The applicant satisfied the matters raised and the EHU raised no further concerns subject to recommended conditions.	Yes (conditions)
Development Engineering	Council's Engineering Officer reviewed the submitted stormwater concept plan and considered that there were no objections subject to conditions.	Yes (conditions)
Water & Wastewater	Council's Water and Wastewater Unit required further information in respect of proposed water meters and sewer inspection openings has reviewed the proposal, as amended, and has raised no objection subject to relevant conditions of consent.	Yes (conditions)
Building	Council's Building Unit reviewed the original proposal and raised no concerns or objections. BSU reviewed amended plans dated 22 August 2022 and noted the amendments did not warrant any additional or modified conditions to those originally provided.	Yes (conditions)
Waste	Council's Waste Unit raised no objections to the proposal.	N/A

4.3 Community Consultation

The originally submitted proposal was notified and advertised for 28 days in accordance with Council's Community Engagement and Participation Plan 2019-2024 from 19 January 2022 until 16 February 2022. The notification included the following:

- An advertisement in the Tweed Link local newspaper;
- Two signs placed on the site, one on Powell Street frontage and the other on Florence Street frontage;
- Notification letters sent to adjoining and adjacent properties – approximately 45;
- Notification on Council's website.

Council received four (4) unique submissions from the first notification period. Of the four (4) unique submissions received, two (2) noted their objection whilst the remaining two (2) outlined concerns with the proposal. The issues raised in these submissions are considered in **Table 7** below.

Table 7: Community Submissions

Issue	No of submissions	Council Comments
Building Height Proposal exceeds maximum building height permitted for the site	2	<p>Amended plans received 22 August 2022 proposed a reduced development that sought 6-storeys with a maximum building height of 22.6m. An amended section 4.6 Variation Request accompanied the amended proposal. These amendments have been carried into the latest plan set received 15 February 2023.</p> <p>Outcome: Council has undertaken an assessment of the amended proposal, including the 4.6 variation request, and deems the proposal has adequately responded to the concerns regarding building height, with a minor variation now proposed (0.6m/2.72%). The issue has been satisfactorily addressed.</p>
Floor Space Ratio Proposed FSR of 2.9:1 is an overdevelopment of the site	1	<p>Amended plans received 22 August 2022 proposed a reduced development comprising 6-storeys and a reduced FSR of 2.3:1. An amended section 4.6 Variation Request accompanied the amended proposal. These amendments have been carried into the latest plan set received 15 February 2023.</p> <p>Outcome: Council has undertaken an assessment of the amended proposal, including the 4.6 variation request which has been addressed elsewhere in this report.</p> <p>Whilst a significant variation to FSR continues to be proposed, impacts resulting from the FSR originally sought have been significantly reduced by the amended design. It is considered the proposal, as amended, results in a better planning outcome and is therefore considered acceptable.</p>
Removal of trees Proposal seeks to remove existing semi-mature and mature native trees on site including Lemon - scented Gum. Trees are enjoyed by all.	2	<p>Amended plans received 22 August 2022 showed the proposed building had been significantly re-designed in the south-western corner in order to retain the Lemon-scented Gum and so as not to intrude, at least by more than 10%, within the TPZ of the tree. These amendments have been carried into the latest plan set received 15 February 2023.</p> <p>Outcome: This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Attachment B).</p>
Building separation/visual privacy Concerns were raised that	2	<p>Privacy screens have been proposed to north-facing balconies at levels 1-5 to minimise impacts to visual privacy to the northern adjoining development at No. 3 Ivory Crescent. These privacy screens, combined with the approximately 6m setback of the rear of the</p>

reduced building separation would result in loss of visual privacy to adjoining properties		adjoining development to the shared boundary is considered to appropriately mitigate concerns pertaining to visual privacy.
Parking and traffic Inadequate parking facilities provided. Lack of on-street parking to absorb overflow	2	<p>Whilst parking was an issue during the assessment of the proposal, these issues have been resolved through amendments.</p> <p>Amended plans received 15 February 2023 have resolved all concerns Council raised in relation to parking. This has been discussed in further detail in the Key Issues section.</p> <p>Outcome: The issue has been satisfactorily addressed.</p>
View impact Obstruction of sea/river views from 31 Florence Street to the west.	1	<p>The application, as amended, has reduced the overall height, bulk and scale of the development when compared to the original proposal.</p> <p>The reduced building height will allow for partial views of the ocean from the rooftop terrace of 31 Florence Street to be retained, as the Level 4 terrace is proposed to have a floor level of RL15.10m AHD, and the Level 5 terrace a proposed floor level of RL18.10m AHD. Both of these levels are beneath the 19m floor level identified in the submission as being afforded to the rooftop terrace of No. 31 Florence Street.</p> <p>In addition to the above, the loss of views from existing development would be a resulting factor from any development that sought to build within the development standards and controls governing the subject site.</p> <p>Outcome: The reduced building height that has been proposed reduces the impact of the development on existing views to the ocean. It is considered the proposal reasonably addresses the concern and the matter is considered to have been satisfied.</p>

Upon receipt of amended plans on 22/08/2022, the development application was re-notified for another 28 days in accordance with Council's Community Engagement and Participation Plan 2019-2024 from 14 September 2022 until 12 October 2022. The re-notification resulted from substantial design changes and included the following:

- An advertisement in the Tweed Link local newspaper;
- Two signs placed on the site, one on Powell Street frontage and the other on Florence Street frontage;
- Notification letters sent to adjoining and adjacent properties – approximately 46;

- Notification on Council's website.

A total of four (4) submissions unique to those received during the first notification/advertisement period were received during the second notification period, all of which objected to the amended proposal. The following concerns were raised during the second notification period (in addition to those raised during notification 1):

Table 3: Community Submissions – Notification 2

Issue	No of submissions	Council Comments
Unit size Do not meet minimum requirements	1	<p>Whilst the ADG does not expressly apply to the proposal, it is noted that the units proposed within the amended development received 15 February 2023 achieve the minimum internal areas for all apartment types.</p> <p>Outcome: The proposed unit sizes are considered acceptable.</p>
Communal areas Insufficient amount provided; no park land provided; no trees proposed; no shade.	1	<p>The amended proposal received 15 February 2023 notes 1807m² of communal open space is provided. As the submitted plans do not show what these areas are, Council has calculated the areas of communal open space to total 1,597m².</p> <p>Neither SEPP (Housing) 2021 nor Council's DCP's provide a minimum communal open space requirement for senior's housing. Given the type of building proposed, the minimum communal open space for residential flat buildings provided within Council's DCP B2 Tweed City Centre is applied.</p> <p>DCP B2 requires a minimum of 30% of the site area be provided as communal open space. 1,597m² equates to 32.8% of the overall site area.</p> <p>Outcome: The amended proposal is compliant with DCP B2 in respect of communal areas.</p>
Bush stone curlews Proposal risks safety of curlews	1	<p>Council's Sustainability and Environment Unit required additional information be submitted in respect of bush stone curlews. This information was submitted within the response to RFI packages received on 22 August 2022.</p> <p>Outcome: Information submitted as part of the 22 August 2022 response to RFI package has been accepted by Council's S&EU subject to recommended conditions of consent.</p>

Noise/Dust/Vibration Construction of another neighbouring development has resulted in dust and noise	1	The proposal, as amended, has been reviewed by Council's Environmental Health Section who are satisfied construction impacts are capable of being managed through conditions. Outcome: Can be managed by way of recommended conditions of consent.
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Issues raised during both notification periods have either been resolved or are considered manageable by way of recommended conditions of consent.

5. KEY ISSUES

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

5.1 Height of Building

A maximum building height of 22m is permitted over the site in accordance with TCCLEP 2012. The application originally proposed a 7-storey building measuring 26.3m, resulting in a variation of 4.3m or 19.54%.

The applicant was advised that the proposed building height was not supported as it raised concerns in respect of obstruction of views, loss of visual privacy and impacts on the public domain and desired local character.

Amended plans received 22 August 2022 proposed a reduced built form seeking a 6-storey development with a maximum building height of 22.6m.

An amended section 4.6 Variation Request accompanied the amended proposal, seeking approval for a 0.6m/2.72% variation. An assessment of the s4.6 has been provided earlier in this report.

Despite still seeking a variation to the maximum permitted height of building, the amended height is considered to be a substantial improvement to the original design and has generally resolved the issues raised.

5.2 Floor Space Ratio

A maximum FSR of 1.8:1 (8,752.1m² GFA) is permitted over the site in accordance with TCCLEP 2012. In accordance with Section 87 of SEPP (Housing) 2021, a bonus 15% FSR is afforded to developments with a building height of not more than 3.8m above the maximum permissible building height.

Despite breaching the maximum permissible building height of 22m by more than 3.8m (4.08m variation sought), the original application sought to utilise the FSR bonus provided under the SEPP, proposing a maximum FSR of 2.9:1/14,140.7m² GFA. Given the proposed building height meant the FSR bonus could not be applied, the maximum FSR permitted for the site is that specified under the TCCLEP 2012 of 1.8:1.

The originally proposed FSR of 2.9:1 resulted in a variation of 5,322.5m² or 60.36% to the maximum 1.8:1 permitted.

The applicant was advised the proposed FSR was not supported and that, as the proposal sought a building height greater than 3.8m above the maximum permitted height of building, the additional FSR bonus of 15% could not be applied. The applicant was advised the non-compliant FSR raised concerns pertaining to visual amenity, development bulk, scale and intensity and impact on the public domain and desired local character.

Amended plans received 22 August 2022 proposed a reduced built form of 6-storeys and reduced GFA of approximately 2,615.8m². As the amended built form results in a building height no more than 3.8m above the maximum permissible building height, the 15% FSR bonus afforded under the SEPP could be applied.

15% of the permitted FSR under TCCLEP 2012 equates to 0.27:1/1,312.8m². As a result of the amended building height, the proposal is permitted a maximum FSR of 2.07:1/10,064.9m².

The amended proposal notes a reduced FSR of 2.3:1/11,498.8m² is sought.

An amended section 4.6 Variation Request accompanied the amended proposal seeking approval for a 1,357.87m² or 13.38% variation. An assessment of the 4.6 has been provided previously in this report.

Despite continuing to seek a variation to the maximum FSR, the amended development is considered to be a substantial improvement to the original design and has generally resolved the issues raised.

5.3 Solar Access

s108(2)(f) requires at least 70% of dwellings receive a minimum of 2 hours direct solar access between 9am and 3pm at mid-winter in living rooms and private open spaces.

70% of the 95 proposed dwelling equates to 66.5 units (67). The applicant did not provide a response to the development standard in the assessment against SEPP (Housing) 2021 originally submitted as part of the DA package.

In the amended assessment against the SEPP that was provided as part of the RFI the applicant does not provide any numeric information in respect to how many of the proposed units achieve compliance with the standard.

Amended plans submitted as part of the package received on 15 February 2023 stated 68/95, being 71.5% of units, achieve the requirement of the standard and identified 27/95, or 28.4% of units, as failing to achieve the standard.

Council disagrees with the applicant's assessment, and considers 30 units in total, being 31.5% of units, do not achieve the requirements of the standard.

Whilst the proposal, as amended, falls short of the minimum 70%, it is considered ample solar access is provided to a number of different areas of communal open space. As such, the variation is considered acceptable given it is minor in nature.

5.4 Car parking

Section 108(k) of SEPP (Housing) 2021 requires a car parking rate of 0.5 spaces per bedroom within a development. Section 5 of Part 1 of Schedule 4 of the SEPP requires car parking provided, not being car parking for employees, is to meet AS2890.6 (a) and provide 10% of the total number of car spaces as being able to increase the width of the space to 3.8m (b).

The original application sought to provide 110 units with a total of 186 bedrooms. A total of 93 car spaces were therefore required under s108(k).

The Traffic Impact Assessment submitted alongside the original proposal discussed the provision of 94 spaces in total, including 76 that complied with AS2890.6, and 5% measuring 3.8m in width. The remaining 18 spaces were proposed to comply with AS2890.1 and were to incorporate visitor parking (11 spaces) and staff parking (7 spaces).

A variation to the required number of spaces able to be increased to 3.8m in width was included within the submitted 4.6 Variation Request.

Council advised the applicant via the RFI issued on 02 May 2022 that the multi-purpose rooms provided in 42 of the 1 x bedroom units were to be assessed as bedrooms and that a total of 114 car spaces were therefore required as 227 bedrooms could be utilised. It was also noted that if the single bedrooms are only considered to have 1 bedroom and 93 spaces are required, the 87 residential spaces proposed (being 76 residential and 11 visitor) were insufficient.

The applicant was also advised provision of visitor spaces that do not comply with AS2890.6 were not supported and that 6 of the staff spaces proposed as tandem would not be supported unless it could be demonstrated that all 6 were in excess to the total number of car spaces required under the SEPP rate.

Amended plans received 22 August 2022 included a redesign of the building which included a reduction in the total number of units from 110 to 95. The total number of bedrooms however remained relatively similar, with 185 bedrooms proposed as part of the amended design. As such, 92.5 (93) car spaces were required in accordance with the SEPP. The amended proposal sought to provide a total of 97 spaces including 79 that comply with AS2890.6 and 9 that measure a minimum of 3.8m wide, being a total of 88 resident spaces. The remaining 9 were noted to comply with AS2890.1 and were allocated to visitor and staff.

After ongoing consultation between the applicant and Council, the applicant submitted further amended plans on 15 February 2023 showing 98 spaces in total, including 84 spaces complying with AS2890.6; 9 spaces meeting the minimum 3.8m width (93 spaces total) and an additional 5 spaces meeting AS2890.1.

The amended plans received on 15 February 2023 show a car parking arrangement that is compliant with s108(k) and s5, Part 1, Schedule 4 of SEPP (Housing) 2021. The amended parking arrangement is accepted, and the issue has been resolved.

5.5 Lemon-scented Gum Tree

The original proposal sought to remove 9 semi-mature and mature trees across the site, including a mature Lemon-scented Gum located at the south-western corner, adjacent to the Powell Street/Florence Street intersection.

Council's Sustainability and Environment Unit raised significant concerns in respect of the proposed vegetation removal and specifically requested the retention of the Lemon-scented Gum.

Amended plans received 22 August 2022 showed the proposed building had been significantly re-designed in the south-western corner in order to retain the Lemon-scented Gum. These amendments have been carried into the latest plan set received 15 February 2023.

Outcome: The amended design and accompanying arborist report were referred back to the S&E Unit who noted the proposal, as amended, provided adequate separation distance from the Lemon-scented Gum tree and that measures for the protection of the tree were generally acceptable, noting only a minor encroachment (less than 10%) into the TPZ of the tree at ground floor level. This issue has been satisfactorily addressed subject to the imposition of relevant recommended conditions of consent (Attachment B).

6. CONCLUSION

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

As discussed above, the key issues pertaining to the proposal were height of building, floor space ratio, solar access, car parking and retention of the Lemon -scented Gum tree.

The submitted section 4.6 variation request to the height of building and floor space ratio development standards have been accepted as discussed earlier in this report. It is considered the proposal, as amended, appropriately amended the design of the development to ensure viable retention of the Lemon-scented Gum tree in the south-western corner of the site. Furthermore, the proposal, as amended, has ensured compliance with SEPP (Housing) 2021 in respect of car parking. The key issues of the proposal are considered to have been adequately achieved or impacts mitigated either through amended design or recommended conditions of consent.

As discussed throughout this report, the proposal is appropriate for the site given its location within the Tweed City Centre and proximity to services. The development, as amended, is consistent with the strategic vision for the area and compliments the transition that is currently underway.

It is considered that the key issues as outlined in Section 5 have generally been resolved satisfactorily through amendments to the proposal. Where these issues have not been resolved, they can be done so via the recommended deferred commencement. Recommended draft conditions are provided under **Attachment B**.

7. RECOMMENDATION

That the Development Application DA21/0949 for senior's housing including demolition of existing dwellings and construction of 95 units, a swimming pool, signage, lot consolidation and tree removal at 6, 8, 10 & 12 Powell Street and 33, 35 and 37 Florence Street, Tweed Heads be APPROVED by way of Deferred Commencement pursuant to Section 4.16(1)(a) of the *Environmental Planning and Assessment Act 1979* subject to the draft conditions of consent attached to this report at Attachment A.

The following attachments are provided:

- Attachment A: Architectural Plans
- Attachment B: Draft Conditions of consent
- Attachment C: Clause 4.6 Request (amended)
- Attachment D: SEPP(Housing) 2021 – relevant controls

- Attachment E - Public Submissions - Notification period 1
- Attachment F - Public Submissions - Notification Period 2